Manus Island

In August 2012, the Gillard Labor Government passed legislation reinstating offshore processing. On 21 November 2012, the first group of asylum seekers was transferred to Manus Island. UNHCR visited the processing centre on Manus Island in January, June and October 2013. Amnesty International visited the processing centre in November 2013 and March 2014. The Human Rights Law Centre (HRLC) visited in March 2014. In December 2014, the Senate Standing Committee on Legal and Constitutional Affairs released a report on the ‘Incident at the Manus Island Detention Centre from 16 February to 18 February 2014.’ Their findings are outlined below.

Physical conditions

The Manus Island processing centre is located at a PNG defence force base, about 40 minutes’ drive from the main town of Lorengau.\(^1\) The centre is divided into ‘compounds’ which house asylum seekers, each compound being patrolled by security guards.\(^2\) When entering and leaving each compound, asylum seekers must sign in and out, and must always be accompanied by a guard.\(^3\) The HRLC described the security presence at the centre as ‘overwhelming’ and contributing to a ‘noticeably tense, hostile and prison-like environment’.

In January 2013 and again in June 2013, UNHCR found that asylum seekers were being held in ‘harsh’ conditions on Manus Island, where the ‘hot and humid weather made the temporary accommodation very uncomfortable’.\(^4\) Some of the men were living in conditions
described by UNHCR as ‘deplorable’.\(^5\) Amnesty and the HRLC made similar observations. After visiting the Manus Island processing centre in November 2013 and March 2014, Amnesty reported concerns about overcrowding in sleeping areas, a lack of privacy and a lack of space for activities or movement.\(^6\)

Following the announcement of the Regional Resettlement Arrangement between Australia and PNG on 19 July 2013, the number of asylum seekers at the centre increased considerably, from 302 in June 2013 to 1,273 in May 2014.\(^7\) As of 28 February 2015 there were 1004 asylum seekers at the centre,\(^8\) allocated across four main compounds, known as Mike, Delta, Foxtrot and Oscar.\(^9\)

Asylum seekers expressed a number of concerns about their living conditions, including overcrowding, lack of privacy, and extreme heat and humidity.\(^10\) The discomfort caused by crowded conditions is exacerbated by the tropical climate on Manus Island, where the temperature lies between 30 and 40 degrees Celsius, humidity is high, and the weather can vary from ‘intense sunshine’ to ‘heavy downpours’.\(^11\) According to Amnesty International, there is little protection from the elements:

> Asylum seekers reported spending between one and five hours a day queuing for meals, for the canteen, for toilets and showers, and while waiting to be collected at the gates for interviews and medical appointments. There is almost no shade to protect people from the sun, heat, or rain, particularly in Oscar Compound …

When it rains, the camp smells strongly of sewage, particularly in Foxtrot Compound and near the entrance to the detention centre. Some detainees expressed concern at not having shoes or umbrellas, particularly when the weather is bad and it rains.\(^12\)

After visiting the centre in March 2014, Amnesty observed that ablution blocks in all compounds were dilapidated, dirty, mouldy, and several were broken or did not have running water.\(^13\)

Asylum seekers have also expressed distress about being given insufficient access to phone and internet facilities to contact their family overseas.\(^14\)

**Health care**

The adequacy of health care facilities on Manus Island is a serious and ongoing issue. In October 2013, asylum seekers expressed concern to UNHCR about:

- their deteriorating physical as well as mental health;
- the limited medical services available;
- respiratory concerns that were exacerbated due to the hot and humid conditions;
- the time it took to access medical treatment; and
- the limited medication they were issued with.\(^15\)

In November 2013, Amnesty International reported that it was ‘concerned that the medical facility within the camp is unable to cope with the growing demand for health and mental health services’.\(^16\) Asylum seekers expressed a number of concerns:
A number of detainees raised concerns that sometimes it takes between three and 10 days to receive a medical appointment after submitting a request [for an appointment]. Some felt that they needed to make several requests in order to be taken seriously and many complained that water and paracetamol was common treatment. The lack of ability to self-administer paracetamol for headaches or antiseptic cream for minor cuts means asylum seekers … often have to seek many appointments for even basic medical care. One doctor commented on the absurdity of requiring people to return to medical appointments several times to receive medication.\textsuperscript{17}

Medical staff on Manus Island also expressed concern about the adequacy of health care at the Manus Island processing centre. According to Amnesty International, medical staff ‘expressed frustration at the lack of response from Australian authorities to basic requests which would improve health and sanitation within the camp’.\textsuperscript{18} They also ‘expressed frustration that when certain conditions could not be treated in the centre, requests for transfer had been ignored’.\textsuperscript{19} Moreover, medical personnel were ‘clearly frustrated that people are deprived of activities or mental stimulation, which is escalating mental health problems within the detention centre’.\textsuperscript{20}

In March 2014 Amnesty observed that four psychiatric patients were detained in two shipping containers ‘facing inwards, split into four rooms’:

Each room has one mattress on the floor… A security officer sat at a desk between the rooms to constantly watch these patients. There is a small unshaded area outside, approximately 3 x 2 metres with just enough room to sit or stand, surrounded by a three metre high corrugated iron wall. There is no air flow and no space to walk around. Patients must be escorted to toilets outside of this area.\textsuperscript{21}

In June 2014 the Senate Standing Committee on Legal and Constitutional Affairs heard that the mental health team on Manus Island consists of mental health nurses, psychologists, counsellors and a psychiatrist. There are also a number of visiting psychiatrists that attend the centre.\textsuperscript{22}

**Detention**

Harsh physical conditions aside, the arbitrary nature of the detention of asylum seekers on Manus Island is disquieting. According to UNHCR:

The current PNG policy and practice of detaining all asylum-seekers at the closed [processing centre], on a mandatory and open-ended basis without an assessment as to the necessity and proportionality of the purpose of such detention in the individual case, and without being brought promptly before a judicial or other independent authority for review of that decision amounts, in UNHCR’s assessment, to arbitrary detention that is inconsistent with international law.\textsuperscript{23}

Amnesty International similarly reported:
Asylum seekers are detained in the absence of any individualised assessment of the need for detention, with no definite date for their release, apparently without any framework in Papua New Guinea for their detention, and no clear means to seek review of the lawfulness of their detention. The result is arbitrary detention, prohibited by customary international law and by treaties to which both Australia and Papua New Guinea are party.24

**Refugee status determination (RSD)**

Although the transfer of asylum seekers to Manus Island commenced in October 2012, there have been long delays in the processing of their refugee claims. UNHCR reported that this caused significant distress among asylum seekers.25

Asylum-seekers expressed varying degrees of confusion to UNHCR over the processing arrangements that would apply to them in PNG. Most advised that the information they received upon arrival about how and when the process would begin was limited and confusing, and many expressed frustration that no one at the Centre would provide them with adequate answers.26

Such concerns were also reported by Amnesty International:

> By far the most frequent complaint, and the one detainees almost universally regarded as the most serious, was that they have been left in uncertainty – about the timetable for Refugee Status Determination hearings and decisions on those hearings, about how long they would remain in detention, about where they would live and work in Papua New Guinea if they were accepted as refugees, about the culture and other aspects of life in Papua New Guinea, about their fate in every respect. Virtually all have family members – parents, spouses or partners, and/or children – in the countries from which they fled, and many expressed anguish at the prospect of being detained indefinitely and remaining powerless to safeguard their families' well-being.27

The capacity of PNG to undertake fair and timely refugee status determination on Manus Island has been questioned, with delays attributed to both the 'lack of legal framework' and the lack of 'appropriate visa categories'.28 In October 2013, UNHCR expressed concern that 'there is no clear and adequate legal or regulatory framework for conducting RSD in PNG'.29 Moreover, UNHCR reported:

> UNHCR has serious concerns about the RSD capacity and capability currently available to the Government of PNG to process, in an efficient and timely manner, the asylum-seekers who have arrived, and will continue to arrive, at the [processing centre]. In this regard, UNHCR notes with concern that as of 28 October 2013, of the 1,093 asylum-seekers who were at the [processing centre] during UNHCR’s visit, only about 160 had been able to lodge applications for asylum and only 55 had received RSD interviews.30

The Senate Standing Committee on Legal and Constitutional Affairs has found that uncertainty over the status determination process contributed to an outbreak of violence at the Manus Island centre between 16 and 18 February 2014,31 and that the violence “may
have been prevented if transferees had been given a clear pathway for the assessment of their asylum claims.\textsuperscript{32} The violence involved clashes between asylum seekers and PNG local staff, security forces, PNG locals and expatriate Salvation Army staff and expatriate G4S staff (the company contracted to run the centre at the time). One asylum seeker, Reza Barati, was killed and several others seriously injured. A review of the events conducted for the Department of Immigration and Border Protection by Robert Cornall AO, the ‘Cornall Report’, was released 26 May 2014 and recommended that ‘current measures and further initiatives which will expedite the finalisation of PNG refugee status determinations and resettlement and removal processes be implemented as quickly as possible’.\textsuperscript{33} The Senate Committee echoed the call for greater expediency in RSD, and expressed concern about the lack of judicial oversight in the status determination process.\textsuperscript{34}

On 9 May 2014 the Australian Minister for Immigration stated that refugee status determination decisions had been handed down for some Manus Island detainees, but these decisions could only constitute ‘recommendations’ and that settlement was up to the PNG government.\textsuperscript{35} At the end of February 2015, the Australian government reported that 298 interim determinations had been completed, of which 163 were positive and 135 were negative.\textsuperscript{36} Determinations remain ‘interim’ until approved by the PNG Minister for Foreign Affairs and Immigration. In November 2014, he received Cabinet approval to ‘finalise’ determinations.\textsuperscript{37} By early February 2015, the PNG government had approved the temporary settlement of 80 refugees.\textsuperscript{38}

**Children**

When the detention centre originally reopened on Manus Island it was intended to house men, women and children. During UNHCR’s visit in January 2013, there were 34 children on Manus Island.\textsuperscript{39} UNHCR expressed particular concern about their welfare:

Asylum-seekers and service providers expressed concerns to UNHCR that the ongoing restrictions on freedom of movement may have a long-term impact on the psychosocial health and development of the children. Some service providers report that children are showing signs of the trauma of both their boat journey to Australia and the ongoing detention on Manus Island, as well as the worries and stresses being expressed by their parents “rubbing off” on them and causing additional anxiety in the children.\textsuperscript{40}

In October 2013, UNHCR reported that children and families had been transferred back to Australia, although there were plans to move them back to Manus Island in 2014, once construction of the new processing centre had been completed.\textsuperscript{41} UNHCR expressed its ‘firm view’ that children and families should not be detained on Manus.\textsuperscript{42} Despite the transfer, Amnesty International reported that the Manus Island detention centre ‘housed at least three children under the age of 18 until just before our visit in mid-November 2013, reportedly as the result of an administrative error’.\textsuperscript{43} They were kept in a separate area of the centre.\textsuperscript{44} Two were sent to Christmas Island on 9 November 2013, and the third was transferred to the general population when he was determined by the Department of
Immigration to have turned 18 (although according to Amnesty he said that he would not be 18 for another year).\textsuperscript{45} Amnesty International also met with three other asylum seekers who had been determined by the Department of Immigration to be over 18, although they said that they were between 15 and 17 years of age.\textsuperscript{46} According to Amnesty International:

The treatment of their cases raises serious concerns about the age assessment procedures employed by Australia's Department of Immigration and Border Protection (DIBP). Particularly since early September, with the introduction of a new rule that asylum seekers must be transferred to Papua New Guinea within 48 hours of arrival on Christmas Island, initial assessments are made within a short time frame and thus appear to rely heavily on observations of physical appearance.\textsuperscript{47}

Amnesty International also expressed concern that children were not being given the benefit of the doubt by the Department of Immigration, contrary to international standards.\textsuperscript{48} Poor age assessments are problematic because they may have the effect of depriving children of the special care and treatment which is required to be accorded to them under international law.

**Return-oriented environment**

Asylum seekers on Manus Island are given the option of returning to their country of origin. Although UNHCR has expressed its support for assisted voluntary returns, it has questioned whether asylum seekers’ decisions to return to their home country could be characterised as truly ‘voluntary’, given the ‘pervasive climate [on Manus Island] which places an emphasis on promoting return’.\textsuperscript{49}

When responding to asylum-seekers concerns and complaints, some asylum-seekers reported that they are told that they can return if they are dissatisfied. In particular, one asylum-seeker shared with UNHCR a letter received from a service provider agency advising that: ‘if you are not pleased with the current processing arrangement, we can put you in touch with IOM [International Organization for Migration] who may assist you with return to your country of origin’.\textsuperscript{50}

One asylum seeker on Manus Island reportedly told Amnesty International that, ‘every gathering we get told to return or you will stay in PNG’.\textsuperscript{51}

In a September 2013 visit to the centre, then Immigration Minister Scott Morrison told asylum seekers that they would either remain at the centre until they returned home, or until a country (other than Australia) agreed to resettle them.\textsuperscript{52}

Other reports have expressed concerns about the ‘return-oriented’ environment at the centre.\textsuperscript{53} Pressure to return may result in *refoulement*. As UNHCR has explained:

> Some asylum-seekers at the [processing centre] who may be bona fide refugees, or in need of complementary protection, may contemplate a return to their country of origin as a result of the combined uncertainty around processing in PNG, the prospect of lengthy delays in accessing a permanent solution, the harsh conditions, and the
prospect of settling in PNG where there are high levels of insecurity and significant challenges around local integration.54

Durable solutions

A number of organisations have expressed concerns about settling refugees in PNG.55 According to UNHCR, ‘sustainable integration of non-Melanesian refugees in the socio-economic and cultural life of PNG will raise formidable challenges and protection concerns’.56

The vast majority of PNG citizens are Christians, meaning that there is likely to be little community understanding of Islam and few places of worship available to Muslims. UNHCR also notes that currently, non-Melanesian refugees in PNG are unable to access State education and employment. Even if these barriers are overcome, in addition to finding employment, the PNG ‘wantok’ system of kinship and affiliation is not likely to provide any real measure of security for non-Melanesian refugees from outside the region. In PNG society, challenging economic conditions and a lack of support for the recognition of overseas qualifications is expected to make attainment of meaningful employment extremely difficult for refugees in PNG.57

There is a particular issue relating to PNG’s criminalisation of homosexuality. According to Amnesty International:

Gay men expressed considerable fear about resettlement in Papua New Guinea, where same-sex sexual conduct is criminalised and police abuse against gay and transgender people is common. Several of the men with whom we spoke were apprehensive about disclosing their sexual orientation during their Refugee Status Determination interviews even when it was a basis for their refugee claim. Their fears were even more pronounced because detention centre staff have warned them that any consensual sexual conduct between detainees will be reported to Papua New Guinea police for prosecution.58

The Senate Committee heard evidence of hostility within the local community towards the asylum seekers, and that many detainees fear for their safety once they leave the detention centre.59 PNG politicians have themselves acknowledged the considerable social challenges of integrating refugees into the local community. In October 2014, the PNG Prime Minister announced that his government would seek to build ‘public awareness and support’ to address the ‘lack of understanding and support for refugee settlement’ so that refugees would be welcomed into the PNG community.60

During early 2015 a small number of refugees were moved from the detention centre into a transit centre in East Lorengau on Manus Island.55 However, the PNG government is yet to finalise a resettlement policy that will enable refugees to move into the community on the PNG mainland.62

Conclusion

In October 2013, UNHCR reported:
Overall, UNHCR was deeply troubled to observe that the current policies, operational approaches and harsh physical conditions at the [processing centre] do not comply with international standards and in particular:

- constitute arbitrary and mandatory detention under international law;
- do not provide a fair, efficient and expeditious system for assessing refugee claims;
- do not provide safe and humane conditions of treatment in detention; and
- do not provide for adequate and timely solutions for refugees.

In November 2013, Amnesty International reported:

The combined effect of the conditions of detention on Manus Island, the open-ended nature of that detention, and the uncertainty about their fates to which detainees are subjected amounts to cruel, inhuman, and degrading treatment or punishment. Moreover, some conditions of detention, particularly the housing of detainees in P Dorm, on their own violate the prohibition on torture and other ill-treatment.

In December 2014, the Senate Standing Committee on Legal and Constitutional Affairs recommended that the Australian Government:

- ensure investigations are carried out into the events of 16 to 18 February 2014;
- acknowledge its responsibility to respect, protect and fulfil the human rights of detainees;
- provide compensation to those who have suffered human rights violations;
- ensure professional medical and legal assistance for all detainees injured in the violence;
- allow the UN, qualified lawyers, the Australian Human Rights Commission and journalists regular access to the centre and transferees; and
- ensure that all service provider staff are provided with sufficient workplace training.

Despite the conclusions of these three bodies, the Australian government has maintained that responsibility for the regional processing centre lies with the PNG government. In relation to the Senate Committee’s recommendations, investigations into the death of one asylum seeker during the unrest of February 2014 were carried out by PNG authorities before the Senate report was released, and news outlets have reported that a criminal trial is now underway. It is also understood that lawyers have gained access to a group of detainees on Manus Island in relation to a separate matter.

Nauru

The transfer of asylum seekers to Nauru commenced in September 2012. Amnesty International visited the processing centre on Nauru in November 2012, and UNHCR visited the processing centre in December 2012, March and October 2013. During 2014, the
Australian Human Rights Commission heard evidence about the plight of children detained on Nauru and detailed this in its 2014 report *The Forgotten Children: National Inquiry into Children in Immigration Detention* report. In 2014 the Department of Immigration commissioned an investigation into allegations of abuse in the processing centre, and this document – the ‘Moss Report’ – was released in March 2015. Their findings are examined below.

**Physical conditions**

The processing centre on Nauru is located in the centre of Nauru on a phosphate plateau, away from the coast, where most of the Nauruan population resides. As at 28 February 2015, there were 742 people in the Nauru centre. In late 2012, both Amnesty International and UNHCR reported that asylum seekers were being housed in tents serving as temporary accommodation pending the construction of more permanent facilities on Nauru. UNHCR described the conditions as ‘harsh, with little natural shelter from the heat during the day, which is exacerbated by all the challenges arising from residing in a construction zone, including significant noise and dust’. Amnesty International reported the processing centre to be:

> [T]otally inappropriate and ill-equipped, with 387 men cramped into 5 rows of leaking tents, suffering from physical and mental ailments – creating a climate of anguish as the repressively hot monsoon season begins.

In March 2013, UNHCR noted ‘a significant improvement to conditions as a result of the construction of the more permanent purpose-built accommodation which was more suitable for the climatic conditions, and which replaced the original tents seen at the time of UNHCR’s December 2012 visit’.

However, due to riots which took place on 19 July 2013, substantial damage was caused to the buildings on Nauru. During its visit in October 2013, UNHCR reported that the purpose-built accommodation was ‘largely destroyed’. Single adult men were being held in tent compounds, with no fans, little privacy, and insufficient toilet and shower facilities. Families, children and single adult women were being held in vinyl marquees, each housing several families, with individual family areas separated by vinyl partitions. UNHCR reported that these were ‘cramped conditions, with very little privacy, in very hot conditions, with some asylum-seekers sleeping on mattresses on the ground’.

According to UNHCR:

> [T]he conditions at the [processing centre], coupled with the protracted period spent there by some asylum-seekers, raise serious issues about their compatibility with international human rights law, including the prohibition against torture and cruel, inhuman or degrading treatment (article 7, ICCPR), the right to humane conditions in detention (article 10, ICCPR) and the right to family life and privacy (article 17, ICCPR).
Health care

In December 2012, UNHCR found that there were ‘limited facilities in Nauru to manage medical health issues’. Health facilities continue to be limited on Nauru. During UNHCR’s visit in October 2013, asylum seekers raised concerns about a number of issues with UNHCR, including:

- lack of adequate medical facilities, including for heart conditions, dental issues and, in one case, to address a metal plate embedded in one person’s leg;
- hygiene issues – many complained of skin conditions and other infections, including parasites and lice;
- lack of a gynaecologist for the women;
- lack of access to x-rays and other medical equipment; and
- limited access to medication.

Adequacy of medical facilities aside, it is problematic that the detention environment itself is contributing to mental health problems among asylum seekers. During its visit in November 2012, Amnesty International reported:

Nine men in the camp are confirmed to be on hunger strike, many more claim they are on one. One hunger striker, Omid, has not eaten for over 40 days. He told the [Amnesty International] delegation that he has lost 19 kilograms but that “my psychological condition is even worse than my physical one”. Many of the men stated that they felt their only option was starting or returning to a hunger strike, or [to] attempt self-harm or suicide.

In October 2013, UNHCR found that:

the morale of asylum-seekers [is] extremely low as a result of uncertainty over and delays in processing and their futures, combined with the harsh conditions within the mandatory detention framework currently prevailing.

Such observations are supported by views expressed by medical and security staff, who informed UNHCR that:

the sense of injustice [being transferred to Nauru, while other asylum seekers were not], along with the hot and crowded detention conditions, a sense of isolation and abandonment, and a lack of information and clarity about their processing and future prospects, has led to widespread depression.

In May 2014 a confidential report on health services and the health of detainees was revealed by The Guardian newspaper. It has noted serious failures in the management of communicable diseases among child detainees, a lack of an appropriate child protection framework, a lack of opportunities for children to engage in meaningful play, depression amongst pregnant women and a lack of access to paediatric services.
In July 2014, the Australian Human Rights Commission’s inquiry into children in immigration detention heard evidence that there was often a shortage of medications such as antibiotics and anti-depressants, meaning that asylum seekers’ treatment was “abruptly stopped”. In August 2014, the former director of International Health and Medical Services (IHMS), which provides health services in detention centres, stated that the Department of Immigration was reluctant to send asylum seekers from Nauru to Australia for medical treatment, as this would increase their ability to access independent legal advice.

In 2014, news sources reported allegations of sexual abuse of women and children in the Nauru centre. According to The Guardian there is no clear child protection framework inside the detention centre – and independent clinical experts have raised serious concerns that children are at a ‘significant risk’ of sexual assault. The Australian government responded to these allegations by launching an inquiry into claims of sex abuse and conduct of contractors working on Nauru, with the review led by former Integrity Commissioner Philip Moss. The review, known as ‘the Moss Report’, gathered evidence relating to specific reports of sexual abuse and sexual exploitation of detainees by staff members. The report was released in March 2015, and recommended, among other things, that ‘the arrangements for identifying, reporting, responding to, mitigating and preventing incidents of sexual and other physical assault at the Centre could be improved’.

Detention

Both Amnesty International and UNHCR have reported that asylum seekers are subject to arbitrary detention on Nauru, contrary to international law. UNHCR found that:

The current Nauru policy and practice of detaining all asylum-seekers at the closed [processing centre] on a mandatory and open-ended basis, without an individualized assessment as to the necessity, reasonableness and proportionality of the purpose of such detention amounts to arbitrary detention that is inconsistent with international law.

Amnesty International expressed similar views, and further found that the lack of processing, harsh conditions and denial of resettlement in Australia constitute a penalty for the asylum seekers’ mode of arrival and therefore contravene article 31 of the 1951 UN Refugee Convention.

Refugee status determination (RSD)

Processing of refugee claims on Nauru only commenced in March 2013, although asylum seekers had been sent there from September 2012. Although acknowledging that the legal framework for refugee status determination in Nauru was ‘sound,’ UNHCR expressed concern about delays in processing during its visit in October 2013:

UNHCR considers the delays in processing and handing down decisions for asylum-seekers, some who have been on Nauru since September 2012, to be unacceptable. It is of deep concern that only one claim for refugee status has been finally determined in the 14 months since asylum-seekers were initially transferred to the [processing
[centre], and this was in an exceptional case of an unaccompanied minor who was being transferred back to Australia.\textsuperscript{97}

In May 2014 it was reported that thirteen asylum seekers on Nauru had been granted refugee status and would be resettled on the island with five-year visas.\textsuperscript{98} An additional 13 asylum seekers were granted refugee status on 26 June 2014.\textsuperscript{99} At the end of February 2015, the Australian government reported that 542 status determinations had been completed, of which 456 were positive and 86 were negative.\textsuperscript{100}

**Children**

As at 23 February 2015, there were 116 children detained on Nauru. A further 68 asylum seeker children are temporarily in Australia while members of their families receive medical treatment, but will be transferred back to Nauru.\textsuperscript{101} Many organisations and individuals have expressed profound concern about the detention of children on Nauru. For example, during its October 2013 visit, when there were 95 children detained at Nauru, UNHCR reported:\textsuperscript{102}

At the time of UNHCR’s visit, children were in closed detention, in difficult conditions, without access to adequate educational and recreational facilities, and with a lack of a durable solution within a reasonable timeframe.

On the basis of the harsh conditions at the [processing centre], UNHCR’s view is that the current facilities and arrangements in place are inappropriate for the support and protection of children. Any transfer of [unaccompanied and separated children] would be highly inappropriate.\textsuperscript{103}

According to UNHCR, ‘no child, whether an unaccompanied child or within a family group, should be transferred from Australia to Nauru.’\textsuperscript{104}

In July 2014, the Australian Human Rights Commission’s inquiry into children in immigration detention heard evidence that there was no full-time child psychiatrist on Nauru.\textsuperscript{105} Former staff employed at the centre told the inquiry that mothers and children detained on Nauru were desperate for clothes and books, and that they had observed children suffering from considerable weight loss and anxiety.\textsuperscript{106}

The Commission’s report, \textit{The Forgotten Children}, was released in February 2015, and found that children on Nauru ‘are suffering from extreme levels of physical, emotional, psychological and developmental distress.’\textsuperscript{107} The Commission found that the transfer and detention of children on Nauru is in breach of the United Nations Convention of the Rights of the Child, including provisions relating to the prohibition on torture, cruel, inhuman or degrading treatment, and the obligation to protect children from all forms of sexual exploitation and sexual abuse.\textsuperscript{108}

**Return-oriented environment**

Amnesty International and UNHCR support the right of asylum seekers to return voluntarily to their home countries, yet due to the conditions on Nauru these organisations have expressed concerns about pressures on asylum seekers to return home.
UNHCR expressed its deep concern about a ‘pervasive climate [on Nauru] which places an overt emphasis on promoting return’. Problematically, this could lead to *refoulement*: 

[S]ome asylum-seekers at the [processing centre] who may be bona fide refugees, or in need of complementary protection, may contemplate a return to their country of origin as a result of the combined uncertainty around processes in Nauru, the prospect of lengthy delays in accessing a permanent solution, the harsh conditions, and the lack of the prospect of a durable solution.

According to Amnesty International:

A number of men reported that they were considering returning home, despite still fearing for their safety. At least one man stated that he may have to return in order to protect his family, but would be forced to flee again this time taking his family with him.

**Durable solutions**

On 19 July 2013, the Australian Government announced that asylum seekers arriving by boat would not be settled in Australia if found to be refugees.

UNHCR has expressed concern regarding the resulting uncertainty for asylum seekers who have arrived on Nauru after 19 July 2013:

The 3 August [Memorandum of Understanding between Australia and Nauru] envisages that some refugees may be able to settle in Nauru, although it is not clear from the formal arrangements whether Nauru is committed, or even capable of, offering long term and durable solutions to those to whom it owes protection under the 1951 Refugee Convention.

The capacity of Nauru to accommodate refugees is questionable. According to UNHCR:

The current socio-economic and demographic identity in Nauru makes it very unlikely that recognized refugees will be able to find a sustainable, long term solution in Nauru itself.

News reports suggest that the local community has expressed hostility towards newly settled refugees. For example, in late 2014 there were several reports that unaccompanied child refugees were assaulted by locals, and that an anonymous letter was sent to resettled refugees threatening them with physical violence.

The settlement service provider has claimed, however, that settled refugees are contributing positively to the community, for example working in schools, starting their own businesses and using their professional skills.

In July 2014, asylum seekers within the centre began a peaceful protest against the conditions of their possible resettlement. *The Guardian* reported that five staff working at the centre may have been suspended for watching the protest, since ‘staff are instructed not to engage with any asylum seekers taking part in the protests.’
In September 2014 the Australian government signed a resettlement agreement with the Cambodian government, to provide for the transfer of refugees from Nauru to Cambodia. For further information on this arrangement, see our factsheet.

Cambodian officials met with Australian and Nauruan officials in early 2015 to discuss progress on the Cambodian resettlement deal. News outlets have reported that only three refugees on Nauru agreed to meet Cambodian officials, leading to uncertainty as to the whether any refugees would agree to be resettled in Cambodia.

**Conclusion**

Following its visit to Nauru in October 2013, UNHCR reported:

- [C]urrent policies, conditions and operational approaches at the [processing centre] do not comply with international standards and in particular:
- constitute arbitrary and mandatory detention under international law;
- despite a sound legal framework, do not provide a fair, efficient and expeditious system for assessing refugee claims;
- do not provide safe and humane conditions of treatment in detention; and
- do not provide for adequate and timely solutions for refugees.

Despite these conclusions, the Australian government has maintained that responsibility for the regional processing centre lies with the Nauruan government.

Since the release of the Moss Report, the Senate has voted to establish a Senate Select Committee Inquiry into the allegations of abuse within the Nauru processing centre.

**Endnotes**


3 Amnesty International, *This is Breaking People*, above n 1, 48.


5 UNHCR, *January Visit*, above n 4, 15.

UNHCR, *October Visit*, above n 2, 18; Amnesty International, *This is Still Breaking People*, above n 6, 5.


Amnesty International, *This is Breaking People*, above n 1, 37; Amnesty International, *This is Still Breaking People*, above n 6, 5.

Amnesty International, *This Breaking People*, above n 1, 18–19, 36–47.

Ibid., 40.

Ibid., 40–1.

Amnesty International, *This is Still Breaking People*, above n 6, 6.

Amnesty International, *This is Breaking People*, above n 1, 44–5; UNHCR, *October Visit*, above n 2, 20; Amnesty International, *This is Still Breaking People*, above n 6, 8.

UNHCR, *October Visit*, above n 2, 23.

Amnesty International, *This is Breaking People*, above n 1, 52.

Ibid., 54 (footnotes omitted).

Ibid., 52.

Ibid., 53.

Ibid.

Amnesty International, *This is Still Breaking People*, above n 6, 7.

Senate Standing Committee on Legal and Constitutional Affairs, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014*, December 2014, 47


Amnesty International, *This is Breaking People*, above n 1, 3–4.

UNHCR, *January Visit*, above n 4, 8.

Ibid.

Amnesty International, *This is Breaking People*, above n 1, 8.

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UNHCR, *October Visit*, above n 2, 1.

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