

# Third country resettlement

## International law and minimum standards relevant to the resettlement of refugees from Nauru and Papua New Guinea

On 12–13 September 2016, the Andrew & Renata Kaldor Centre for International Refugee Law convened a two-day Expert Roundtable on regional cooperation and refugee protection in the Asia-Pacific at UNSW. The first session of the Expert Roundtable focused on the ‘offshore processing’ (or ‘third country processing’) of asylum seekers in Nauru and Papua New Guinea (PNG). Participants expressed broad agreement that offshore processing was unsustainable and had no discernible future in its present form, and that an exit strategy from these countries should be pursued as a matter of priority.

The Roundtable discussed the key requirements and minimum standards that should be in place for any resolution of offshore processing in Nauru and PNG to be consistent with international law. A majority of participants shared the view that:

- it was essential to avoid erosion of the basic principles of international human rights and refugee law, including the right to seek asylum;
- any solution would need to address the indefinite and uncertain nature of the current arrangements; and
- additional protections and special arrangements would likely be necessary for stateless people.

In relation to the possible third country resettlement of refugees from Nauru and PNG (whether in the United States or elsewhere), a majority of participants shared the view that:

- refugees do not have an unfettered right to choose where they will be resettled. While a refugee’s preference of resettlement country may be taken into consideration (especially where he or she has ties to a country), and while no person should be forcibly moved to another country against his or her will, it would be inappropriate to introduce ‘voluntariness’ as a criterion for determining where refugees are relocated following refugee status determination;
- however, as a general rule, there are certain minimum standards and conditions that must be met in order for a country to be considered a viable resettlement country. These include:
  - guarantees that refugees will be protected from *refoulement*, in any manner whatsoever;
  - guarantees that refugees will also enjoy the rights to which they are entitled under the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol (Refugee Convention) and human rights law, in full and without discrimination, in law and in practice;
  - an adequately resourced integration programme which provides the services and support needed by refugees to adjust to a new society;
  - that family reunification is available, and supported; and

- that the receiving State is capable of, and the local community is committed to, sustaining the resettlement arrangement; and
- in addition to these general conditions, there are some objective criteria that countries should consider on an individual basis for each refugee – either as a matter of legal obligation or good policy – and which should be given sufficient weight in any resettlement program. These include whether a refugee has direct links to a country, the best interests and particular needs of refugee children, and the principle of family unity.

According to some participants, any resolution of the situations in Nauru and PNG would need not only to meet these general resettlement conditions, but also be sensitive to the fact that all people transferred to those countries require a higher standard of services to remedy the harm caused by their extended detention there. There was a strong view that people who had been transferred to Nauru and PNG comprised a distinct caseload, with very different circumstances from other refugees seeking a durable solution. It was recalled that these people presented with unprecedented levels of mental health problems, and that there was a 'humanitarian imperative' to address their critical health needs in a place where the appropriate professional expertise and capacity were already well-established. While the existence of adequate psychological support might not ordinarily be a determinative criterion for the viability of a resettlement country, some participants deemed it essential in this case.

Overall, the Expert Roundtable took the approach that an exit strategy from Nauru and PNG was fundamentally about linking all people transferred to those countries with long-term and appropriate solutions. There was support for the development of a suite of options, if it was not possible for everyone to be relocated to the same place under the same conditions. These options could possibly include some limited local integration in Nauru and PNG, but would more likely involve resettlement to other countries. These options should also include at least some solutions in Australia where appropriate or legally necessary (for example where families had been separated between Australia and Nauru or PNG).

The full report of the Expert Roundtable, *Where to From Here?*, is available at [http://www.kaldorcentre.unsw.edu.au/sites/default/files/Where\\_to\\_from\\_here.pdf](http://www.kaldorcentre.unsw.edu.au/sites/default/files/Where_to_from_here.pdf)

For more information, see: UNHCR Regional Representation Canberra, *Position paper: bilateral and/or multilateral arrangements for processing claims for international protection and finding durable solutions for refugees* (20 April 2016)

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