

**AMNESTY
INTERNATIONAL**



3 November 2016

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Dear Committee Secretary

Submission to the inquiry into serious allegations of abuse, self-harm and neglect in offshore detention

Thank you for the opportunity to provide a submission to the Legal and Constitutional Affairs References Committee inquiry into the serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre.

Submission

Amnesty International submits this letter and accompanying research report, [Island of Despair: Australia's "processing" of refugees on Nauru¹](#), to aid the Committee in this inquiry. We'd appreciate the report being provided in full to all members of the Committee.

This letter sets out our recommendations in relation to the evidence of abuse of asylum seekers and refugees held by Australia on Nauru and Manus Island and provides further information regarding the Australian government's response to our recently published report, *Island of Despair*.

Please also find attached the following Amnesty International reports for consideration by the Committee:

1. *Nauru Weakening Human Rights Protections and the Rule of Law* Amnesty International Submission to the UN Universal Periodic Review²;
2. *Australia: This is breaking people: human rights violations at Australia's asylum seeker processing centre on Manus Island, Papua New Guinea³*; and
3. *Australia: This is still breaking people: update on human rights violations at Australia's asylum seeker processing centre on Manus Island, Papua New Guinea⁴*.

¹ Amnesty International, *Island of Despair: Australia's "processing of refugees on Nauru"*, ASA 12/4934/2016, October 2016, <https://www.amnesty.org.au/island-of-despair-nauru-refugee-report-2016/>

² Amnesty International, *Nauru Weakening Human Rights Protections and the Rule of Law* Amnesty International Submission to the UN Universal Periodic Review, ASA 42/2279/2015, November 2015, <https://www.amnesty.org/en/documents/asa42/2279/2015/en/>

³ Amnesty International, *Australia: This is breaking people: human rights violations at Australia's asylum seeker processing centre on Manus Island, Papua New Guinea*, ASA 12/002/2014, December 2013, <https://www.amnesty.org/en/documents/ASA12/002/2013/en/>

⁴ Amnesty International Australia, *Australia: This is still breaking people: update on human rights violations at Australia's asylum seeker processing centre on Manus Island, Papua New Guinea*, ASA 12/002/2014, May 2014 <https://www.amnesty.org/en/documents/asa12/002/2014/en/>

Recommendations

Based on months of research, including interviews with more than 100 people in Nauru and Australia, Amnesty International's report brings together further revelations of abuse with existing accounts to reveal the full scale of Australia's system of deliberate cruelty. It is clear that the status quo is not tenable.

Amnesty International holds equally grave concerns about the treatment of asylum seekers and refugees held by Australia in Papua New Guinea.

Amnesty International recommends the crisis that refugees and asylum-seekers are facing currently on Nauru and Manus Island be resolved immediately. The people whom Australia has warehoused on Nauru and Manus Island cannot wait another day for a resolution to this acute crisis, and the Australian Government must recognise that the remaining refugees have the right to settle in Australia immediately.

Amnesty International also supports and commends efforts to explore policy proposals relating to the treatment of asylum seekers that comply with Australia's international human rights obligations⁵. 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.

Australia should consider the following options:

1. 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 Process⁶ to reach agreement on improved rights protections for asylum-seekers and refugees throughout the region;
2. 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;
3. Expanding private sponsorship and family reunion visa options for refugees is also a good option. Canada, for example, put in place a private sponsorship program which has allowed Canadian families to bring nearly 11,000 Syrian refugees since the end of 2015;
4. 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;
5. 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;
6. 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;
7. 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;

⁵ 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>.

⁶ <http://www.baliprocess.net/>

8. 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; and,
9. 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.

Further discussion of these recommendations can be found on page 54 of our report, [Island of Despair](#).

Government Response

Since Amnesty's report, [Island of Despair](#), was released on Monday 17 October the Immigration Minister Peter Dutton and the Department of Immigration and Border Protection have attempted to flatly reject the evidence of abuse we have documented. Yet neither the Minister or his Department have provided any evidence to refute our specific findings of:

- shockingly high rates of self harm, trauma and mental anguish;
- inadequate medical care;
- persistent intimidation and attacks against refugees in the community including robberies, attempted home invasions, violent attacks including against children, and sexual assaults;
- consistent failure of police to investigate or hold perpetrators accountable for these crimes;
- arbitrary arrests and intimidation of refugees in the community;
- children being denied the right to safely access education services; and,
- deliberate attempts to cover up the harm by preventing service providers on Nauru from speaking out and limiting access for independent observers.

Amnesty International's report has found that the Australian Government is choosing to subject women, men and children to an elaborate and cruel system of abuse with a policy that is intentionally designed to harm people in order to deter others from coming to Australia by boat.

These horrific and unpalatable facts are what need to be urgently addressed by the Government.

Torture

The Australian Government'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.

In response to Amnesty's claims of torture the Prime Minister said, "I reject that claim totally, it is absolutely false"⁷.

Amnesty International has more than 55 years of experience in identifying and eradicating torture and understand very well what is defined as torture under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Amnesty International does not use this term unless there is evidence that it meets the definition of torture. We do not make this claim lightly. Severe mental or physical pain or suffering that is intentionally inflicted to punish or coerce someone with the acquiescence of officials fits the definition of torture under international law.

We are not the first to say this Australia's treatment of refugees and asylum-seekers amounts to torture. The UN Special Rapporteur on Torture Juan Mendez, referring to Australia's offshore processing regime in Papua New Guinea

⁷ <http://www.abc.net.au/radionational/programs/breakfast/malcolm-turnbull-on-amnesty-international-report-nauru/7941536>

has already said that Australia has “violated the right of asylum seekers including children to be free from torture or cruel, inhuman or degrading treatment”⁸.

Faced with this evidence the government should look carefully at the situation before issuing blanket denials and we encourage the Committee to further explore this issue throughout its inquiry.

Consultation

In public statements, the Department of Immigration and Border Protection claims that they were not approached during the development of this report nor consulted prior to its publication.

Amnesty International sent the Department of Immigration a lengthy Memorandum summarising our findings about offshore processing on Nauru on 7 October, offering the Department the opportunity to comment or provide any clarifications. Amnesty International gave the Department ample opportunity for the right to reply and explained that we would publish their response alongside the report if they responded within the given time frame.

The Department has not yet provided a detailed response to Amnesty International. There are horrific and unpalatable facts, as well as the circumstances and cases of individuals requiring medical care which urgently need to be addressed by the Department.

Request to appear as a witness

Amnesty International's Senior Researcher Anna Neistat, who visited Nauru to undertake the research for our report *Island of Despair*, is available to give evidence to the Committee. As one of the few researchers who have recently visited Nauru, this would be an invaluable opportunity for the Committee to discuss Anna's findings directly with her, as well as discuss proposals about a better way to approach the forced migration crisis the world is now facing. We look forward to hearing from the Committee with proposed hearing dates.

Please do not hesitate to contact our Government Relations team should require any further information.

Yours sincerely

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Amnesty International Australia

⁸ <https://www.theguardian.com/australia-news/2015/mar/09/un-reports-australias-immigration-detention-breaches-torture-convention>