Submission to the Senate Legal and Constitutional Affairs Committee on its inquiry into abuse, self-harm, and neglect of refugees and asylum seekers on Nauru and Manus Island

November 9, 2016

Human Rights Watch makes this submission to provide the Senate Legal and Constitutional Affairs Committee with information relevant to its inquiry into serious allegations of abuse, self-harm, and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and similar allegations in relation to the Manus Regional Processing Centre.

Since July 2012, all asylum seekers who arrive in Australia by boat (including unaccompanied children and families) have been transferred either to Nauru or Manus Island in Papua New Guinea, under memoranda of understanding signed in 2012 and 2013.¹

As Human Rights Watch and a host of other groups and authorities have found, Australia’s offshore operations cause real and lasting harm to refugees and asylum seekers. Many suffer harassment and violence, abuses that largely go unaddressed by authorities. These abuses, the forcible transfer and exile to remote locations, and an uncertain future have had dire consequences for the mental well-being of refugees and asylum seekers. A leaked report from the United Nations High Commissioner for Refugees (UNHCR) found that “[post-traumatic stress disorder] and depression have reached epidemic proportions” among those held in both

locations and “anticipate[d] that mental illness, distress and suicide will continue to escalate in the immediate and foreseeable future.”

Papua New Guinea’s Supreme Court ruled in April 2016 that the detention of asylum seekers and refugees on Manus Island violates the country’s constitution. The following day, Papua New Guinea President Peter O’Neill asked the Australian government to find alternative arrangements for its detainees and those refugees who do not wish to voluntarily stay in the country. The Australian government has yet to do so.

This submission draws primarily on Human Rights Watch research on Nauru and Manus Island. Human Rights Watch visited Nauru for seven days in July 2016, conducting in-depth interviews with 35 refugees and asylum seekers on the island, children as well as adults. Human Rights Watch and the Human Rights Law Centre visited the transit centre at Lorengau on Manus Island, Papua New Guinea, in June 2015 but were not allowed to enter the Lombrum detention facility. This submission also draws on reports of the office of the UNHCR, the Australian Human Rights Commission, the independent inquiry led by former integrity commissioner Philip Moss (the “Moss Review”), the Senate Select Committee on the Recent Allegations Relating to Conditions

---

and Circumstances at the Regional Processing Centre in Nauru,10 and Amnesty International,11 as well as the cache of over 2,000 incident reports filed by caseworkers on Nauru between May 2013 and November 2015 (the “Nauru Files”), which were released by The Guardian in August 2016.12

1. Offshore Operations on Nauru

For months and in some cases years after their arrival in Nauru, adult and child asylum seekers were held in detention centres, surrounded by fences and guarded by security services. They lived in crowded tents where the heat was unbearable, with temperatures indoors regularly reaching 45 to 50 degrees Celsius (113 to 122 degrees Fahrenheit). With humidity between 75 and 90 percent, mould grows quickly on tent walls and ceilings, and skin rashes and other infections spread rapidly. Sudden, torrential rains flood roads and pool on the tent floors. On several occasions, rains have also uncovered unexploded World War II ordnance on the detention centre grounds.

Refugees and asylum seekers described conditions in these detention camps as “prison-like,” with regular searches of their tents by guards and regular confiscation of “prohibited” items—including food and sewing needles. Food was distributed at set times, and no one was allowed to bring any food into the tents, even for young children. Until early 2015, asylum seekers could take one two-minute shower a day. There were long lines for toilets that quickly became so dirty that staff refused to clean them. They could use the internet once a week at most, and could not leave the camp.

Since October 2015, Nauru has allowed asylum seekers greater freedom of movement around the island, a step widely interpreted as a response to litigation in Australia challenging the lawfulness of asylum seekers’ detention.

Those the Australian and Nauru governments recognize as refugees are generally provided accommodation in open camps or other housing throughout the island. Families are generally assigned prefabricated units or converted containers, and single men are placed in rooms with space only for a bed and a small shelf.

---

10 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 (Canberra: Commonwealth of Australia, 2015).
There are currently just under 1,200 refugees and asylum seekers on Nauru, including 173 children. About one-third, including 49 children, remain in tents in the Regional Processing Centres. Human Rights Watch heard from refugees and asylum seekers. They are allowed to leave during the day, although they are subject to monitoring by guards and other restrictions on their liberty. Smartphones are prohibited inside the centres.

As described in more detail below, Human Rights Watch identified widespread harassment of and violence against asylum seekers and refugees and profound concerns about the mental well-being of those transferred to and held on Nauru.

**Harassment and Violence, Including Sexual Assault**

Refugees and asylum seekers told Human Rights Watch that they suffer regular violent physical attacks from local Nauruans that with rare exception go unpunished by local authorities. Children as well as adults reported acts of intimidation, harassment, or violence directed at them or family members by Nauruans acting alone or in groups. Types of physical abuse include spitting, throwing bottles and stones, swerving vehicles in the path of refugees and asylum seekers as they walk or ride on motorbikes, breaking accommodation windows, and destroying other property.

Several of those interviewed by Human Rights Watch described acts of violence committed by guards and service providers against children. Similar accounts appear among the 66 reports of assault on children among the Nauru Files.

Sexual assault of refugee and asylum-seeking children on Nauru—by security guards as well as by other refugees or asylum seekers—has also been reported since 2013. The Moss Review described six reports of sexual assault of children, allegedly by contract service providers in

---


16 See, for example, Australian Human Rights Commission, *The Forgotten Children*, p. 188.
some cases and by adult detainees in other cases. In addition, the Moss Review identified five reports of alleged sexual harassment of children by contract service providers.

The Nauru Files contain at least one report of sexual assault of a child by a guard. In that case, a woman reported that “their son [name redacted] had said . . . that one Nauruan officer had put his hand up [their son’s] shorts and was playing with his bottom.” At least 10 other reports in the Nauru Files described acts of sexual assault against children, although it is not always clear from the redacted reports whether the alleged perpetrator was a guard or other staff member, a refugee or asylum seeker, or a member of the local community.

**Bullying and Harassment at School**

Harassment and violence against refugee and asylum-seeking children in local schools also appears to be prevalent. Parents and children told Human Rights Watch that they are regularly called names, shoved, and subjected to other forms of bullying by Nauruan students. Similarly, a July 2016 evaluation by Save the Children Australia found that refugee and asylum-seeking children, particularly girls, were subjected to physical violence by Nauruan students.

Cases described in the Nauru Files include reports that some refugee and asylum-seeking children have been subjected to sexualized forms of harassment while at school. For example, a girl who attended a Nauruan primary school told a caseworker in September 2015 that when she was at school, “Nauruan boys run up and touched me on the bottom and then run away.”

---

17 Moss Review, paras. 3.96-3.106.
18 Ibid, paras. 3.107-3.111.
20 See, for example, Incident Report SCA 15.0165, February 23, 2015 (a girl’s report that a man had “caught her”; asked what she meant, the girl “demonstrated by pinching herself on the bottom and pointed to her vagina”), http://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#incident= sca150165 (accessed November 2, 2016); Incident Report SCA 15.0174, February 25, 2015 (reporting that a man in the camp tried to place a girl on his lap and has also “tried to touch her on the chest and bite her on the cheek on 2 occasions”), http://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#incident= sca150174 (accessed November 2, 2016); Incident Report SCA 15.01731, February 24, 2015 (report that another individual “hit me and then cut me from under . . . [The person making the report] asked her if she could point (on the cut out doll we had) to the area where he ‘cut her from under’ and she pointed to the vagina area . . . .”), http://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#incident= sca1501731 (accessed November 2, 2016).
another report made the same month, the mother of a different girl told a caseworker that her daughter was refusing to go to school because “Nauruan boys at Nauru College [a secondary school] continue to touch her on her bottom and hug her.”

A third girl told a Save the Children caseworker that she would no longer be attending classes at Nauru Secondary School because of two Nauruan boys who made her feel uncomfortable.

The Consequences of Harassment and Violence
Children and adults told Human Rights Watch that to avoid persistent harassment and violence, they frequently avoid leaving their accommodations, particularly at night. Women and girls rarely leave the camps and then only in groups or with male companions.

Some children have stopped attending local schools to avoid harassment and violence. For example, a 15-year-old girl told Amnesty International that she stopped going to school because Nauruan children always tried to pull off her headscarf and constantly taunted her. Save the Children Australia estimates that 85 percent of refugee and asylum-seeker children on Nauru are not enrolled in school.

Lack of Police Investigation
Asylum seekers and refugees told Human Rights Watch that local police make little or no effort to investigate attacks against them, even in cases where the victims were able to clearly identify the perpetrators. Often police disregard their complaints and sometimes discourage them from filing reports.

Of some 50 cases referred to the Nauruan police by Australia’s Department of Immigration and Border Protection over the last three years, only five charges have been filed and two convictions have been recorded, according to one news account. In October 2016, Nauruan police charged one person with indecent assault of a 6-year-old, in what is thought to be the first case relating to the alleged abuse of an asylum seeker to be brought before Nauru’s courts.

---

Nauru’s former chief justice, Geoffrey Eames, QC, testified before the Senate Select Committee in July 2015 that “there is a serious question about [police] independence and about their willingness to investigate allegations against Nauruans who are charged with assaults of non-Nauruans.”29 Nauru enacted a child protection act in June 2016,30 but it has little capacity to implement the new law.31

**Attempted Suicide, Other Acts of Self-Harm, and Mental Well-Being**

Nearly every asylum seeker and refugee on Nauru interviewed by Human Rights Watch expressed concern about their mental well-being, describing high levels of anxiety, trouble sleeping, mood swings, and feelings of listlessness and despondency that began when they were forcibly transferred to Nauru. Children had begun to wet their beds, suffer nightmares, act out, and in some instances had stopped interacting with or even speaking to people outside of their immediate families.

Human Rights Watch spoke with children and with parents of children who had considered or attempted suicide or had engaged in other acts of self-harm, such as cutting their arms. In an indication of the prevalence of these serious concerns, the Nauru Files contain 30 reports of self-harm by children and 159 reports of attempted self-harm by children.32

The Australian Human Rights Commission, UNHCR, and other independent agencies have observed that prolonged detention in conditions that violate the prohibition on ill-treatment exacerbated the trauma many had suffered from persecution in their home countries and the abuses and other hazards they faced on their journeys to Australia.33

---

29 Senate Select Committee, *Taking Responsibility*, para. 2.36.
31 The Committee on the Rights of the Child noted in September 2016 that Nauru’s “Child Protection Directorate staff lack training or formal experience in child protection/child welfare,” its police have “limited capacity . . . to investigate allegations of sexual based violence against children,” “[i]nvestigative and other procedures . . . fail to provide guarantees of redress and lack a child sensitive approach,” and that there was “[i]nsufficient cooperation and information sharing among relevant agencies and inadequate follow up of complaints,” among other shortcomings. Committee on the Rights of the Child, Concluding Observations: Nauru, UN Doc. CRC/C/NRU/CO/1 (September 30, 2016) paras. 8, 30.
2. Offshore Operations on Manus Island

About 900 adult men live on Manus Island, mostly in the Regional Processing Centre, located on a naval base, while more than 60 men live in the transit centre at Lorengau.

During our 2015 visit to Manus Island, we uncovered serious human rights concerns, including the assault of a refugee by alleged authorities in Lorengau town, mistreatment of gay asylum seekers by other detainees, and mental health problems linked to prolonged and indefinite detention.

*Harassment and Violence, Including Sexual Assault*

Conditions in the Regional Processing Centre were cramped and dirty, and several detainees said they had faced violence from guards or local residents.

Australian immigration staff told a Senate Committee that over a 14-month period, the Manus centre recorded 14 sexual assaults, 213 physical assaults, and 798 cases of abusive or aggressive behaviour. Two asylum seekers sent to Manus have died – one after allegedly being beaten to death by contract staff at the detention centre.³⁴

In Papua New Guinea, consensual same-sex relations are offenses under the criminal law.³⁵ Two gay asylum seekers in detention and other asylum seekers told Human Rights Watch about the mistreatment of gay men in detention. All those interviewed, including those who are not gay, said that gay men had a particularly difficult time on Manus Island. Asylum seekers said gay men are either shunned or sexually abused or assaulted and used by the other men.

*The Consequences of Harassment and Violence*

Refugees on Manus Island told Human Rights Watch that the thought of settling in Papua New Guinea was unthinkable — even terrifying. Human Rights Watch met men haunted by the deadly violence they experienced in February 2014 when security personnel and local men armed with guns and machetes stormed the centre, threatening and beating the residents. They had grown despondent, fearful of venturing into the local community. Some recalled the night in February 2014 when an Iranian man, Reza Barati, was beaten to death and local residents, police, and guards allegedly injured more than 50 asylum seekers after protests at the detention centre. Abuses of asylum seekers, especially members of vulnerable groups such as gaymen, have caused some to return home where they risk persecution rather than face insecurity and uncertainty in Papua New Guinea.

---


³⁵ Under section 210 of the Criminal Code Act 1974, entitled “Unnatural Offences,” a person who sexually penetrates another person “against the order of nature” or allows a male person to sexually penetrate him is guilty of a crime punishable by up to 14 years’ imprisonment. Section 212, titled “Indecent Practices between Males,” provides that a male person who “commits an act of gross indecency” with another male person is guilty of a misdemeanour punishable by up to 3 years’ imprisonment. Criminal Code Act 1974, §§ 210, 212 (Papua N.G.).
Many of those found to be refugees refuse to leave the regional processing centre because of concerns over safety and an inability to provide for themselves in Papua New Guinea.

At time of writing, only 25 refugees on Manus had been allowed to move to mainland Papua New Guinea, working in Lae or Port Moresby. Of this number, several returned to Manus, citing threats to personal safety and poor working and living conditions.

Attempted Suicide, Other Acts of Self-Harm, and Mental Well-Being
Prolonged and indefinite detention has driven people to breaking point, with alarming levels of trauma, depression, and other mental health conditions. During the 2015 visit to Manus Island, Human Rights Watch met refugees and asylum seekers who cut themselves, banged their heads on walls, did not talk to anybody for months, or refused to go outside.

One of the refugees tried to explain to Human Rights Watch what life was like in the transit centre after long periods in detention: “You become domesticated, like an animal inside a cage. You think they are fine. They look normal, they seem healthy but they could not survive in nature, and that is like us now. We become like that. Mentally, we are not fine.”

Refugees and asylum seekers, service providers, local police, and even Papua New Guinea immigration officials all identified the continuing delay in the development of a policy to integrate refugees as exacerbating the psychological toll on many refugees and asylum seekers. Detention takes a heavy toll, especially on people who have already suffered through persecution in their home countries and on dangerous boat journeys. An ethnic Rohingya refugee told Human Rights Watch, “In Burma, the government shoots us. Here, they kill us mentally.”

UNHCR is unequivocal, stating in May 2016 that “[t]he consensus among medical experts is that conditions of detention and offshore processing do immense damage to physical and mental health.”

3. Australian Border Force Act 2015
The Australian government’s offshore operations are highly secretive. The centres are closed and UN experts, journalists, and human rights organizations have all experienced difficulties in obtaining access to independently assess conditions. All media and staff working in offshore processing centres are required to sign Deeds of Confidentiality with the Department of Immigration.

Part 6 of the Australian Border Force Act 2015 contains the secrecy and disclosure provisions that facilitate this secrecy. Section 42 makes it a crime punishable by two years’ imprisonment for anyone who works directly or indirectly for the government to disclose any information obtained from work with migrants and refugees.37

Media reports state that staff working for service providers in the centres were told their digital communications would be monitored and they could face criminal action if they spoke out about conditions.38 Following a High Court challenge by health professionals to the legitimacy of the legislation,39 the Turnbull government quietly removed “health professionals” from the Act.40 However, the ban still applies to other service providers, such as teachers, social workers, guards, and child protection workers who contract or consult for the Department of Immigration and Border Protection.

The effect of these provisions has been to silence those working in the centres or for the government. Many are fearful to talk to journalists, human rights groups, or others because of the risk of prosecution. In September 2015, UN Special Rapporteur on Migrants Francois Crepeau postponed a visit to Australia due to lack of cooperation from the Australian government regarding protection concerns and access to detention centres. Crepeau also cited risks of reprisals because of the government’s failure to give him assurances not to intimidate or sanction — under the Border Force Act – those who speak with him.41

4. The Lack of Durable Solutions
Neither Nauru nor Papua New Guinea offers refugees meaningful opportunities for local integration, and to date, refugees have been denied acceptable settlement options in other countries.

---

37 Australian Border Force Act 2015 (Cth) § 42 (Austl.).
On Nauru, asylum seekers and refugees are held for an indeterminate amount of time without the possibility of integration on the island and without a clear plan for their settlement elsewhere. When they were first sent to Nauru, refugees and asylum seekers were told by immigration authorities that they were being transferred for “processing” and would be then settled in a third country. Most have now been living on Nauru for nearly three years with no knowledge of how much longer they will be kept on the island.

Once asylum seekers are recognized as refugees in Nauru, they are not eligible for permanent residency in either Nauru or Australia, and are only allowed to stay in Nauru temporarily. Thus, even those who have received positive refugee status determinations have no idea what to expect and have received no clear answers from Nauruan or Australian authorities. This uncertainty has a significant negative impact on asylum seekers and refugees’ mental and physical health. Work and study options on Nauru are limited.

For those in Papua New Guinea, fears about personal safety, harsh detention conditions, lengthy delays in refugee processing, the absence of a clear pathway to resettlement or integration, and large financial incentives from the Australian Department of Immigration and Border Protection create significant pressures to return to their country of origin.

Papua New Guinea immigration officials said that refugees cannot engage in paid employment on Manus Island because the governor of Manus Island agreed to host the regional processing centre on the basis that asylum seekers would be detained and processed on the island but integrated elsewhere. Several refugees have tried to settle in Papua New Guinea. One became homeless, and others faced violence, or were robbed or cheated.

5. Australia’s Duty of Care and Responsibilities for Rights Violations Committed in the Course of Offshore Processing and Detention on Nauru and Papua New Guinea

Australia continues to bear responsibility for safeguarding the human rights of the refugees and asylum seekers it has transferred to Nauru and Papua New Guinea. Australian authorities have been intimately involved in every aspect of the apprehension, detention, and transfer of asylum seekers to offshore facilities in these countries. Asylum seekers were intercepted and taken into custody by Australian authorities, usually in Australian territorial waters, and held on Australian territory for several days or more before transfer to Nauru or Papua New Guinea by aircraft. All refugee status determination interviews on Nauru, and many refugee status determination interviews on Manus Island, were conducted by Australian officials purporting to act on behalf of Nauru’s and Papua New Guinea’s immigration authorities.

---

47 Human Rights Watch interviews with refugees and asylum seekers on Nauru, July 2016; Amnesty International, This Is Breaking People, pp. 31-34.
43 See, Nauru Memorandum of Understanding, para. 6; PNG Memorandum of Understanding, para. 6.
44 Human Rights Watch interviews with refugees on Nauru, July 2016.
45 Amnesty International, This Is Breaking People, pp. 64-65.
In short, Australia exercises effective control, as that term is used in international law, over the Nauru and Papua New Guinea offshore operations, and it has continuing international responsibility for asylum seekers and refugees it has transferred to Nauru and Papua New Guinea. It is, therefore, responsible for human rights violations suffered by the refugees and asylum seekers held in those countries. In addition, each of Nauru and Papua New Guinea is responsible on a joint basis with Australia for human rights violations that take place on its territory.

The Australian government has disputed that it exercises effective control over its offshore centres. Its argument is without merit. Evaluating the responsibility of the Australian government in relation to the Manus Island processing centre, the Senate Legal and Constitutional Affairs References Committee observed in December 2014 that “the degree of involvement by the Australian Government in the establishment, use, operation, and provision of total funding for the centre clearly satisfies the test of effective control in international law, and the government’s ongoing refusal to concede this point displays a denial of Australia’s international obligations.” The Senate Select Committee reached a similar finding with respect to Australia’s responsibility for the Nauru processing centre; indeed, it observed that “the Government of Australia’s purported reliance on the sovereignty and legal system of Nauru in the face of allegations of human rights abuses and serious crimes at the RPC [Regional Processing Centre] is a cynical and unjustifiable attempt to avoid accountability for a situation created by this country.”

---


48 As UNHCR observed with respect to Nauru, “the physical transfer of asylum-seekers from Australia to Nauru, as an arrangement agreed by two 1951 Refugee Convention States, does not extinguish the legal responsibility of the transferring State (Australia) for the protection of the asylum-seekers affected by the arrangements. In short, both Australia and Nauru have shared and joint responsibility to ensure that the treatment of all transferred asylum-seekers is fully compatible with their respective obligations under the 1951 Convention and other applicable international instruments.” UNHCR, “UNHCR Monitoring Visit to the Republic of Nauru,” 7 to 9 October 2013, para. 22.


50 Taking Responsibility, para. 5.16 (“The committee agrees that the level of control exercised by the Government of Australia over the RPC supports a strong argument that the primary obligation rests with Australia under international law for protecting the human rights of the asylum seekers, and for compliance with the Refugees Convention. At a minimum, the committee is convinced that Australia holds joint obligations with the Government of Nauru in that regard.”).

51 Ibid, para. 5.19.
6. Recommendations
Human Rights Watch calls on the Australian government to end its offshore operations on Nauru and Papua New Guinea and transfer all refugees and asylum seekers to Australia or another appropriate country.

In the meantime, until these operations are ended, the Australian government should support the governments of Nauru and Papua New Guinea to:

- Respond effectively to complaints of physical and sexual violence.
- Provide refugees and asylum seekers medical care, including mental health services, that meets international standards of accessibility, availability, acceptability, and quality.
- Ensure that children and adults are able to receive an education free of discrimination and harassment.
- Otherwise improve living conditions for refugees and asylum seekers.

The Australian government should also:

- Identify appropriate settlement countries for those who are recognized as refugees.
- Repeal or substantially revise Part 6 of the Australian Border Force Act, which imposes criminal penalties for the disclosure of information about human rights abuses in immigration detention.