



**Submission by Human Rights Watch
On the Situation in Australia
To the Committee on Economic, Social and Cultural Rights**

61st plenary session
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Summary

This submission focuses on the situation of asylum seekers and refugees in Australia's offshore operations in Nauru and Papua New Guinea (PNG), and on the protection of education during armed conflict. It relates to Articles 2, 3, 11, 12, and 13 of the International Covenant on Economic, Social and Cultural Rights (the "Covenant"), and proposes issues and questions that Committee members may wish to raise with the government.

Evidence included in this submission draws primarily on Human Rights Watch research on Nauru and Manus Island, PNG. Human Rights Watch visited Nauru for seven days in July 2016, conducting in-depth interviews with 35 refugees and asylum seekers on the island, including children.¹ Human Rights Watch and the Human Rights Law Centre visited the transit center at Lorengau on Manus Island, PNG, in June 2015 but were not allowed to enter the Lombrum detention facility.² Human Rights Watch has also interviewed refugees and asylum seekers on Manus and Nauru by telephone, and refugees and asylum seekers transferred from Manus and Nauru to Australia on medical grounds.

This submission also draws on reports of the office of the United Nations High Commissioner for Refugees (UNHCR),³ the Australian Human Rights Commission,⁴ the independent inquiry led by

¹ See Human Rights Watch and Amnesty International, "Appalling Abuse, Neglect of Refugees on Nauru: Investigation on Remote Pacific Island Finds Deliberate Abuse Hidden Behind Wall of Secrecy," August 2, 2016, <https://www.hrw.org/news/2016/08/02/australia-appalling-abuse-neglect-refugees-nauru>.

² See Human Rights Watch and Human Rights Law Centre, "The Pacific Non-Solution: Two Years On, Refugees Face Uncertainty, Restrictions on Rights," July 15, 2015, <https://www.hrw.org/news/2015/07/15/australia/papua-new-guinea-pacific-non-solution>.

³ United Nations High Commissioner for Refugees (UNHCR), "UNHCR Mission to the Republic of Nauru, 3-5 December 2012: Report," http://unhcr.org.au/unhcr/images/2012-12-14%20nauru%20monitoring%20report%20final.pdf#_ga=1.101697922.2042998675.1431090683 (accessed November 2, 2016); UNHCR, "UNHCR Monitoring Visit to the Republic of Nauru, 7 to 9 October 2013," <http://unhcr.org.au/unhcr/images/2013-11-26%20Report%20of%20UNHCR%20Visit%20to%20Nauru%20of%207-9%20October%202013.pdf> (accessed November 2, 2016); UNHCR, "UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 15-17 January 2013," http://unhcr.org.au/wp-content/uploads/2015/05/15Jan2013_ManusMission.pdf (accessed November 3, 2016).

⁴ Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention* (2014), https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf (accessed November 2, 2016).

former integrity commissioner Philip Moss (the “Moss Review”),⁵ the Senate Select Committee on the Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru,⁶ and Amnesty International,⁷ 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 2016.⁸

Background

Since July 2012, asylum seekers who arrive in Australia by boat (including unaccompanied children and families) have been transferred either to Nauru or Manus Island in PNG, under memoranda of understanding (MOUs) signed in 2012 and 2013. Under the MOUs, Nauru and PNG agreed to host asylum seekers transferred by Australia in detention facilities known as “Regional Processing Centres” (RPC).⁹ Nearly 2,000 asylum seekers and refugees have been held for years on both Nauru and PNG under circumstances that violate their human rights.

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 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.”¹⁰

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 has consistently disavowed responsibility for human rights violations associated with offshore processing, stating, as in its reply to the list of issues, that the Regional Processing Centres are located in Nauru and PNG and are subject to the laws of those countries.¹¹ However, it is clear

⁵ Philip Moss, “Review into Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, Final Report” [the Moss Review], February 6, 2015, http://www.immi.gov.au/about/dept-info/_files/review-conditions-circumstances-nauru.pdf (accessed November 2, 2016).

⁶ 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).

⁷ Amnesty International, *Island of Despair: Australia’s “Processing” of Refugees on Nauru* (London: Amnesty International, 2016); Amnesty International, *This Is Breaking People: Human Rights Violations at Australia’s Asylum Seeker Processing Centre on Manus Island, Papua New Guinea* (London: Amnesty International, 2013).

⁸ See Paul Farrell, Nick Evershed, and Helen Davidson, “The Nauru Files: Cache of 2,000 Leaked Reports Reveal Scale of Abuse of Children in Australian Offshore Detention,” *Guardian*, August 10, 2016, <https://www.theguardian.com/australia-news/2016/aug/10/the-nauru-files-2000-leaked-reports-reveal-scale-of-abuse-of-children-in-australian-offshore-detention> (accessed November 2, 2016).

⁹ 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, signed August 3, 2013, cl. 10.

¹⁰ See Martin McKenzie-Murray, “Leaked UNHCR Report: Manus Island World’s Worst,” October 8, 2016, <https://www.thesaturdaypaper.com.au/news/immigration/2016/10/08/leaked-unhcr-report-manus-island-worlds-worst/14758452003831> (accessed November 2, 2016).

¹¹ List of issues in relation to the fifth periodic report of Australia, Addendum, Replies of Australia to the list of issues, March 17, 2017, E/C.12/AU7S/Q/5/Add.q1, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2fAUS%2fQ%2f5%2fAdd.1&Lang=en (accessed April 11, 2017).

that Australia is jointly responsible under international law for safeguarding the human rights of the refugees and asylum seekers it has transferred to Nauru and PNG.¹²

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 have been 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 PNG by aircraft.¹³ Australia bears all costs of the transfer of asylum seekers to these countries and of the offshore processing centers' operations.¹⁴ All refugee status determination interviews on Nauru,¹⁵ and many refugee status determination interviews on Manus Island,¹⁶ have been conducted by Australian officials purporting to act on behalf of Nauru's and PNG's immigration authorities.

In short, Australia exercises effective control, as that term is used in international law,¹⁷ over the Nauru and PNG offshore operations, and it has continuing international responsibility for asylum seekers and refugees it has transferred to Nauru and PNG.¹⁸ 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 PNG is responsible on a joint basis with Australia for human rights violations that take place on its territory.¹⁹

The Australian government has disputed that it exercises effective control over its offshore centers. Its argument is without merit. Evaluating the responsibility of the Australian government in relation to the Manus Island processing center, Australia's 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

¹² 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, January 26, 2007, <http://www.refworld.org/docid/45f17a1a4.html> (accessed September 8, 2016), para. 35. See also *ibid.*, paras. 36-43. Australian authorities have been intimately involved in every aspect of the apprehension, detention, and transfer of children and adults to Nauru. These asylum seekers have been 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 by aircraft. Australia funds all costs associated with the offshore detention and processing of asylum seekers and refugees in Nauru and spent 415 million Australian dollars (US\$314 million) on its offshore processing operations in the fiscal year ending on April 30, 2015, nearly \$350,000 for each person held on the island in that year alone. These factors establish that Australia exercises effective control, as that term is used in international law, over refugee holding and processing on Nauru.

¹³ Human Rights Watch interviews with refugees and asylum seekers on Nauru, July 2016; Amnesty International, *This Is Breaking People*, pp. 31-34.

¹⁴ See Nauru Memorandum of Understanding, para. 6; PNG Memorandum of Understanding, para. 6.

¹⁵ Human Rights Watch interviews with refugees on Nauru, July 2016.

¹⁶ Amnesty International, *This Is Breaking People*, pp. 64-65.

¹⁷ See 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, January 26, 2007, <http://www.refworld.org/docid/45f17a1a4.html> (accessed November 2, 2016) para. 35. See also *ibid.*, paras. 36-43.

¹⁸ See generally International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001), arts. 16-18, http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf (accessed November 2, 2016).

¹⁹ 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.

ongoing refusal to concede this point displays a denial of Australia's international obligations.”²⁰ The Senate Select Committee reached a similar finding with respect to Australia’s responsibility for the Nauru processing center;²¹ 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.”²² In April 2017, the Australian Senate Legal and Constitutional Affairs References Committee confirmed once again that “the Australian Government clearly has a duty of care in relation to the asylum seekers who have been transferred to Nauru or Papua New Guinea. To suggest otherwise is fiction.”²³

Offshore Operations on Nauru

Background

Since September 2012, Australia has forcibly transferred families with children, unaccompanied children, and single men and women to Nauru as part of the Australian government’s stated policy of deterring boat arrivals. The Regional Processing Centre is run by a private company hired by the Australian government, entirely funded by Australia, and, as established above, the Australian government has effective control of the facility and is responsible for ensuring the welfare of the asylum seekers detained there.

For months and in some cases years after their arrival in Nauru, asylum seekers were held in detention centers, 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, mold 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 center 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-

²⁰ Senate Legal and Constitutional Affairs References Committee, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014* (December 2014), http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Manus_Island/Report (accessed November 2, 2016) para. 8.33.

²¹ *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.”).

²² *Ibid.*, para. 5.19.

²³ Senate Legal and Constitutional Affairs References Committee, *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*, April 2017, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/NauruandManusRPCs/Report (accessed April 21, 2017).

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.²⁴

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.

There are currently just under 1,200 refugees and asylum seekers on Nauru,²⁵ including 173 children.²⁶ (This number does not include children born on Nauru, who are effectively stateless.) At time of writing, 373 people, children as well as adults, remain in the RPC.²⁷ They are allowed to leave during the day, although they are subject to monitoring by guards and other restrictions on their liberty. Smartphones were prohibited inside the centers when Human Rights Watch visited Nauru in July 2016.²⁸

Harassment and Violence, including sexual assault (Articles 2, 3, 11)

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.²⁹

²⁴ Human Rights Watch and Amnesty International, "Appalling Abuse, Neglect of Refugees on Nauru."

²⁵ Amnesty International, *Island of Despair*, p. 13 (citing email from Australian Department of Immigration and Border Protection to Amnesty International, September 2016, giving data as of August 31, 2016); Australian Government, Department of Immigration and Border Protection, "Operation Sovereign Borders monthly update: March 2017," April 7, 2017, <http://newsroom.border.gov.au/channels/media-releases/releases/operation-sovereign-borders-monthly-update-march-4> (accessed April 21, 2017).

²⁶ Government of Nauru, Opening Statement: Committee on the Rights of the Child, September 13-14, 2016, para. 16.

²⁷ Australian Government, Department of Immigration and Border Protection, "Operation Sovereign Borders monthly update: March 2017," April 7, 2017, <http://newsroom.border.gov.au/channels/media-releases/releases/operation-sovereign-borders-monthly-update-march-4> (accessed April 21, 2017).

²⁸ Human Rights Watch and Amnesty International, "Appalling Abuse, Neglect of Refugees on Nauru."

²⁹ See, for example, Incident Report SCA 15.0162, February 22, 2015, <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=sca150162> (accessed November 2, 2016); Incident Report SCA 15.0173, February 24, 2015, <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=sca150173> (accessed November 2, 2016); Incident Report SCA 15.0391, June 11, 2015, <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=sca150391> (accessed November 2, 2016); Incident Report SCA 15.0574, September 3, 2015, <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=sca150574> (accessed November 2, 2016).

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.³⁰

Sexual assault

Sexual assault of refugees and asylum seekers on Nauru—by security guards as well as by other refugees or asylum seekers—has also been reported since 2013.³¹ The Moss Review described six reports of sexual assault of children, allegedly by contract service providers in some cases and by adult detainees in other cases.³² In addition, the Moss Review identified five reports of alleged sexual harassment of children by contract service providers.³³

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.”³⁴ 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.³⁵

Six women described sexual assault or harassment, including groping, touching, explicit threats, demands for sex, and attempted rape. One woman 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.³⁶

Attempted Suicide, Other Acts of Self-Harm, and Mental Well-Being (Article 12)

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

detailed-in-a-unique-database-interactive#incident=sca150574 (accessed November 2, 2016); Incident Report SCA 15.0727, October 16, 2015, <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=sca150727> (accessed November 2, 2016).

³⁰ Human Rights Watch and Amnesty International, “Appalling Abuse, Neglect of Refugees on Nauru.”

³¹ See, for example, Australian Human Rights Commission, *The Forgotten Children*, p. 188.

³² Moss Review, paras. 3.96-3.106.

³³ *Ibid.*, paras. 3.107-3.111.

³⁴ Incident Report SCA 15.0051, January 15, 2015, <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=sca150051> (accessed November 2, 2016).

³⁵ 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 . . .”), <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#incident=sca1501731> (accessed November 2, 2016).

³⁶ Human Rights Watch and Amnesty International, “Appalling Abuse, Neglect of Refugees on Nauru.”

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.³⁷ 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.³⁸

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.³⁹

Two agencies, International Health and Medical Services (IHMS) and the Offshore Service for Survivors of Torture (OSSTT), provide mental health services for refugees and asylum seekers under contracts with the Australian government.⁴⁰

IHMS, the main health service provider for refugees and asylum seekers,⁴¹ appears to rely largely on strong sedative and anti-psychotic medication—for children as well as adults—to address mental health issues. Refugees and asylum seekers told Human Rights Watch and Amnesty International that these medications have severe side effects but provide little relief.⁴² The OSSTT officially deals only with previous trauma.⁴³

The Right to Health Information (Article 12)

General Comment No. 14 (2000) recognizes that the right to health is closely related to and dependent upon the realization of other human rights, including access to information.⁴⁴

³⁷ Ibid.

³⁸ See Farrell, Evershed, and Davidson, “The Nauru Files: Cache of 2,000 Leaked Reports Reveal Scale of Abuse of Children in Australian Offshore Detention,” *Guardian*, August 10, 2016, <https://www.theguardian.com/australia-news/2016/aug/10/the-nauru-files-2000-leaked-reports-reveal-scale-of-abuse-of-children-in-australian-offshore-detention> (accessed November 2, 2016).

³⁹ See, for example, Australian Human Rights Commission, “New Report: Experts Reveal Alarming Impact of Detention on Children,” February 4, 2016, <https://www.humanrights.gov.au/news/stories/new-report-experts-reveal-alarming-impact-detention-children> (accessed November 2, 2016); “UNHCR Calls for Immediate Transfer of Refugees Out of Manus Island, Nauru to ‘Humane Conditions,’” *ABC News*, May 5, 2016, <http://www.abc.net.au/news/2016-05-05/unhcr-presses-for-transfer-of-refugees-out-of-detention-centres/7385748> (accessed November 2, 2016).

⁴⁰ See Rebecca de Boer, “Background Note: Health Care for Asylum Seekers on Nauru and Manus Island,” Parliamentary Library, June 28, 2013, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/AsylumSeekersHealthCare (accessed September 9, 2016).

⁴¹ Paul Farrell, “IHMS, the Healthcare Giant at the Heart of Australia’s Asylum System—Explainer,” *Guardian*, July 20, 2015, <https://www.theguardian.com/australia-news/2015/jul/21/ihms-the-healthcare-giant-at-the-heart-of-australias-asylum-system-explainer> (accessed September 9, 2016).

⁴² Human Rights Watch and Amnesty International, “Appalling Abuse, Neglect of Refugees on Nauru.”

⁴³ Ibid.

⁴⁴ General Comment No. 14 (2000), The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2000/4, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2F2000%2F4&Lang=en (accessed April 12, 2017).

Beginning in April 2015, the Nauruan government began blocking access to Facebook. The government claimed this was for the purposes of protecting children from sexual exploitation,⁴⁵ but the timing of the move suggests that it was done to prevent asylum seekers and refugees from expressing their opinions about conditions on the island, communicating with lawyers and human rights groups, or contacting their families abroad.⁴⁶ Such restrictions also have the potential to affect access to information, including health information.

It is unclear what level of access asylum seekers and refugees currently have to Facebook and other forms of social media.

Lack of Appropriate Medical Care (Article 12)

In its reply to the list of issues Australia noted that all people in Australian immigration detention are provided with health care broadly equal to the standard available under Australia's public health system, including mental and physical health screening upon entry, the provision of regular onsite health clinics, specialist and allied health services and acute care by hospitals. With regards to offshore processing operations, it noted that Australia has provided specialist garrison, and health and welfare providers to support Nauru and PNG to deliver services to transferees. Transferees are said to have access to medical treatment, including mental health services delivered through psychiatrists, psychologists, and mental health nurses.⁴⁷

Human Rights Watch found that the quality of medical care for refugees and asylum seekers on Nauru is poor. Medical equipment is rudimentary, and specialist medical attention is not regularly available. Dental services are largely limited to tooth extraction. Refugees and asylum seekers reported that the hospital lacks even basic supplies, such as bandages or sterile gloves.⁴⁸

Specialized medical equipment and staff are not available on Nauru; Nauruans who require more than basic medical care are sent to Australia, Fiji, or Taiwan. Refugees and asylum seekers may be sent to PNG and less frequently to Australia for care not available on Nauru. In several of the cases Human Rights Watch and Amnesty International reviewed, doctors made written requests in medical reports for overseas treatment for refugees and asylum seekers because the hospital lacked the necessary expertise or equipment. Those referred for overseas treatment may wait for months before they are transferred.⁴⁹

⁴⁵ The Government of the Republic of Nauru, "Nauru Cracks Down on Internet Pornography," undated, <http://www.naurugov.nr/government-information-office/media-release/nauru-cracks-down-on-internet-pornography.aspx> (accessed September 9, 2016).

⁴⁶ Amnesty International, *Annual Report 2016*, Nauru, <https://www.amnesty.org/en/countries/asia-and-the-pacific/nauru/report-nauru/> (accessed September 9, 2016). See also Access et al., Joint Letter to the Government of Nauru on Internet Blocking and Freedom of Expression, May 26, 2015, <https://www.hrw.org/news/2015/05/26/joint-letter-government-nauru-internet-blocking-and-free-expression> (accessed September 9, 2016).

⁴⁷ List of issues in relation to the fifth periodic report of Australia, Addendum, Replies of Australia to the list of issues, March 17, 2017, E/C.12/AU.7S/Q/5/Add.q1, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2fAUS%2fQ%2f5%2fAdd.1&Lang=en (accessed April 11, 2017), 36, 38.

⁴⁸ Human Rights Watch and Amnesty International, "Appalling Abuse, Neglect of Refugees on Nauru."

⁴⁹ Ibid.

Some of those interviewed said that they had developed serious medical problems in Nauru and that they had received virtually no specialized medical attention. They had heart and kidney diseases; diabetes accompanied by weight loss and rapidly deteriorating eyesight; and back problems leading to reduced mobility, among other conditions. Parents were particularly critical of services available to women during pregnancy and childbirth and said that newborns suffered from persistent infections and other medical conditions.⁵⁰

Refugees and asylum seekers routinely face neglect by health workers and other service providers who have been hired by the Australian government. They reported that both the IHMS medical staff and Nauru's hospital often refuse to take their complaints seriously and, in most cases reported to Human Rights Watch and Amnesty International, prescribe nothing but painkillers. Refugees and asylum seekers described several instances in which they tried to call an ambulance when their friends or family members needed urgent help, but the hospital refused to send one.⁵¹

In April 2017, the Senate Legal and Constitutional Affairs References Committee found that "The department [of Immigration and Border Protection] has ultimate decision making power as the contracting agency, makes final decisions in relation to the provision of specialist and emergency medical treatment, and (largely as a result of its capacity building measures) is the primary source of guidance and expertise to the Governments of Nauru and PNG in relation to the management of all matters associated with the presence of refugees and asylum seekers."⁵²

Bullying and Harassment at School (Articles 2, 13)

Harassment and violence against refugee and asylum-seeking children in local schools appears to be prevalent. Parents and children reported that they are regularly called names, shoved, hit, have things thrown at them, and subjected to other forms of bullying by Nauruan students. Children reported being ignored when they complain of bullying and harassment to their teachers. 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.⁵³

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."⁵⁴ In another report made the same month, the mother of a different girl told a caseworker that her daughter was

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Senate Legal and Constitutional Affairs References Committee, 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, April 2017, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/NauruandManusRPCs/Report (accessed April 21, 2017).

⁵³ See Nicole Hasham, "You Are Terrorists, You Make Bombs": Racist Taunts Help Keep Nauru Refugee Kids Out of School," *Sydney Morning Herald*, July 29, 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> (accessed November 2, 2016).

⁵⁴ Incident Report SCA 15.0583, September 12, 2015, <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=sca150583> (accessed November 2, 2016).

refusing to go to school because “Nauruan boys at Nauru College [a secondary school] continue to touch her on her bottom and hug her.”⁵⁵ 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.⁵⁶

In its reply to the list of issues, Australia stated that all refugee and asylum-seeker children of school age (4 to 18 years) have transitioned to Nauru Government schools.⁵⁷ In part due to bullying and harassment, many asylum seeker and refugee children have stopped attending school, Human Rights Watch and Amnesty International found. For example, a 15-year-old girl said that she stopped going to school because Nauruan children always tried to pull off her headscarf and constantly taunted her.⁵⁸ Save the Children Australia estimates that 85 percent of refugee and asylum seeker children on Nauru are not enrolled in school.⁵⁹ Australia further stated that the education of children in Nauru is a matter for the Nauruan government, while noting it is committed to supporting the Nauruan government in integrating refugee and asylum seeker children into schools.⁶⁰

Offshore Operations on Manus Island

Background

About 900 adult men live on Manus Island, mostly in the RPC, located on a naval base, while about 60 men live in the transit center at Lorengau.

In 2015, Human Rights Watch documented 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.⁶¹

PNG 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 center on the basis that asylum seekers would be detained and processed on the island but integrated elsewhere. As of

⁵⁵ Incident Report SCA 15.0609, September 15, 2015, <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=sca150609> (accessed November 2, 2016).

⁵⁶ Incident Report SCA 15.0619, September 17, 2015, <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=sca150621> (accessed November 2, 2016).

⁵⁷ List of issues in relation to the fifth periodic report of Australia, Addendum, Replies of Australia to the list of issues, March 17, 2017, E/C.12/AU.7S/Q/5/Add.q1, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fAUS%2fQ%2f5%2fAdd.1&Lang=en (accessed April 11, 2017), 147.

⁵⁸ Ibid.

⁵⁹ See Hasham, “You Are Terrorists, You Make Bombs.”

⁶⁰ List of issues in relation to the fifth periodic report of Australia, Addendum, Replies of Australia to the list of issues, March 17, 2017, E/C.12/AU.7S/Q/5/Add.q1, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fAUS%2fQ%2f5%2fAdd.1&Lang=en (accessed April 11, 2017), 147-148.

⁶¹ Human Rights Watch and Human Rights Law Centre, “The Pacific Non-Solution.”

November 26, 2016, 26 have tried to settle in PNG.⁶² One became homeless, and others faced violence, or were robbed or cheated.

Harassment and Violence, Including Sexual Assault (Articles 2, 11, 12)

Conditions in the Regional Processing Centre in Manus Island 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 Center recorded 14 sexual assaults, 213 physical assaults, and 798 cases of abusive or aggressive behavior. Two asylum seekers sent to Manus have died—one after allegedly being beaten to death by contract staff at the detention center.⁶³

In PNG, consensual same-sex relations are offenses under the criminal law.⁶⁴ 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.

Refugees on Manus Island told Human Rights Watch that the thought of settling in PNG 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 center, 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 center.

Abuses of asylum seekers, especially members of vulnerable groups such as gay men, have caused some to return home where they risk persecution rather than face insecurity and uncertainty in PNG. Many of those found to be refugees refuse to leave the RPC because of concerns over safety and an inability to provide for themselves in PNG.⁶⁵

At time of writing, only 26 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.

⁶² Eric Tlozek, “Asylum seekers: US resettlement deal brings relief then scepticism for refugees on Manus Island,” *ABC*, November 13, 2016, <http://www.abc.net.au/news/2016-11-14/relief-then-scepticism-on-manus-island-over-us-resettlement-deal/8022318> (accessed April 21, 2017).

⁶³ Liam Cochrane, “Reza Barati Murder Trial Delayed After Suspects Not Provided with Defence Lawyers,” *ABC*, November 3, 2014, <http://www.abc.net.au/news/2014-11-03/barati-murder-trial-delayed-after-suspects-not-provided-lawyers/5862986> (accessed November 3, 2016).

⁶⁴ 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.).

⁶⁵ Human Rights Watch and Human Rights Law Centre, “The Pacific Non-Solution.”

Attempted Suicide, Other Acts of Self-Harm, and Mental Well-Being (Article 11)

Prolonged and indefinite detention has driven people to breaking point, with alarming levels of trauma, depression, and other mental health conditions. In 2015, 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 center 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 PNG 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.⁶⁶

The Lack of Durable Solutions

Neither Nauru nor Papua New Guinea offers refugees meaningful opportunities for local integration.

On Nauru, asylum seekers and refugees are held for an indefinite 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.⁶⁷

Of six refugees who resettled from Nauru to Cambodia under an A\$55 million (US\$43 million) deal struck between the countries in 2015, two remain. The others returned to their country of origin.

In November 2016, the United States agreed to resettle a number of refugees from Australia’s offshore operations. The resettlement deal is only available to those found to be refugees under the Refugee Convention.

In April 2017, Australian Minister for Immigration and Border Protection Peter Dutton said that the Australian government had brokered a deal with Nauru that those asylum seekers found to be refugees who will not be taken to the US under a pending refugee deal, and those who were not refugees whose home countries would not take them back, will be given 20-year Nauruan visas.⁶⁸

⁶⁶ Ibid.

⁶⁷ Human Rights Watch and Amnesty International, “Appalling Abuse, Neglect of Refugees on Nauru.”

⁶⁸ “Dutton: No asylum seeker on Manus Island, Nauru will come to Australia,” *The Australian*, April 9, 2017, <http://www.theaustralian.com.au/national-affairs/dutton-no-asylum-seeker-on-manus-island-nauru-will-come-to-australia/news-story/1f6d01a47f02acd9d4cbbf0a3d521128> (accessed April 12, 2017).

PNG's Supreme Court ruled in April 2016 that the detention of asylum seekers and refugees on Manus Island violates the country's constitution.⁶⁹ The following day, PNG Prime Minister 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.⁷⁰ The Australian government has stated that the facility will close by the end of October 2017. Dutton told reporters in April 2017 that those asylum seekers on Manus Island who are found not to be refugees were expected to return to their home countries. He said those who were refugees but were not taken by the US would stay in PNG. "They are not coming to Australia." He further indicated that PNG would be expected to resettle any asylum seekers there after October.⁷¹

For asylum seekers and refugees in PNG, 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.

Australia bears ultimate responsibility for the refugees and asylum seekers in Nauru and PNG. This was confirmed in April 2017 by the Australian Senate Legal and Constitutional Affairs References Committee, which found that "the Australian Government must acknowledge that it has the responsibility for resettling refugees located in Nauru and PNG."⁷²

Human Rights Watch recommends the Committee ask the government of Australia:

- What steps are being taken to end offshore operations on Nauru and PNG and to ensure durable solutions for the futures of the refugees and asylum seekers detained in both countries?
- Until the offshore operations are ended, what steps are being taken to improve the quality of living conditions for refugees and asylum seekers on Nauru and PNG?
- What support is being provided to the government of Nauru to support the education of refugee and asylum-seeking children?
- What steps are being taken to address the poor quality of medical care, including mental health services, for refugees and asylum seekers in Nauru and PNG?

Human Rights Watch asks the Committee to call upon the government of Australia to:

- Immediately end its offshore operations on Nauru and PNG and transfer all refugees and asylum seekers to Australia or another appropriate country.

⁶⁹ *Namah v. Pato et al.*, (2016) SC 1497 (Papua N.G. April 26, 2016), <https://www.scribd.com/doc/310461159/PNG-Supreme-Court-Decision-on-Manus-Island> (accessed November 2, 2016).

⁷⁰ Helen Davidson and Ben Doherty, "Manus Island Detention Centre to Close, Papua New Guinea Prime Minister Says," *Guardian*, April 27, 2016, <https://www.theguardian.com/australia-news/2016/apr/27/manus-island-detention-centre-to-close-papua-new-guinea-prime-minister-says> (accessed November 2, 2016).

⁷¹ "Dutton: No asylum seeker on Manus Island, Nauru will come to Australia," *The Australian*, April 9, 2017, <http://www.theaustralian.com.au/national-affairs/dutton-no-asylum-seeker-on-manus-island-nauru-will-come-to-australia/news-story/1f6d01a47f02acd9d4cbbf0a3d521128> (accessed April 12, 2017).

⁷² Senate Legal and Constitutional Affairs References Committee, 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, April 2017, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/NauruandManusRPCs/Report (accessed April 21, 2017).

- In the meantime, until these operations are ended, the Australian government should support the governments of Nauru and PNG to:
 - Respond effectively to complaints of physical and sexual violence.
 - Provide refugees and asylum seekers with quality 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.
- Identify appropriate settlement countries for those who are recognized as refugees.

The Protection of Education During Armed Conflict (Article 13)

Human Rights Watch encourages Australia to endorse the Safe Schools Declaration, an international commitment to protect education in armed conflict.⁷³ The Declaration includes a pledge to use the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict.⁷⁴

When Australia was on the United Nations Security Council in 2014, it voted for Security Council Resolution 2143 (2014), which encourages all countries to consider concrete measures to deter military use of schools. The Australian ambassador to the UN, Gary Quinlan, told the Security Council that using schools for military purposes gravely endangers the lives of children. “We cannot deny generations of children an education through the destruction or misuse of school premises. We must work decisively on that. ... We need to do more to protect schools, teachers, and students during conflict. ... The child victims around the world count on us.”

Human Rights Watch recommends the Committee ask the government of Australia:

- What steps has Australia taken in line with Security Council Resolution 2143 (2014) and 2225 (2015) to take concrete measures to deter the military use of schools?

Human Rights Watch asks the Committee to call upon the government of Australia to:

- Endorse the Safe Schools Declaration, thereby endorsing and committing to use the *Guidelines for Protecting Schools and Universities from Military Use in Armed Conflict*.

⁷³ Safe Schools Declaration, May 28, 2015, https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/utvikling/safe_schools_declaration.pdf (accessed October 19, 2016).

⁷⁴ Global Coalition to Protect Education from Attack (GCPEA), *Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict*, March 18, 2014, http://protectingeducation.org/sites/default/files/documents/guidelines_en.pdf (accessed October 19, 2016).