



# **Universal Periodic Review (UPR) 23rd Session**

(2<sup>nd</sup> to 13<sup>th</sup> November 2015)

## **Human Rights Situation in Nauru**

**Joint Submission of :**  
**Franciscans International**  
**Edmund Rice International**

Geneva, March 2015

## INTRODUCTION

1. The organisations listed below present this submission concerning the human rights situation in Nauru for consideration by the UPR Working Group at its 23<sup>rd</sup> session, November 2015. The human rights issues addressed are *the rights of asylum seekers and refugees, the rights of the child and the adverse impact of climate change on human rights*.
2. Franciscans International (FI) is a faith-based International Non-Governmental Organization (INGO) with General Consultative Status with the Economic and Social Council of the United Nations. It was founded in 1982 to bring to the UN the concerns of the most vulnerable.
3. Edmund Rice International (ERI) is a faith-based NGO with Special Consultative Status with the Economic and Social Council of the United Nations promoting and protecting human rights in over 30 countries. Established in 2007, ERI is primarily concerned with the Rights of the Child, the Universal Right to Education, and Ecological Sustainability.

### Asylum Seekers and Refugees

#### *First-Cycle UPR Recommendations*

4. In the previous UPR, Nauru accepted recommendations on human rights issues relevant to asylum seekers and refugees, including to undertake education programmes on a human rights-based approach to the handling of asylum-seekers and refugees, and to build institutional capacity for the development of a national refugee status determination procedure; to promptly take effective measures to safeguard the rights of refugees and asylum-seekers, including not to let other countries violate the rights of refugees and asylum-seekers in the territory of Nauru; to continue its efforts in the areas of population awareness programmes, and the training of public officers on the rights of asylum-seekers and refugees;<sup>1</sup>

#### *Legal and Institutional Framework*

5. On 29 August 2012, the Nauru Government signed a Memorandum of Understanding (MoU)<sup>2</sup> with the Government of Australia to implement a third-country processing regime under which asylum seekers' claims to Australia will be processed in a country outside Australian territory. A similar MoU was also signed between Australia and Papua New Guinea (PNG) on 8 September 2012<sup>3</sup> designating PNG as a regional processing country. Initially, the use of such third countries was applicable only for asylum seekers arriving at an "excised offshore place", such as Christmas Island.<sup>4</sup> In May 2013, however, the Australian Government extended this policy to all asylum seekers who arrive by boat in Australia (whether to the mainland or to an excised offshore place) without authorization.<sup>5</sup> In September 2014, Australia signed a further MoU with Cambodia, to resettle any asylum seekers held in Nauru who are eventually granted refugee status.

#### *Promotion and Protection of Human Rights on the Ground*

6. The conditions of the migration detention for asylum seekers in Nauru facility have been consistently criticised as unacceptable by national and international observers. In 2013, the

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1 The report of the UN Working Group of UPR, A/HRC/17/3, paras 79.94-96)

2 See the related document on the designation of Nauru at

[https://www.humanrights.gov.au/sites/default/files/Docs%20tabled%20with%20Instrument%20of%20Designation.Nauru\\_.pdf](https://www.humanrights.gov.au/sites/default/files/Docs%20tabled%20with%20Instrument%20of%20Designation.Nauru_.pdf).

3 See the related documents on the designation of Papua New Guinea at

[https://www.humanrights.gov.au/sites/default/files/Docs%20tabled%20with%20Instrument%20of%20Designation.PNG\\_.pdf](https://www.humanrights.gov.au/sites/default/files/Docs%20tabled%20with%20Instrument%20of%20Designation.PNG_.pdf)

4 Christmas Island is an island offshore of mainland Australia and forming part of its territory.

5 See the information provided by the Australian Human Rights Commission at <https://www.humanrights.gov.au/transfer-asylum-seekers-third-countries>

Australian Parliamentary Joint Committee on Human Rights considered the legislation re-introducing detention on Nauru and concluded that the likely impact of the detention arrangements on physical and mental health was “contrary to the right to health in the ICESCR and the prohibition against degrading treatment in the ICCPR”.<sup>6</sup> Recent reports from Nauru also indicate that women asylum seekers face particularly adverse conditions which may violate Australia’s obligations under CEDAW.<sup>7</sup>

7. On the 19th of July 2013 rioting caused substantial damage to the centre buildings, believed to have been largely the result of the announcement that no arrivals would be resettled in Australia (under the above mentioned agreement between the Governments of Australia and Nauru).<sup>8</sup> This resulted in the detainees being moved to tent accommodation. In a published statement, Salvation Army staff working in the center described it as “an inevitable outcome from a cruel and degrading policy.”<sup>9</sup>
8. The UN Working Group on Arbitrary Detention was scheduled to make its first country visit to Nauru from 14 to 19 April 2014, as initially suggested by the Department of Foreign Affairs & Trade of Nauru. Regrettably, the Government of Nauru withdrew the invitation due “unforeseen circumstances” and did not propose new dates.<sup>10</sup>
9. There is a concern on the freedom of movement and freedom of assembly of the asylum seekers. The Nauru’s police chief made a statement and warned refugees that they would be jailed if they gathered publicly in groups larger than three.<sup>11</sup> The Government of Nauru also issued a decree to limit the places where the refugee can visit. They are forbidden from visiting schools, the hospital, the harbour or airport. Media has reported attack by local Nauru population against refugees, such as the attack which happened in March 2015 when an Iranian refugee couple has been taken to hospital after being pelted with rocks and knocked off their motorbike.<sup>12</sup>
10. The decision of the government of Nauru in Jan 2014 to increase the cost of a visa application for journalists from \$200 to \$8000 (non-refundable if the application is rejected) is a serious obstacle to the monitoring of conditions on Nauru for asylum seekers and ensuring their human rights are respected.<sup>13</sup>

## 11. Recommendations

1. *To immediately close the asylum seekers Regional Processing Centre on Nauru,*
2. *To ensure the personal security of asylum seekers and refugees in Nauru, and guarantee their rights to freedom of assembly, movement and expression;*
3. *To ensure the reception of asylum seekers and processing of their claims accords with Nauru’s international law obligations;*

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6 Parliamentary Joint Committee on Human Rights, Parliament of Australia, Ninth Report of 2013: Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012 and related legislation (2013), 19 June 2013, [2.195]

7 Reports indicate, for example, that “sanitary pads are [] issued in small numbers because they are deemed a fire hazard. There are long queues in the hot sun daily and there is no privacy ... [w]omen who are sick and who cannot stand in the queue for hours, miss their contraceptive pills and risk getting pregnant. [] Women are flown to Australia for abortions because these are illegal on Nauru. Many of these are first babies but they say that it would be wrong to have a baby on Nauru and ask how they could keep such a baby alive in such conditions”: Pamela Curr and Brigid Arthur, *Sanitary Pads ‘A Fire Hazard’: The Realities of Life for Mothers and Children on Nauru*, New Matilda, 8 March 2015, accessed 11 March 2015, <https://newmatilda.com/2015/03/08/sanitary-pads-fire-hazard-realities-life-mothers-and-children-nauru>

8 The Guardian Australia, ‘Nauru riot: 125 asylum seekers arrested’, Sunday 21 July 2013, accessed 3rd May 2014 at <http://www.theguardian.com/world/2013/jul/21/nauru-riot-asylum-seekers-arrested>

9 ‘The Nauru Riot: Staff Condemn Cruel and Degrading Conditions’, Statement by Past and Present Salvation Army Staff Members, 23 July 2013 accessed 3rd May at <http://markjisaacs.com/nauru-riot-press-release/>

10 ‘Cancellation of the first official visit to Nauru by the UN Working Group on Arbitrary Detention’ OHCHR News Statement 9th April 2014, accessed 3rd May 2014 at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14495&LangID=E>

11 See <http://www.theguardian.com/world/2015/mar/04/up-to-70-refugees-nauru-arrested-police-crack-down-peaceful-protests>

12 See <http://www.theguardian.com/world/2015/mar/17/nauru-iranian-refugee-couple-pelted-with-rocks-by-local-men-sources-say>

13 <http://www.theguardian.com/world/2014/jan/09/nauru-visa-to-cost-8000>

4. To reschedule the visit of the UN Working Group on Arbitrary Detention to Nauru, after the postponement of the visit in 2014.
5. To abolish the inflated visa application fee for journalists which discourages media scrutiny.

### **Rights of the Child: Children in Immigration Detention Centres**

#### *First-Cycle UPR Recommendations*

12. In the previous UPR, Nauru accepted several recommendations on the rights of the child, including to criminalise violence against women and provide significant penalties under the law for that crime; With the support of the international community, draft legislative bills on domestic violence and on child abuse; Create and implement a national action plan for the elimination of domestic violence and child abuse with the technical assistance of specialised agencies and programmes of the United Nations system; establish stronger laws against perpetrators of child abuse and to increase penalties and sentencing in courts and strengthen its laws prohibiting physical abuse of children, including sexual exploitation.<sup>14</sup>

#### *Promotion and Protection of Human Rights on the Ground*

13. UN High Commissioner on Refugees (UNHCR) visited the detention centre in October 2013 and, despite noting some improvements since 2012, concluded that “the current policies, conditions and operational approaches at the Refugee Processing Centre do not comply with international standards.”<sup>15</sup> In April 2014, underscoring the facility’s inadequate nature, heavy rainfall unearthed an unexploded munition from World War II in a camp area that children frequent.<sup>16</sup> The explosive, which had never been discovered despite the facility being used since 2001, would not only create the risk physical danger but also potential trauma for persons who have fled war zones.<sup>17</sup>
14. The Australian Churches Refugee Taskforce published a report in July 2014, *Protecting the Lonely Children*, on unaccompanied children who seek asylum in Australia. It characterised the physical and mental suffering of children in Nauru (and previously in Manus Island) as “state sanctioned child abuse”.<sup>18</sup> While transparency may not be politically convenient for the Australian Government, it is necessary to ensure that inhumane practices on Manus Island in PNG and other detention centers, such as Nauru, are identified and stopped or that “[centre] staff [do not] report a rape or an instance of child abuse because they’re afraid of legal action [against them] by the government.”<sup>19</sup>
15. As at 31 January 2015, 119 of children were held in immigration detention in Nauru.<sup>20</sup> There have been extensive complaints about abuse and aggression towards children by facility staff.<sup>21</sup> In four incidents,<sup>22</sup> children were struck on the back of the head and knocked to the ground; removed from play areas with “excessive force”; pushed and intimidated; and denied medical facilities.<sup>23</sup> They raise serious concerns for children's well-being, and may indicate violations of Australia’s obligations under the CRC.<sup>24</sup>

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14 The report of the UN Working Group of UPR, A/HRC/17/3, paras 79.94-96)

15 UN High Commissioner for Refugees (UNHCR), UNHCR monitoring visit to the Republic of Nauru, 26 November 2013.

16 The Guardian Australia, 'Unexploded wartime bomb found in Nauru detention centre', 22 April 2014, accessed 3rd May 2014 at <http://www.theguardian.com/world/2014/apr/22/unexploded-wartime-bomb-found-in-nauru-detention-centre>.

17 This was revealed in a leaked internal email: *ibid*.

18 National Council of Churches in Australia: Australian Churches Refugee taskforce: Protecting the Lonely Children July 2014 p9

19 Graeme McGregor, Amnesty International, in *ibid*.

20 According to the report of NGO ChilOut, at <http://www.chilout.org/>.

21 The Guardian Australia, 'Nauru guards accused of assaulting children in detention camp', 24th April 2014, accessed 28th April 2014 at <http://www.theguardian.com/world/2014/apr/24/nauru-guards-accused-of-assaulting-children>.

22 These four separate incidents were described in a letter to Nauru contractors.

23 *Ibid*.

24 See UN Committee on the Rights of the Child (CRC), CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, [89].

16. In February 2015, the independent Australian Human Rights Commission published its report, *The Forgotten Children: Inquiry into Children in Immigration Detention 2014*. The report suffered in that the Australian Department of Immigration and Border Protection refused to provide much requested key information about the transfer and detention of children in Nauru. Nevertheless, the Commission found that “children on Nauru are suffering from extreme physical, emotional, psychological and developmental distress”<sup>25</sup> and confirmed that their prolonged, mandatory detention causes significant mental and physical illness and developmental delays, in breach of Australia’s international obligations.<sup>26</sup> It feared there would be no time limit on their detention<sup>27</sup> and revealed that between January 2013 and March 2014, children were involved in and/or exposed to numerous assault and self-harm incidents, including 207 incidents of actual self-harm, in which 128 children were involved; 27 children engaging in voluntary starvation/hunger strike, 171 children being involved in incidents of threatened self-harm, 233 assaults involving children, and 33 incidents of reported sexual assault, with the vast majority involving children. The average detention is between three and 14 months.

## 17. Recommendations

1. *To release the children and their families detained in Nauru, transfer them to Australia, and ensure that their rights are protected in accordance with Australia’s international law obligations;*
2. *To take appropriate measures ensure the rights to life, physical and mental integrity, and freedom from arbitrary deprivation of liberty of persons currently detained at Nauru, especially children.*

## The adverse impact of climate change on human rights

### *First-Cycle UPR Recommendations*

18. In the previous UPR, Nauru accepted four recommendations relevant to climate change and human rights, including developing the human rights-based climate change adaptation strategy; cooperation with the UN bodies to mitigate and adapt the effects of climate change; to develop rights-based national action plan to address the challenges of climate change and to continue its work with the UN Framework Convention on Climate Change and other forums in addressing the challenge of climate change.

### *Legal and Institutional Framework*

19. In the beginning of 2015, the Government of Nauru adopted the Republic of Nauru Framework for Climate Change Adaptation and Disaster Risk Reduction (RONAdapt) as an official policy to response to the risks to sustainable development posed by climate change and disasters which aims to identify the immediate priorities relating to climate change adaptation (CCA) and disaster risk reduction (DRR) and to provide a general framework for longer term planning and programming of CCA and DRR activities, including guidance on their mainstreaming in national and sectoral development policies.<sup>28</sup>

### *Promotion and Protection of Human Rights on the Ground*

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<sup>25</sup> Australian Human Rights Commission: *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014* released 11 Feb 2015 p195.

<sup>26</sup> See the report of the Australian National Commission of Human Rights at [https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten\\_children\\_2014.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf).

<sup>27</sup> The report also found that the detention breached article 37(b) of the Convention on the Rights of the Child.

<sup>28</sup> See <http://reliefweb.int/report/nauru/republic-nauru-framework-climate-change-adaptation-and-disaster-risk-reduction-ronadapt>

20. The republic of Nauru is located in the South Pacific region. It is a raised atoll island with the total surface of 21 square kms. Nauru comprises a narrow flat coastal strip, and a raised central plateau. The population of Nauru is estimated to be 10 000 people.<sup>29</sup>
21. Due to its geographical position, Nauru is one of most vulnerable states to the adverse impact of climate change. In its last UPR Submission, the Government of Nauru has expressed its concern about the impact of climate change on their population, especially regarding the rising sea-level; availability and quality of water; waste disposal; coastal erosion; reef damage.<sup>30</sup> These concerns have been confirmed by the last International Panel on Climate Change (IPCC) Report which in the Pacific small islands such as Nauru, highlighted accelerated coastal erosion, saline intrusion into freshwater lenses and increased flooding from the sea causing large effects on human settlements.<sup>31</sup>
22. The main economy of the land comes from the fishery and the extraction of phosphate. Intensive phosphate mining, which started since early 1900's has left some of the land inhabitable. As a small raised atoll island, Nauru is facing the challenge of the scarcity of fresh water resources. There is limited amount of ground water resources. As an alternative, the population depends on harvesting rain water. However, there have been concerns about poor rainwater harvesting and catchment methods in addition to the climate uncertainty of the rainy season.
23. The right to food of the people in Nauru is also at stake. With only 21 square kms and the land damage caused by years of phosphate mining operation in the island, there is very little area that can be cultivated for agriculture. Therefore, most of the food items are imported from outside the country which makes Nauru highly dependent on external forces. There is neither food sovereignty nor food security in the island.
24. Fisheries are of vital importance to the economy of Nauru and the food security of its population. Climate change already affects the fisheries sector in Nauru, and will continue to do so. Climate change in the Pacific will lead to warmer temperatures, increased rainfall in tropical areas, and more extreme weather events. Moreover, the changes also impact the Pacific Ocean, resulting in warmer waters, a higher sea level, increasing acidity of the ocean, and an expansion of low oxygen areas. For the future, projected changes will include, among others, stratification of the water column, changes to major currents, and consequent decreased nutrients supply. Tuna distribution in the ocean, for instance, is likely to be affected by these changes, which in turn will have effects on the government revenues and Gross Domestic Product.
25. Furthermore, the effects of reduced coastal fisheries production are a threat to the availability of fish for food security. Nauru already faces the challenge of a large gap in the quantity of fish needed for the good nutrition of its population. The vulnerability to shortages is likely to remain high. Nauru has a weak adaptive capacity, and the amount of fish available per person is simply limited.<sup>32</sup>

## **26. Recommendations**

1. *To ensure the provision of clean drinking water and access to water services and sanitation for all, as well as to ensure the access to food for all population, including in times of natural disaster.*
2. *To continue dialogue and pro-active multilateral and bilateral negotiations with other States on the protection of the human rights of the citizen of Nauru by ensuring safe havens for them*

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<sup>29</sup> see <http://www.naurugov.nr/about-nauru/our-country.aspx>

<sup>30</sup> see A/HRC/WG.6/10/NRU/1

<sup>31</sup> see <http://www.ipcc.ch/pdf/assessment-report/ar4/wg2/ar4-wg2-chapter16.pdf>

<sup>32</sup> See [http://www.spc.int/DigitalLibrary/Doc/FAME/Brochures/Anon\\_12\\_PolicyBrief15\\_ClimateOceanic.pdf](http://www.spc.int/DigitalLibrary/Doc/FAME/Brochures/Anon_12_PolicyBrief15_ClimateOceanic.pdf)

*as their islands become uninhabitable, and by bringing a human rights based approach to the climate negotiations in UNFCCC to ensure legally binding agreements.*

- 3. To continue to negotiate for compensation for the damage caused to their islands from those responsible for climate change, according to the principle of common but differentiated responsibility as stipulated in the UNFCCC.*