

In its last Universal Periodic Review in January 2011, Nauru received seven recommendations related to allowing visitation from United Nations special procedures, three recommendations related to public access to government information and one recommendation on strengthening its legal and judicial sectors. Nauru accepted all of these recommendations.

Nauru also received a recommendation related to not allowing other countries to violate the rights of refugees and asylum-seekers in its territory. While Nauru also accepted this recommendation, since September 2012 it has allowed Australia to transfer asylum seekers to mandatory and indefinite detention within its jurisdiction. At times there have been over 1100 asylum seekers detained in the centre¹ – more than 10 percent of Nauru's total population.²

Nauru's failure to implement this key recommendation has been a significant factor contributing to a failure to implement, and even to regress in relation to, the other recommendations detailed above, with a detrimental effect upon human rights defense and freedom of expression.

1. Denial of access to NGOs and UN experts

- When the UNHCR last visited the immigration detention centre on Nauru in October 2013, it reported that conditions fail to meet international standards, do not provide safe and humane conditions of treatment and 'constitute arbitrary and mandatory detention under international law'.³ Since then, UN and NGO access has been restricted.
- The United Nations Working Group on Arbitrary Detention had agreed with Nauru that it would conduct its first official visit from 14 to 19 April 2014.⁴ However, three weeks before the visit was to take place the Nauruan Government withdrew its invitation, saying it 'did not invite this group to visit' and alleging the planned visit was 'merely another publicity stunt by a group with a political agenda'.⁵ Amnesty International was also denied permission to visit on the basis that the country's immigration authorities were 'incredibly busy'.⁶

2. Restricting access by foreign journalists

- In January 2014 Nauru increased the visa fee for journalists from AUD 200 (USD 155) to AUD 8000 (USD 6220).⁷ The fee is non-refundable even if the visa application is rejected. The 3900 percent fee hike has discouraged foreign journalists from travelling to Nauru to report on the treatment of asylum seekers transferred there by Australia, as well as other local issues.⁸

¹ Department of Immigration and Border Protection, *Immigration Detention and Community Statistics Summary* (April 2014) <<http://www.immi.gov.au/managing-australias-borders/detention/pdf/immigration-detention-statistics-apr2014.pdf>>.

² United Nations Statistics Division, *Nauru* <<https://data.un.org/CountryProfile.aspx?crName=Nauru>>.

³ UNHCR, *UNHCR monitoring visit to the Republic of Nauru 7 to 9 October 2013* (26 November 2013) <<http://unhcr.org.au/unhcr/images/2013-11-26%20Report%20of%20UNHCR%20Visit%20to%20Nauru%20of%207-9%20October%202013.pdf?COLLCC=746182653&>>.

⁴ Xabier Celaya, *Cancellation of the first official visit to Nauru by the UN Working Group on Arbitrary Detention* (9 April 2014) OHCHR <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14495&LangID=E>>.

⁵ Oliver Laughland, *Nauru blocks UN human rights delegation from visiting island* (9 April 2014) *The Guardian* (online), <<http://www.theguardian.com/world/2014/apr/09/nauru-blocks-un-human-rights-delegation-from-visiting-island>>.

⁶ Karen Barlow, *Asylum seekers: Amnesty accuses Nauru of hiding conditions after refusing detention centre access* (30 April 2014) ABC News <<http://www.abc.net.au/news/2014-04-29/nauru-hiding-asylum-seeker-conditions-amnesty-says/5418924>>.

⁷ *Nauru government defends media visa price hike* (10 February 2014) ABC News <<http://www.abc.net.au/news/2014-02-10/an-nauru-visa-price-hike-for-journalists/5250568>>.

⁸ Elaine Pearson, *Dispatches: Foreign Journalists Aren't Welcome in Nauru* (10 January 2014) Human Rights Watch <<http://www.hrw.org/news/2014/01/10/dispatches-foreign-journalists-aren-t-welcome-nauru>>.

3. Undermining the rule of law and judicial independence

- In January 2014 Nauru arrested and deported its Chief Magistrate, an Australian national. The Chief Justice of the Supreme Court, also an Australian national, made urgent orders seeking to prevent the Chief Magistrate's deportation but those orders were ignored and the Chief Justice's visa was cancelled. As he was out of the country at the time, the cancellation of the Chief Justice's visa left him unable to return to Nauru and resume his duties.⁹ It took nine months for the Nauruan Government to appoint replacements.¹⁰
- The removal of the Chief Magistrate and Chief Justice in rapid succession was reported to be a politically motivated response to a particular case before the courts.¹¹ The circumstances of their removal undermined the rule of law and jeopardised both the actual and perceived independence of the Nauruan Judiciary.

4. Removing Opposition Members from Parliament

- Shortly after ousting the Chief Magistrate and Chief Justice, the Nauruan Government suspended three opposition MPs from Parliament for criticising the Government in international media. At the time, the Nauruan Justice Minister said, 'There is a place to argue your point and that is here in the parliament. These MPs have done what no other country would deem acceptable – use the foreign media to trash our international reputation'.¹²
- Prior to suspending the MPs, the Government had also censored local media outlets by refusing to allow interviews with opposition members to be broadcast.¹³

5. Silencing and criminalising whistleblowers

- People working in the detention centre on Nauru face a significant risk of reprisals if they speak out about human rights abuses. Service providers are subject to restrictive contractual 'gag clauses'.¹⁴
- Some individuals who have spoken publically about mistreatment they have witnessed and conditions inside the centre have faced criminal investigation and the threat of prosecution.¹⁵ Several have disclosed information anonymously for fear of reprisal.¹⁶

⁹ Melissa Clarke, *Nauru expels Australian magistrate Peter Law, bars chief justice Geoffrey Eames from returning to country* (20 January 2014) ABC News <<http://www.abc.net.au/news/2014-01-20/nauru-sacks-deports-australian-magistrate-chief-justice/5207600>>.

¹⁰ *Nauru appoints replacements for sacked chief justice and magistrate*, (9 September 2014) The Guardian <<http://www.theguardian.com/world/2014/sep/09/nauru-appoints-replacements-for-sacked-chief-justice-and-magistrate>>.

¹¹ Jeff Waters, *Nauru's chief justice Geoffrey Eames says visa cancellation is politically motivated* (20 January 2014) ABC News <<http://www.abc.net.au/news/2014-01-20/nauru-chief-justice-visa-cancelled-politically-motivated/5208540>>.

¹² *Nauru Parliament erupts into chaos after opposition MPs suspended for speaking to ABC, foreign media* (15 May 2014) ABC News <<http://www.abc.net.au/news/2014-05-14/an-nauru-mps-suspended-for-speaking-to-abc/5451366>>.

¹³ Daniel Flitton and Michael Gordon, *Nauru MP dragged out of Parliament for comments to foreign media* (14 May 2014) The Sydney Morning Herald <<http://www.smh.com.au/world/nauru-mp-dragged-out-of-parliament-for-comments-to-foreign-media-20140514-zrcu5.html>> .

¹⁴ Melissa Davey, *Mandatory detention of children 'abusive', say Australian paediatricians'* (6 October 2014) The Guardian <<http://www.theguardian.com/australia-news/2014/oct/06/mandatory-detention-children-abusive-australian-paediatricians>>; Paul Osborne, *Greens attack Nauru health deal* (21 September 2012) The Sydney Morning Herald <<http://news.smh.com.au/breaking-news-national/greens-attack-nauru-health-deal-20120921-26c0t.html>>.

¹⁵ Sarah Whyte, *Legal experts criticise Scott Morrison's use of 'draconian' law'* (9 October 2014) The Age <<http://www.theage.com.au/federal-politics/political-news/federal-politics/political-news/legal-experts-criticise-scott-morrison-s-use-of-draconian-law-20141008-10rwn3.html>>; Bec Zajac, *Speaking out* (21 January 2015) The Monthly <<http://www.themonthly.com.au/blog/bec-zajac/2015/21/2015/1421797900/speaking-out>>.

¹⁶ Bec Zajac, *More Australians wanting to blow the whistle on Manus Island and Nauru conditions* (23 January 2015) The Citizen <<http://www.thecitizen.org.au/news/more-australians-wanting-blow-whistle-manus-island-and-nauru-conditions>>; Submission No 134 to Australian Human Rights Commission, *National Inquiry into Children in Immigration Detention 2014*.

6. Recommendations to the Government of Nauru

- Issue a standing invitation to the Human Rights Council's special procedures and extend a specific invitation to visit to the Special Rapporteur on human rights defenders.
- Reverse the dramatic hike in visa fees for foreign journalists and guarantee not to unreasonably impede journalists' access to Nauru.
- Commit to strengthening judicial independence and avoiding interference with the Judiciary.
- Enact legislation which enshrines the right to access and disclose information held by both State and non-State actors relating to human rights.
- Ensure that individuals working within the detention centre on Nauru are not subject to legal or contractual prohibitions on publically disclosing human rights abuses.
- Guarantee that individuals who publically criticise the Government or who disclose information about human rights abuses are not subject to reprisals, including by enacting whistleblower legislation which provides specific protection to any person who makes a disclosure which relates to the alleged violation of human rights by either a State or non-State actor or may expose or promote accountability for such violations.
- Develop, enact and implement a specific national law on the protection of human rights defenders in accordance with the international Declaration on Human Rights Defenders.
- Cease allowing Australia to violate the rights of asylum seekers and refugees within Nauru's jurisdiction.

The restrictions placed upon journalists, whistleblowers, UN experts, justice operators and opposition politicians undermine Nauru's democracy and its international commitments to the protection of human rights. It is vital that these restrictions be reversed if the State is to guarantee the rights of not only the refugees and asylum seekers within its jurisdiction, but of all Nauru citizens.