



Human Rights Council
Working Group on the Universal Periodic Review
Thirty-seventh session
18–29 January 2021

Summary of Stakeholders' submissions on Nauru*

Report of the Office of the United Nations High Commissioner for Human Rights

I. Background

1. The present report was prepared pursuant to Human Rights Council resolutions 5/1 and 16/21, taking into consideration the periodicity of the universal periodic review. It is a summary of five stakeholders' submissions¹ to the universal periodic review, presented in a summarized manner owing to word-limit constraints.

II. Information provided by stakeholders

A. Scope of international obligations and cooperation with international human rights mechanisms and bodies²

2. Amnesty International (AI) stated that, in spite of its commitment to do so at the previous review, Nauru had not yet ratified the International Covenant on Civil and Political Rights (ICCPR) or the International Covenant on Economic, Social and Cultural Rights (ICESCR). AI recommended that Nauru ratify the ICCPR and the ICESCR and, where necessary, seek international cooperation and assistance to incorporate these treaties into domestic law.³ Access Now and the Center for Global Non-killing (CGNK) made similar recommendations.⁴

3. CGNK recommended that Nauru urgently ratify the Convention on the Prevention and Punishment of the Crime of Genocide.⁵ It also recommended that, despite that there was no known cases of enforced disappearances in Nauru listed by the Working Group on Enforced or Involuntary Disappearances, the country ratify the International Convention for the Protection of All Persons from Enforced Disappearance.⁶

* The present document was not edited before being sent to United Nations translation services.



B. National human rights framework⁷

4. AccessNow indicated that Part II of the Constitution of Nauru provided for judicially enforceable fundamental rights such as the right to life, freedom of conscience, freedom of expression and freedom of peaceful assembly and association.⁸

5. AccessNow highlighted that Nauru has updated its criminal law by replacing the 1899 criminal code by the Crimes Act 2016. The organisation indicated that, although the new law was welcomed by civil society organizations for its improvement on human rights, it still posed certain concerns regarding the enjoyment of the right to freedom of expression.⁹

6. AI stressed that, in spite of accepting a recommendation to establish a national human rights institution (NHRI) and making some progress (including the drafting of proposed laws), it had not yet been set up. AI urged Nauru to continue to work, with the support of regional partners, to establish an NHRI for the protection and promotion of human rights in accordance with the Paris Principles.¹⁰

C. Implementation of international human rights obligations, taking into account applicable international humanitarian law

1. Cross-cutting issues

Equality and non-discrimination¹¹

7. AI indicated that it was not clear what legal, policy or practical measures the Nauru government had implemented since the last review to protect the rights of women and children and people with disabilities. AI urged the Nauruan government to continue working to ensure substantive equality and freedom from violence and discrimination for all people.¹²

8. AI stressed that Nauru amended its criminal laws in 2016 to decriminalize homosexual activity between consenting adults.¹³

Development, the environment, and business and human rights¹⁴

9. JAI stated that the effects of climate change and in particular the rising sea levels posed a major threat to life in Nauru, threatening the lives and homes of citizens. It added that Nauru was not prepared to address these effects and, as a result, the lives of its citizens were in grave jeopardy. JAI stressed that urgent action was needed to forestall immediate harm to the citizens of Nauru because of the climate breakdown¹⁵ and recommended that Nauru immediately commence with more robust preparations for climate change.¹⁶ JAI also reported the threat in fresh water supply due to salt water intrusion caused by climate change and indicated that Nauru must take steps to ensure that their people continue to have access to clean water.¹⁷

2. Civil and political rights

Right to life, liberty and security of person¹⁸

10. CGNK informed that death penalty was still present in the Constitution of Nauru. According to CGNK the Constitution largely permitted the taking of life in cases of arrest, escape, riot insurrection, mutiny and to prevent the commitment of criminal offences (article 4). It recommended that Nauru engage in a participative process to amend the Constitution and to value life, and ratify the second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.¹⁹

Administration of justice, including impunity, and the rule of law²⁰

11. AI informed that from 1976 until 2008, the High Court of a third country was the ultimate appellate court for Nauru. In 2018, the appellate jurisdiction of the High Court of that third country was removed and Nauru passed a new law, the Nauru Court of Appeal

Act, that same year. In 2019, Nauru appointed six Court of Appeal judicial officers from Pacific Island countries and stated that up to two appointees from that third country would be named to hear appeals on refugee and asylum seeker cases.²¹ Nauru's judicial system is comprised of a District Court (with limited jurisdiction for civil and criminal cases), the Supreme Court and the newly constituted Court of Appeal.²²

12. AI informed about concerns regarding defendants' lack of adequate legal representation after laws were changed to make it more difficult for them to use overseas qualified Counsel to represent them in Nauru (noting that Nauru does not have many independent lawyers working in the country).²³

13. AI reported that, in 2014, three judicial officers were removed following their decisions in cases against the government. Another judicial officer had his contract terminated in 2018, three days after handing down his decision stating that the defendants could not receive a fair trial in Nauru. AI underlined that the arbitrary removal of judicial officers had undermined the independence and integrity of the judiciary. It also added that, under the new Nauru Court of Appeal Act 2018, the President of Nauru appointed judicial officers, in consultation with the Chief Justice, and that judicial officers might be appointed to hear one off cases, or for a fixed time. According to AI, these powers might undermine the independence of the judiciary, the rule of law, the right to a fair trial and effective remedies, and other human rights, in general.²⁴

14. AI stated that judicial officers should have security of tenure to insulate them from concerns that they would be affected by a political reaction to their decisions, and that the body responsible for the appointment of judicial officers must be independent from the executive in both its composition and that its work and assignment of cases should be done by the judicial administration in accordance with objective criteria. While recognizing the challenges of establishing an independent and impartial judiciary in a country such as Nauru, AI stated that the country should seek technical advice and assistance from the United Nations Special Rapporteur on the Independence of Judges and Lawyers to establish an independent and impartial judiciary.²⁵ AI called on Nauru to strengthen the independence of the judiciary and of the governing bodies of the judiciary, including by ensuring that judicial officers cannot be arbitrarily removed from office without due process and are appointed independently in line with international human rights standards, including the United Nations Basic Principles on the Independence of the Judiciary.²⁶

Fundamental freedoms and the right to participate in public and political life²⁷

15. With regard to freedom of expression, AccessNow stated that, although constitutionally protected, this right was not always respected or fostered by the government of Nauru. It indicated that section 3 of article 12 of the Constitution and division 13.2 of the 2016 Crimes Act posed certain restriction to this right. The Crimes Act provided for the crime of defamation and foresaw three years' imprisonment.²⁸ JAI made a similar observation.²⁹ AccessNow stressed that criminal law was not the appropriate response to speech acts as it created a dangerous space for human rights abuse in the form of state-sponsored intimidation and prosecution of critical voices, and might also self-censor people fearing reprisals and criminal prosecution from the State.³⁰ JAI referred to multiple reports of media censorship in recent years.³¹ AccessNow urged that freedom of expression, access to information and the right to privacy to be prominent issues in the upcoming UPR review cycle, and recommended that Nauru repeal or amend the provisions of the Criminal Act 2016 on criminal defamation.³² JAI also recommended that Nauru repeal all legislation and policy inhibiting the right to free speech and expression.³³

16. AccessNow stated that the government had repeatedly prevented people, including journalists and independent observers, from accessing the island, especially since asylum seekers started arriving in Nauru. These limitations included the need to obtain sponsorship letters from a Nauruan citizen for certain foreigners wanting to visit Nauru, the fee on the media visa application of AUD\$8,000 (non-refundable) even if the application was unsuccessful, and the banning of certain journalists.³⁴ AI also referred to the same fee and informed that it was waived for journalists attending the Pacific Island Forum Leader's meeting in September 2018 although a foreign journalist was questioned by police for alleged breach of visa conditions after speaking to a refugee. AI stated that this measure

meant that, in practice, very few journalists had been able to access the country to report on human rights issues of international concern, such as the treatment of asylum seekers and refugees.³⁵ AccessNow recommended that Nauru ensure national legislation and policies fully guarantee the safety of journalists, whistleblowers and human rights defenders, so they can pursue their activities freely without interference, attacks or intimidation.³⁶ AI recommended that Nauru protect and uphold the right to free and independent media, including by removing prohibitively high foreign journalist visa fees to enable foreign journalists to visit the country.³⁷

17. AccessNow indicated that Nauru still lacked legislation on access to information.³⁸ According to JAI, the government of Nauru owned all media and, as such, exercised ample editorial control over published content.³⁹ AccessNow stated that access to the internet, particularly to an open and high-quality internet, helped ensure citizen's access to information, in particular in light of the Covid-19 pandemic, and that by expanding and enhancing connectivity the government would enable the enjoyment of various human rights, especially by vulnerable communities.⁴⁰ It informed that the government imposed an internet shutdown in 2015, blocking access to certain websites, arguing the measure was taken to protect citizens from abusive content on the internet, such as online pornography, and claimed that these restrictions would remain in place until protective mechanisms are adopted.⁴¹ This shutdown and the disruption of access to the affected websites set an alert to civil society organizations, human rights defenders and journalists. AccessNow indicated that many people saw these measures as a means to cover up the human rights violations that had been happening in the immigration detention centres for asylum seekers⁴², and underlined the impermissibility of such shutdowns under international human rights law and in the context of Covid-19.⁴³ AI informed that the internet ban was lifted in 2018.⁴⁴ AccessNow recommended that Nauru refrain from imposing any restrictions on internet access and telecommunications and amend Article 12 of the Constitution to explicitly prevent blocking or throttling of information and communication technologies, networks, applications or services.⁴⁵ JAI also urged Nauru to pass a public information access law that required public disclose of government financial information increasing government transparency.⁴⁶

18. AccessNow stated that, although freedom of peaceful assembly and association were guaranteed in the Constitution of Nauru, in some occasions the government attempted to restrict the exercise of these human rights and mentioned that demonstrations concerning the treatment received by asylum seekers at the immigration detention centre in Nauru were often subject to governmental reprisal.⁴⁷ AccessNow reported that in 2015, 19 people (opposition members of Parliament according to AI)⁴⁸ were charged and prosecuted for "rioting", "disturbing the legislature" and "entering a restricted area" after they organized a protest outside the Parliament. In 2019, the so called Nauru 19 group was found guilty of "rioting".⁴⁹ On that case, AI informed that the Supreme Court of Nauru convicted 12 people of various offences related to riot, peaceful assembly and assault. AI was concern that the charges against them were politically motivated, and for those who were not alleged to have engaged in any acts of violence at the protests, amounted to an unlawful restriction on the right to peaceful assembly.⁵⁰ AccessNow added that restrictions on individuals' freedom of peaceful assembly and association had serious impacts on their right to freedom of expression. AccessNow considered that reprisals against peaceful protests and demonstrations that criticized governmental conduct not only amounted to censorship of content by the authorities, but also triggered self-censorship by individuals themselves, who refrained from manifesting their views due to the fear of facing criminal and civil punishments.⁵¹ It recommended that Nauru refrain from restricting individuals' right to freedom of peaceful assembly and association and subjecting them to criminal prosecution or civil liability.⁵² AI further recommended that Nauru immediately and unconditionally release Members of Parliament and their supporters convicted of non-violent offences related to protests in 2015.⁵³

Right to privacy

19. According to AccessNow, the right to privacy and data protection were latent concerns in Nauru because it did not have privacy laws nor legislation on data protection, consumer protection and cybercrimes laws.⁵⁴ AccessNow recommended that Nauru enact a

comprehensive data protection law to protect the right to privacy and adequately fund and support its implementation, and ensure that all governmental activity, including law enforcement, is consistent with international human rights obligations, including the protection of the right to privacy, and is conducted on the basis of a legal framework which is publicly accessible, clear, precise, comprehensive and non-discriminatory.⁵⁵

3. Economic, social and cultural rights

*Right to health*⁵⁶

20. JAI informed about the widespread obesity in Nauru that would lead to excessive poor access to health in the island.⁵⁷ According to JAI, 71% of the whole population and 97% of men were classified as obese.⁵⁸ It stressed the obligation for the country to both acknowledge and address the obesity epidemic, by adopting legislation to allow its citizens to maintain and realize their right to health.⁵⁹

4. Rights of specific persons or groups

*Women*⁶⁰

21. JAI informed that, although women were afforded equality under the law the Constitution of Nauru, the nation had yet to formally grant women the benefits required by the Convention on the Elimination of All Forms of Discrimination against Women.⁶¹ It recommended that Nauru take steps to achieve gender equality and to prevent increased gender-based violence as well as to adopt family law legislation that is not biased, both economically and socially, towards men.⁶²

22. JAI stated that women disproportionately faced maltreatment and discrimination, and were routinely subject to a culture of domestic violence, lower wages, gender-based sexual violence, and the biased effects of fault-based divorce system. JAI urged that Nauru act to curb violence against women.⁶³

*Children*⁶⁴

23. Global Initiative to end all corporal punishment of children (GIEACPC) indicated that corporal punishment of children was still lawful in Nauru despite the recommendation to prohibit it made by the Committee on the Rights of the Child. Corporal punishment in Nauru was prohibited in schools, penal institutions and as a sentence for a crime but it was still lawful at home, in alternative care and in day care settings.⁶⁵ GIEACPC stressed that neither the Crimes Act 2016 nor the Child Protection and Welfare Act 2016 or the Domestic Violence and Family Protection Act 2017 explicitly prohibited all corporal punishment in childrearing. GIEACPC hoped the states will raise the continued legality of corporal punishment during the review in 2020 and make a specific recommendation that Nauru draft and enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including at home and repeal any legal defences for its use.⁶⁶

*Persons with disabilities*⁶⁷

24. According to JAI, five percent of the population of Nauru identified itself as disabled.⁶⁸ JAI urged Nauru to ensure persons with disabilities are protected, by enacting anti-discrimination legislation and ensure they have adequate access to healthcare.⁶⁹

*Migrants, refugees, asylum seekers and internally displaced persons*⁷⁰

25. JAI informed about reports of poor treatment in Nauru of persons seeking asylum in a third country, which could potentially violate a myriad of human rights protections.⁷¹ In particular, JAI highlighted mistreatment of migrants by officials, failure to provide adequate access to personal hygiene items and facilities, as well as inadequate access to medical care. It recalled Nauru's obligation to ensure humane treatment of refugees and the need to ensure refugees were treated with respect and in accordance with human rights protections.⁷² According to AccessNow, the situation of the immigration detention centre in Nauru and the related human rights abuses have been covered up by extremely dangerous

efforts by both the Nauruan government and a third country government involved.⁷³ AccessNow recommended that Nauru repeal or amend its national immigration rules to allow access to the island, including by foreign journalists, human rights defenders and NGOs.⁷⁴

26. AI informed that, in March 2020, there were only 211 refugees and asylum seekers remaining in Nauru and that in February 2019, the last of the remaining refugee and asylum seeker children in Nauru were removed to another country after concerns were raised related to their physical and mental wellbeing. AI urged the Nauru government to continue to expedite arrangements with willing countries until every refugee and asylum seeker who wishes to do so is settled in a country where they are safe and their human rights are respected. It also added that further action was needed to end refugee policies set up by the Nauru government and a third country. AI recommended that Nauru immediately end ‘offshore processing’ arrangements with that third country and ensure that the 211 remaining refugees and asylum seekers who wish to do so are transferred to a third country or settled in a country where they are safe and their rights are respected and protected. AI also recommended that Nauru ensure free and full access for independent agencies such as church and community groups, journalists, UN agencies, and non-governmental organisations and permit them to monitor the conditions for the refugees and asylum seekers who choose to remain.⁷⁵

27. With regard to access to health, AI informed that in October 2018, the government forced Médecins Sans Frontières (MSF) to abandon its operations on Nauru where it had been providing critical mental health support to both local people and refugees. According to AI, this ban was an example of the ongoing obstruction by the Nauru government to working openly and transparently on refugee and asylum seeker issues. In February 2019, MSF launched a free tele-mental health service to provide psychological support to former patients, including Nauruan nationals, asylum seekers and refugees. However, two weeks later the Nauruan government banned telemedicine in the country, once again forcing MSF to suspend its services. AI recommended that Nauru immediately reinstate mental health services provided by MSF and other qualified health providers for locals and refugees and asylum seekers in particular in the context of Covid-19.⁷⁶

Notes

¹ The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org.

Civil society

Individual submissions:

AccessNow	Access Now, New York (United States of America);
AI	Amnesty International, London (United Kingdom);
CGNK	Center for Global Nonkilling, Geneva (Switzerland);
GIEACPC	Global Initiative to End All Corporal Punishment of Children, London (United Kingdom);
JAI	Just Atonement, New York (United States of America).

² For relevant recommendations see A/HRC/31/7, paras. 85.1–85.23, 85.25, 85.27, 85.32–85.35, 85.50, 86.1, 86.4, and 87.2.

³ AI, para. 5 and p. 3. See also AccessNow, para. 35.

⁴ AccessNow, para. 35 and CGNK, p. 7.

⁵ CGNK, p. 7.

⁶ CGNK, p. 8.

⁷ For relevant recommendations see A/HRC/31/7, paras. 85.23–85.26, and 85.28–85.30.

⁸ AccessNow, para. 4.

⁹ AccessNow, para. 7.

¹⁰ AI, para. 9.

¹¹ For relevant recommendations see A/HRC/31/7, paras. 87.3–87.8.

¹² AI, para. 3.

¹³ AI, para. 1.

¹⁴ For relevant recommendations see A/HRC/31/7, paras. 85.53–85.58 and 86.18.

¹⁵ JAI, para. 1.

¹⁶ JAI, para. 18.

- 17 JAI, para 11.
- 18 For relevant recommendations see A/HRC/31/7, paras. 85.32–85.35, 85.48, and 87.9–87.12.
- 19 CGNK, p. 7.
- 20 For relevant recommendations see A/HRC/31/7, paras. 85.46–85.48, 86.9–86.14 and 87.18.
- 21 AI, para 6.
- 22 AI, para. 7.
- 23 AI, para. 14.
- 24 AI, paras 10 and 11.
- 25 AI, para. 12.
- 26 AI, p. 3.
- 27 For relevant recommendations see A/HRC/31/7, paras. 86.15–86.17, 87.1, and 87.13–87.17.
- 28 AccessNow, paras. 5-7.
- 29 JAI, para. 36-39.
- 30 AccessNow, para. 8.
- 31 JAI, para. 37.
- 32 AccessNow, paras. 34 and 36.
- 33 JAI, para. 41.
- 34 AccessNow, paras. 10 and 11. See also AI, para. 13.
- 35 AI, para. 13.
- 36 AccessNow, para. 39.
- 37 AI, p. 3.
- 38 AccessNow, para. 9.
- 39 JAI, para. 38. See also AccessNow, para. 9.
- 40 AccessNow, paras. 12 and 13.
- 41 AccessNow, para. 17.
- 42 AccessNow, para. 18.
- 43 AccessNow, para. 19.
- 44 AI, para. 1. See also AccessNow, para. 19.
- 45 AccessNow, para. 38.
- 46 JAI, para. 6. See also AccessNow, para. 42.
- 47 AccessNow, para. 26.
- 48 AI, para. 14.
- 49 AccessNow, para. 28.
- 50 AI, para. 14.
- 51 AccessNow, para. 29.
- 52 AccessNow, para. 40.
- 53 AI, p. 3.
- 54 AccessNow, para. 31.
- 55 AccessNow, paras. 41 and 43.
- 56 For relevant recommendations see A/HRC/31/7, para. 85.52.
- 57 JAI, para. 2.
- 58 JAI, para. 19.
- 59 JAI, para. 21.
- 60 For relevant recommendations see A/HRC/31/7, paras. 85.36–85.45, 86.3–86.8.
- 61 JAI, para. 24.
- 62 JAI, para. 31.
- 63 JAI, paras. 4 and 29.
- 64 For relevant recommendations see A/HRC/31/7, paras. 85.31, 85.49, 86.2, and 87.29–87.30.
- 65 GIEACPC, pp. 1 and 2.
- 66 GIEACPC, p. 1.
- 67 For relevant recommendations see A/HRC/31/7, paras. 85.50–85.51.
- 68 JAI, para. 32.
- 69 JAI, para. 34.
- 70 For relevant recommendations see A/HRC/31/7, paras. 87.12, and 87.19–87.29.
- 71 JAI, para. 3.
- 72 JAI, paras. 22 and 23.
- 73 AccessNow, para. 21.
- 74 AccessNow, para. 37.
- 75 AI, para. 1 and p.3.
- 76 AI, para. 15 and p. 3.