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AMNESTY
INTERNATIONAL



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1. INTRODUCTION

Amnesty International welcomes the opportunity to submit this document to the United Nations (UN) Committee on Economic, Social and Cultural Rights (the Committee) in advance of the adoption of the List of Issues for Australia's fifth periodic report under the International Covenant on Economic, Social and Cultural Rights (the Covenant) in October 2016.

This submission contains up-to-date information, current at August 2016, and focuses on the economic, social and cultural rights in Australian law, the Australian Human Rights Commission, the rights of Indigenous Peoples and the rights of asylum seekers. It is not an exhaustive analysis of Australia's compliance with its obligations under the Covenant.

2. ADOPTION OF LEGISLATIVE MEASURES AND GUARANTEEING RIGHTS UNDER THE COVENANT (ARTICLES 2.1 AND 2.2)¹

2.1 ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN LAW

Australia undertook an extensive National Human Rights Consultation in 2009. In its report, the consultation panel recommended that a Human Rights Act be legislated to implement human rights principles into Australian federal law. This recommendation was rejected by Government in favour of developing a *Human Rights Framework* in April 2010 and a *National Action Plan on Human Rights* in 2012. Amnesty International welcomed these developments at the time, however due to the failure of successive governments to implement much of the agenda, now considers both to be ineffective. It should be noted that a Federal election was held on 2 July 2016. The incumbent Government was returned to office, however given Parliament does not sit again until late August, and has not outlined its human rights agenda in any detail.

In 2016, Australia still does not have overarching federal human rights legislation to ensure coherence and compliance with its international human rights obligations, including protection of economic, social and cultural rights, across all state and territory jurisdictions. Two jurisdictions within Australia have implemented their own human rights legislation: the Australian Capital Territory (ACT)'s Human Rights Act contains broad protections economic, social and cultural rights;² however Victoria's Charter of Human Rights and

¹ See paras 10, 11 and 13 respectively of the Concluding Observations for Australia, CESCR E/C.12/AUS/CO/4, 2009.

² ACT Human Rights Act 2004, available from: <http://www.legislation.act.gov.au/a/2004-5/current/pdf/2004-5.pdf>

Responsibilities Act only contains narrow protections of these rights, and defines “human rights” in the Act as “civil and political rights”.³ Queensland is currently conducting consultations on the development of a Human Rights Act. Amnesty International remains concerned about patchy and inadequate legislative protections of economic, social and cultural rights in Australia.

Amnesty International notes the important work of the Parliamentary Joint Committee on Human Rights (PJCHR), established in 2012 under the *Human Rights (Parliamentary Scrutiny) Act 2011*. This Committee provides regular, detailed analysis of new legislation that raises human rights concerns against the seven core UN human rights treaties to which Australia is a party, including the Covenant. However, even when the PJCHR reports that legislation does limit and breach human rights enshrined in the Covenant, the Government has not taken the congruent action as required under the Covenant to amend it to ensure it is inline with international human rights treaties to which it is party, or cease the passage of that legislation.

Amnesty International recommends that:

- urgent action is taken to fulfil the obligation to ensure all pre-existing and proposed laws and policies are brought inline with the rights enshrined in the Covenant on Economic, Social and Cultural Rights;
- implementing legislation is prepared, consulted and adopted that clearly articulates the rights enshrined in the treaties to which Australia is party, in order to enhance the protection of human rights under the Covenant on Economic, Social and Cultural Rights coherently across all jurisdictions in Australia.

2.2 THE AUSTRALIAN HUMAN RIGHTS COMMISSION

Amnesty International is concerned that despite the AHRC being accredited as an ‘A status’ institution, in recent years some senior members of the Australian government have sought to undermine the credibility of the institution and its current President. The government outright rejected a report by the AHRC that criticised the treatment of children in immigration detention centres by successive governments.⁴ Rather than engaging with the report’s content, the Prime Minister and other senior Government members criticised the timing of the report and questioned the motivations of the President of the AHRC,⁵ showing a disturbing disregard for the role of the AHRC to conduct independent inquiries and report on human rights issues.

Amnesty also notes the 30 per cent funding cut to the AHRC announced in December 2014 which will significantly inhibit the AHRC’s capacity to undertake its work. Amnesty International has recommended an expansion of the rights covered in the *Australian Human Rights Commission Act 1986* to provide greater scope for the Australian Human Rights Commission (AHRC) to engage in human rights scrutiny, and ensure effective safeguarding of all rights, including on economic, social and cultural rights.

In order to ensure people have access to justice and recourse to accountability for violations of economic, social and cultural rights, Amnesty International recommends that:

- the mandate of the Australian Human Rights Commission is reformed to ensure it fully covers economic, social and cultural rights; and
- the authorities take action to comply with the Paris Principles and guarantee the resources and personnel necessary to ensure the effective functioning of the institution.

³ Charter of Human Rights and Responsibilities Act 2006, 4, available from: [http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/edfb620cf7503d1aca256da4001b08af/54D73763EF9DCA36CA2571B6002428B0/\\$FILE/06-043a.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/edfb620cf7503d1aca256da4001b08af/54D73763EF9DCA36CA2571B6002428B0/$FILE/06-043a.pdf)

⁴ Australian Human Rights Commission (AHRC), *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014*, 12 February 2015, <https://www.humanrights.gov.au/news/stories/locking-children-taints-us-all-says-commission-president>.

⁵ Following the release of *The Forgotten Children: National Inquiry into Children in Immigration Detention* report, the Prime Minister said that it was “...a blatantly partisan politicised exercise and the Human Rights Commission ought to be ashamed of itself” and that “it would be a lot easier to respect the Human Rights Commission if it did not engage in what are transparent stitch-ups” (<http://www.smh.com.au/federal-politics/political-news/human-rights-commission-should-congratulate-scott-morrison-tony-abbott-responds-to-report-on-children-in-immigration-detention-20150211-13ci2j.html>). Both the Prime Minister and Attorney-General have publicly stated that they have ‘lost faith’ in the AHRC President.

3. THE RIGHTS OF INDIGENOUS PEOPLES (ART. 2.2, 9, 11, 12 AND 13)⁶

It has been 10 years since the Australian Government set Closing the Gap targets to eliminate the stark disparity between Indigenous and non-Indigenous Australians in life expectancy, health, education and employment indicators.⁷ While some important gains have been made in this time in areas of Indigenous health and education, Amnesty International maintains that successive governments have continued to fail to effectively address the pre-existing inequalities, disadvantage and discrimination suffered by Indigenous Peoples in Australia.

Aboriginal and Torres Strait Islander Peoples still face discrimination in areas such as access to adequate housing, education and health care and over-representation in the criminal justice system.

In 2014 the Australian Government introduced a new, competitive tender model for funding programs aimed at addressing Indigenous disadvantage, and made \$534.4 million worth of cuts over five years to the Indigenous Affairs budget. Aboriginal and Torres Strait Islander organisations have highlighted the negative impacts these funding cuts are having on the delivery of programs to address disadvantage in education, health and employment, and have called for the Government to restore funding levels.⁸

In June 2016 a wide range of Aboriginal and Torres Strait Islander representative organisations, peak bodies and groups came together, with the support of human rights and community groups, to issue a statement to the Australian Government, called the *Redfern Statement*⁹ (see box below). This statement called for Australia to adopt a new approach to working in partnership with Aboriginal and Torres Strait Islander Peoples to address these challenges.

⁶ See paras 15 and 32 respectively of the Concluding Observations for Australia, CESCR E/C.12/AUS/CO/4, 2009.

⁷ Council of Australian Governments, Closing the Gap on Indigenous Disadvantage, available from: http://www.coag.gov.au/closing_the_gap_in_indigenous_disadvantage

⁸ Close the Gap, Position paper on the Federal Budget 2016, <https://www.humanrights.gov.au/sites/default/files/2016%20CTG%20Federal%20Budget%20position%20paper.pdf>

⁹ The Redfern Statement was led by: National Congress of Australia's First Peoples; First Peoples Disability Network (FPDN); National Aboriginal and Torres Strait Islander Legal Services (NATSILS); National Aboriginal Community Controlled Health Organisations (NACCHO); National Family Violence Prevention Legal Services (FVPLS) Forum; Secretariat for National Aboriginal and Islander Child Care (SNAICC); Australian Indigenous Doctor's Association (AIDA); Congress of Aboriginal and Torres Strait Islander Nurses and Midwives (CATSINaM); Indigenous Allied Health Australia; Jaanimili Aboriginal Services & Development Unit – Communities, NSW & ACT; National Aboriginal and Torres Strait Islander Health Workers Association (NATSIHWA); National Association of Aboriginal and Torres Strait Island Physiotherapists NGAOARA – Child and Adolescent Wellbeing; The Healing Foundation; The Lowitja Institute; Victorian Aboriginal Community Controlled Health Organisation (VACCHO); Winnunga Nimmityjah Aboriginal Health Service; Queensland Aboriginal and Torres Strait Islander Child Protection Peak. Available from: http://nationalcongress.com.au/wp-content/uploads/2016/06/The-Redfern-Statement-9-June-2016_FINAL-002.pdf

Redfern Statement, signed 9 June 2016

We stand here as Aboriginal and Torres Strait Islander peak representative organisations with a deep concern:

- that in 2016 First Peoples continue to experience unacceptable disadvantage;
- that the challenges confronting Aboriginal and Torres Strait Islander people continue to be isolated to the margins of the national debate;
- that Federal Government policies continue to be made for and to, rather than with, Aboriginal and Torres Strait Islander people; and
- that the transformative opportunities for Government action are yet to be grasped.

Stand with us to let this statement and call for Government action be heard and acted upon by our nation's leaders.¹⁰

3.1 RACIAL DISCRIMINATION IN THE NORTHERN TERRITORY

The fifth periodic report indicates that the ratification of the International Labour Convention (ILO) No. 169 'is not a priority for the Australian Government at this time' because in relation to consulting Indigenous people on matters that affect them, the Government considers that it 'already does this in a variety of ways'.

Amnesty International contends that in reality, the Government has failed to consult with Indigenous communities on a number of occasions, such as the Northern Territory Emergency Response (NTER), which was only enabled through the suspension of the *Racial Discrimination Act*, and a series of reforms to the management and funding of remote Indigenous communities (including housing, essential and municipal services).

As of 31 December 2010, the *Racial Discrimination Act 1975* has been fully reinstated in the Northern Territory. However, Indigenous people in the Northern Territory are still subject to the discriminatory measures contained in the government's 'Stronger Futures in the Northern Territory' policy initiative.¹¹ These measures include a compulsory income management regime, compulsory acquisition by the Government of Aboriginal Lands, and blanket bans on alcohol and pornography, among other restrictions.

Under the income management regime, fifty per cent of individuals' income support and 100 per cent of advances and lump sum payments made to them are diverted to an "income management account". The quarantined funds can only be spent in specially licensed stores on "priority needs", such as food, clothing and household items, using a bright green 'BasicsCard' that clearly identifies its holder as someone subject to income management. This regime applies to all those living in prescribed areas inhabited by Indigenous peoples, regardless of whether or not they have responsibilities over children or have been shown to have problems managing income in the past.¹² Compulsory income management has been expanded to other (mostly Aboriginal) communities outside the Northern Territory such as Ceduna (South Australia) and parts of Western Australia.¹³

In 2010, the UN Special Rapporteur on the rights of Indigenous Peoples described these measures as having "an overtly interventionist architecture, with measures that undermine indigenous self-determination,

¹⁰ Full statement available here: http://nationalcongress.com.au/wp-content/uploads/2016/06/The-Redfern-Statement-9-June-2016_FINAL-002.pdf

¹¹ In June 2012, a suite of bills including the Stronger Futures in the Northern Territory Bill 2012 the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011 and the Social Security Legislation Amendment Bill of 2011 was passed by the Australian Parliament.

¹² UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, February 2010, Observations on the Northern Territory Emergency Response in Australia, http://www.ncca.org.au/files/Natsiec/NTER_Observations_FINAL_by_SR_Anaya_.pdf, p. 5.

¹³ Australian Government, Department of Human Services, 16 May 2016, <https://www.humanservices.gov.au/corporate/budget/budget-2014-15/budget-measures/welfare-payment-reform/income-management-one-year-extension-and-expansion-ceduna-south-australia>, [webpage].

limit control over property, inhibit cultural integrity and restrict individual autonomy.”¹⁴ The Special Rapporteur noted that the measures of the NTER “distinguish on the basis of race, because they are intended to and in fact do apply specifically to indigenous individuals and communities in the Northern Territory and not to others. The NTER measures specifically target indigenous people or apply to people and land within “prescribed areas” which, pursuant to section 4(2) of the NTER Act, are specified “Aboriginal land” and other designated areas that are populated almost entirely by indigenous people. These areas cover some 600,000 square kilometres and encompass more than 500 Aboriginal communities and over 70% of Aboriginal people within the Northern Territory (approximately 45,500 Aboriginal men, women, and children).¹⁵

The Special Rapporteur also found that the NTER imposes discriminatory treatment of indigenous peoples in relation to their right to social security, which is protected by article 9 of the Covenant.

Amnesty International maintains that the government’s implementation of the NTER did not conform to well-established principles under international law which require the free, prior and informed consent of the communities concerned as stipulated in the UN Declaration on the Rights of Indigenous Peoples.¹⁶

3.2 LAND RIGHTS, HOUSING AND ESSENTIAL SERVICES

Amnesty International is concerned that up to 150 Indigenous communities in Western Australia (WA) remain at risk of forced closure. In September 2011 the WA Government forcibly evicted the residents of the remote Indigenous community of Oombulgurri. Then, between September and December 2014, the WA Government demolished the majority of buildings and infrastructure in the community to prevent people from returning.¹⁷ This was all done without the free, prior and informed consent of the community and created trauma and loss for the affected community.¹⁸

In September 2014, following an agreement to hand over management of essential and municipal services from the Federal to the WA Government, the WA Government announced the possibility of closing up to 150 more remote communities.¹⁹ The threat of closure resulted in a protest movement and media attention, resulting in the WA Government announcing they would further consult before any closures occurred.

In July 2016, the WA Government released their plan, Resilient Families, Strong Communities - a Roadmap for Regional and Remote Communities.²⁰ The plan goes beyond housing issues and seeks to link community viability with a range of social indicators such child attendance at school, community safety, employment and a range of other social indicators. There is currently no Federal commitment of funding of remote communities after 2018, leaving financial responsibility for these communities solely to the WA Government. While the WA Government has indicated it will not close any communities by force, they have indicated that only certain ‘viable’ communities will be supported with essential and municipal services and housing management. Amnesty International remains concerned that the gradual removal of basic services will mean

¹⁴ UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, February 2010, Observations on the Northern Territory Emergency Response in Australia, http://www.ncca.org.au/files/Natsiec/NTER_Observations_FINAL_by_SR_Anaya_.pdf, p. 4.

¹⁵ UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, February 2010, Observations on the Northern Territory Emergency Response in Australia, http://www.ncca.org.au/files/Natsiec/NTER_Observations_FINAL_by_SR_Anaya_.pdf, p. 6.

¹⁶ Article 19 of the UN Declaration on the Rights of Indigenous Peoples and Article 6 of ILO Convention 169 on Indigenous and Tribal Peoples.

¹⁷ Solonec, Tammy and Seery, Cassandra, *The Oombulgurri eviction: Practicality or illegality?* *Indigenous Law Bulletin*, Vol. 8, No. 20, Sept/Oct 2015: 16-21.

¹⁸ The Guardian, 27 November 2014, ‘The trauma of Oombulgurri’s demolition will be repeated across Western Australia’, <http://www.theguardian.com/commentisfree/2014/nov/27/the-trauma-of-oombulgurris-demolition-will-be-repeated-across-western-australia>.

¹⁹ For example, the Governments of Western Australia and South Australia have indicated remote communities could close without an agreement on Federal government funding. See Dan Harrison, ‘Remote Indigenous communities under threat’, Sydney Morning Herald, 14 November 2014, available online at <http://www.smh.com.au/federal-politics/political-news/remote-indigenous-communities-under-threat-20141114-11myb9.html>

²⁰ Government of Western Australia, Resilient Families, Strong Communities: A roadmap for regional and remote Aboriginal communities, July 2016. Available from: http://regionalservicesreform.wa.gov.au/sites/regionalservicesreform.wa.gov.au/files/pdfs/CS671_RSRU_RoadMapDocument_Web_v3.pdf

people have little choice but to move elsewhere, resulting in the closure of these communities without the free, prior and informed consent of the traditional owners.

If communities close, it will have severe implications for those communities including loss of culture and access to land, trauma from removal from lands and the further consequences of relocating to larger towns including greater risk of substance abuse, criminal activity, homelessness, overcrowding and poor health. Removing Indigenous peoples from their traditional lands would limit the full enjoyment of social, economic and cultural rights.

Furthermore, the forced closure of remote communities may have implications in terms of Indigenous land rights claims. Under the *Native Title Act 1993*, there is a requirement for Indigenous people to prove ongoing connection with the land and waters, which may be jeopardised if people are forced to move to other areas.

Amnesty International has consistently advocated for policies that support remote communities and protect access to Indigenous homelands, rather than closing communities.²¹

Removing Indigenous peoples from their traditional lands places individuals at risk of homelessness and has many other serious cultural and economic implications that may limit the full enjoyment of social, economic and cultural rights.

Amnesty International has consistently advocated for policies that support remote communities and protect access to Indigenous homelands, rather than forcibly closing communities.²²

3.3 INDIGENOUS JUSTICE ISSUES

The overrepresentation of Indigenous people in the criminal justice system is a symptom of Indigenous peoples' lack of enjoyment of economic, social and cultural rights generally.

Indigenous people continue to be significantly over-represented in Australia's criminal justice system, comprising 27.4 per cent of adults in prisons and 57.2 per cent of juveniles in detention, despite accounting for just 2.3 per cent of all adults and 5.5 per cent of youth in the general population.²³ The most recent data, from 2013–14, shows that Indigenous young people are 26 times more likely to be in detention than non-Indigenous young people.²⁴ Aboriginal and Torres Strait Islander young people make up just over 6 per cent of the Australian population of 10–17 year-olds but more than half (54 per cent) of those in detention. The situation is bleaker still among the youngest Indigenous children, who made up more than 60 per cent of all 10-year-olds and 11-year-olds in detention in Australia in 2012–13.²⁵

The reasons for the overrepresentation of Indigenous people in incarceration are complex and include intergenerational trauma, entrenched poverty, lack of access to adequate health care, housing and education, unemployment, lack of access to legal services, untreated drug and alcohol misuse, among other underlying social and economic disadvantages experienced by Indigenous people.

Furthermore, state-based laws that disproportionately affect Indigenous people contribute to high numbers of Indigenous people in incarceration.²⁶ Paperless arrest laws, introduced in 2014 in the Northern Territory, allow police to detain "...anyone who has committed, or they believe will commit, a minor offence for up to four hours without charge or access to a lawyer, and longer if intoxicated."²⁷ The Northern Territory Coroner's said the paperless arrest scheme was "retrogressive", was "unjustifiable preventive detention" and recommended the laws be repealed. Mandatory sentencing laws in Western Australia and the Northern Territory remove magistrates' powers to consider each case individually and hand down sentences that are

²¹ Amnesty International Australia, 2011, *The Land that Holds Us*, <http://www.amnesty.org.au/images/uploads/aus/AI-homelands-report.pdf>.

²² Amnesty International Australia, 2011, *The Land that Holds Us*, <http://www.amnesty.org.au/images/uploads/aus/AI-homelands-report.pdf>.

²³ Amnesty International Australia, May 2015, *A brighter tomorrow: keeping Indigenous kids in the community and out of detention in Australia*, http://www.amnesty.org.au/images/uploads/aus/A_brighter_future_National_report.pdf.

²⁴ *Ibid.*, p. 5.

²⁵ *Ibid.*, p5.

²⁶ Criminal Law Amendment (Home Burglary and Other Offences) Bill 2014, <http://www.amnesty.org.au/news/comments/36664/>.

²⁷ The Guardian, 17 August 2016, Excessive Force and prolonged isolation alleged at Queensland youth detention centre, <https://www.theguardian.com/australia-news/2016/aug/18/excessive-force-and-prolonged-isolation-alleged-at-queensland-youth-detention-centre>.

proportional. Mandatory sentencing increases the numbers of Indigenous people, particularly young people, in incarceration.

Amnesty International is also concerned about evidence of mistreatment and abuse in Australia's youth detention centres. In July 2016, a news program revealed footage from the Don Dale Youth Detention Centre in Darwin (Northern Territory) where tear gas, mechanical restraints and spit hoods were used inappropriately on children.²⁸ The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment said the acts shown in the Four Corners footage could "amount to torture".²⁹ Further evidence has emerged about mistreatment of Indigenous youth in the Queensland criminal justice system.

Amnesty International is also concerned about funding uncertainty and cuts to Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services in recent years, which have placed severe limitations on the delivery of critical legal aid to Indigenous peoples.³⁰ The Productivity Commission has highlighted that there is significant unmet legal need in Australia, and has recommended an additional \$200 million be invested across the legal sector to both Indigenous and non-Indigenous legal aid providers to address this.³¹

Finally, Amnesty International is concerned about ongoing and preventable Aboriginal deaths in custody and the failure of successive Governments to adequately address this issue since the 1991 Royal Commission into Aboriginal Deaths in Custody.

In order to ensure compliance with Australia's obligations under the Covenant with respect to Indigenous Peoples Amnesty International urges Australia to:

- ratify the International Labour Convention (ILO) No. 169,
- set out a comprehensive plan for how Closing the Gap programs will be funded to 2025, including considering reinstating funding cut from the Indigenous Affairs Budget,
- ensure adequate funding is restored to ensure essential services to Indigenous homelands are maintained,
- prioritise ending the over-representation of Indigenous people in the criminal justice system by setting national justice targets alongside the existing Closing the Gap targets,
- commit to increasing access to justice by addressing gaps in legal aid funding, particularly by increasing funding for Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services.

²⁸ ABC, 26 July 2016, "Evidence of 'torture' of children held in Don Dale detention centre uncovered by Four Corners", <http://www.abc.net.au/news/2016-07-25/four-corners-evidence-of-kids-tear-gas-in-don-dale-prison/7656128>.

²⁹ The Guardian, 28 July 2016, "Treatment of children at Don Dale prison could amount to torture, says UN", <https://www.theguardian.com/australia-news/2016/jul/28/treatment-of-children-at-don-dale-prison-could-amount-to-torture-says-un>.

³⁰ Indigenous Law Bulletin, Eddie Cubillo, September/October, Volume 8, Issue 14, 'Funding cuts to Aboriginal and Torres Strait Islander legal services: where is the justice for our nation's First Australians?', <http://www.ilc.unsw.edu.au/sites/ilc.unsw.edu.au/files/articles/FUNDING%20CUTS%20TO%20ABORIGINAL%20AND%20TORRES%20STRAIT%20ISLANDER%20LEGAL%20SERVICES.pdf>, p.15. See also [http://www.natsils.org.au/portals/natsils/MEDIA%20RELEASE%20-%20post-budget%20-%20030516%20\(002\).pdf?ver=2016-05-04-102339-127](http://www.natsils.org.au/portals/natsils/MEDIA%20RELEASE%20-%20post-budget%20-%20030516%20(002).pdf?ver=2016-05-04-102339-127).

³¹ Productivity Commission, *Access to Justice Arrangements*, Inquiry report, Volume 2, 703.

4. THE RIGHTS OF REFUGEES AND ASYLUM SEEKERS (ARTS. 2.2, 11 AND 12)³²

Amnesty International is deeply concerned by the systematic erosion of human rights protection for asylum seekers and refugees that has occurred under successive Australian governments. Mandatory indefinite detention of asylum seekers (both adults and children) and the offshore detention of all asylum seekers who arrive by boat continue to have a devastating effect on the physical and mental health of detainees, and have led to several deaths³³, suicides³⁴, suicide attempts, self-harm, hunger strikes, violence and depression – even among young children. The impact of being indefinitely detained in appalling conditions is further exacerbated by the subsequent denial of adequate physical and mental health care information, services and goods.

4.1 OFFSHORE PROCESSING

Currently, all asylum seekers who arrive by boat are either sent back to their country of departure (including by boat ‘turnbacks’ at sea) or are transferred to offshore immigration detention centres in the Republic of Nauru or on Manus Island in Papua New Guinea (PNG).

The PNG Supreme Court has found the Manus Island detention centre is illegal and unconstitutional and the Australian and PNG Governments have agreed that it will be closed.³⁵

An Amnesty International delegation visited Nauru in July 2016.³⁶ Refugees and asylum seekers on Nauru, most of whom have been held there for three years, routinely face neglect by health workers and other

³² See paras 25 respectively of the Concluding Observations for Australia, CESCR E/C.12/AUS/CO/4, 2009.

³³ Mr Reza Berati died after violence erupted at the Manus Island Detention Centre on 18 February 2014. See http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Manus_Island/Report/report.pdf, p. 101.

Mr Hamid Kehazaei died on 5 September 2014 after contracting septicaemia on Manus Island.

³⁴ <https://www.theguardian.com/australia-news/2016/apr/29/refugee-who-set-himself-alight-on-nauru-dies-of-injuries-in-hospital>

³⁵ Ben Doherty, Helen Davidson and Paul Karp, Papua New Guinea court rules detention of asylum seekers on Manus Island illegal, The Guardian, 26 April 2016, <https://www.theguardian.com/australia-news/2016/apr/26/papua-new-guinea-court-rules-detention-asylum-seekers-manus-unconstitutional>; Ben Doherty, Australia confirms Manus Island Detention Centre will close, The Guardian, 17 August 2016, https://www.theguardian.com/australia-news/2016/aug/17/manus-island-detention-centre-to-close-australia-and-papua-new-guinea-agree?CMP=Share_iOSApp_Other.

service providers who have been hired by the Australian government, as well as frequent unpunished assaults by local Nauruans. They endure unnecessary delays and at times denial of medical care, even for life-threatening conditions. Many have dire mental health problems and suffer overwhelming despair—self-harm and suicide attempts are frequent. All face prolonged uncertainty about their future. Amnesty International previously visited Nauru in December 2012 and found the conditions for detainees there to be inhumane.³⁷

Amnesty International visited Manus Island detention centre in November 2013 and March 2014 and documented a host of human rights violations there, including inhumane conditions, indefinite detention and inadequate treatment for high rates of mental illness.³⁸ At 30 June 2016, there were 442 people living in the detention facilities on Nauru (including 49 children) and 854 adult males in detention on Manus Island.³⁹ There are approximately a further 800 refugees living on Nauru in the community, who also face serious security risks and have inadequate access to healthcare, educational and employment opportunities.

4.2 MANDATORY INDEFINITE DETENTION

Australia continues to subject asylum seekers and refugees to mandatory indefinite detention, and has not repealed the policy as recommended by the Committee in 2009. Asylum seekers are detained until their claim has been finalised, and there are no legislated maximum time limits on how long asylum seekers and refugees may be detained. As at 30 June 2016, 42.3 per cent of people in immigration detention in Australia had been detained for more than a year including 23 per cent who have been detained for more than 730 days.⁴⁰ Most of the people on Nauru have been held there for three years.⁴¹

Amnesty International holds that the current system of mandatory, non-reviewable detention of asylum seekers and refugees contravenes several international human rights agreements to which Australia is a party.⁴²

Amnesty International also notes the findings of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment that, ‘the Government of Australia, by failing to provide adequate detention conditions; end the practice of detention of children; and put a stop to the escalating violence and tension at the Regional Processing Centre, has violated the right of the asylum seekers, including children, to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 1 and 16 of the CAT.’⁴³

4.3 CHILDREN IN DETENTION

Children should never be placed in immigration detention. Amnesty International supports the findings and all recommendations made by the AHRC in its report, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, which found that ‘prolonged detention is having profoundly negative impacts on the mental and emotional health and development of children’ and that ‘...the mandatory and prolonged

³⁶ Amnesty International and Human Rights Watch Joint Press Release, 3 August 2016, Australia: Appalling abuse, neglect of refugees on Nauru, http://www.amnesty.org.au/resources/activist/Nauru_mission_briefing_joint_HRW.pdf .

³⁷ Amnesty International Australia, Amnesty International Nauru Brief, 23 November 2012, <http://www.amnesty.org.au/images/uploads/news/NauruOffshoreProcessingFacilityReview2012.pdf>.

³⁸ Amnesty International, *This Is Breaking People*, November 2013, http://www.amnesty.org.au/images/uploads/about/Amnesty_International_Manus_Island_report.pdf.

³⁹ Department of Immigration and Border Protection, 30 June 2016, Immigration Detention and Community Statistics Summary, <https://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-30-june-2016.pdf>.

⁴⁰ Department of Immigration and Border Protection, Immigration Detention and Community Statistics, 30 June 2016, <https://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-30-june-2016.pdf>, p. 11.

⁴¹ Amnesty International and Human Rights Watch Joint Press Release, 3 August 2016, Australia: Appalling abuse, neglect of refugees on Nauru, http://www.amnesty.org.au/resources/activist/Nauru_mission_briefing_joint_HRW.pdf.

⁴² Article 9 of the *International Covenant on Civil and Political Rights* prohibits arbitrary detention and provides that a detained person must be able to take proceedings before a court; Articles 3 and 9 of the *Universal Declaration of Human Rights* establish the right to liberty and freedom from arbitrary detention; and Article 31(1) of the *Refugee Convention* provides that refugees should not be subjected to any form of punishment due to their illegal entry.

⁴³ Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 6 March 2015, <http://static.guim.co.uk/ni/1425873116713/Mendez-report.pdf>, p. 7-8.

detention of children breaches Australia's obligation under article 24(1) of the Convention on the Rights of the Child'.⁴⁴

Amnesty International notes that the government has made some progress releasing children and families from onshore detention facilities, by moving them into so-called 'community detention' arrangements. Serious concerns remain, however, for those remaining on Nauru.

Amnesty International recommends the Australian Government:

- close the Regional Processing Centres on Nauru and Manus Island and settle in Australia all people assessed to be refugees, ensuring their rights under the Covenant are protected by providing appropriate settlement support services and entitlements;
- assess all people applying for refugee status in the Australian community, ensuring their rights under the Covenant are protected until resolution of their application; and
- legislate to end the practice of detaining children in immigration detention facilities.

⁴⁴ Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf.

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