



Submission by Human Rights Watch to the Committee on the Rights of the Child on Australia

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This submission focuses on the situation of asylum seekers and refugee children transferred to Nauru by Australia—many of whom have recently been sent back to Australia for medical treatment; the detention of children; the rights of intersex children; and the protection of education during armed conflict. It relates to articles 9, 13, 19, 24, 25, 28, 34, 37, 38, and 39 of the Convention on the Rights of the Child. It proposes issues and questions that Committee members may wish to raise with the government.

Australia’s Responsibilities for Rights Violations in Offshore Processing on Nauru

Human Rights Watch gathered information about Australia’s offshore processing during a visit to Nauru in July 2016 and through additional interviews with refugees and asylum seekers between August 2016 and November 2018, by telephone with refugees and asylum seekers on Nauru, and in person with those transferred from Nauru to Australia on medical grounds.¹

From July 2013, asylum seekers who arrive in Australian waters by boat (including unaccompanied children and families) were transferred to Nauru, in the case of

¹ Human Rights Watch and Amnesty International conducted in-depth interviews with refugees and asylum seekers on Nauru in July 2016. In total, we spoke with 84 refugees and asylum seekers (including nine children) from Afghanistan, Bangladesh, Kuwait, Iran, Iraq, and Somalia. See Human Rights Watch and Amnesty International, “Appalling Abuse, Neglect of Refugees on Nauru: Investigation on Remote Pacific Island Finds Deliberate Abuse Hidden Behind Wall of Secrecy,” August 2, 2016, <https://www.hrw.org/news/2016/08/02/australia-appalling-abuse-neglect-refugees-nauru>. In addition, Human Rights Watch interviewed refugees and asylum seekers by phone and, in the case of refugees and asylum seekers transferred from Nauru to Australia on medical grounds, in person. See, for example, Elaine Pearson (Human Rights Watch), “For Refugees on Nauru, Little Joy on Children’s Day,” *Australian Institute of International Affairs*, November 19, 2018, <https://www.hrw.org/news/2018/11/20/refugees-nauru-little-joy-childrens-day>.

families with children, or to Manus Island, Papua New Guinea, in the case of single men (and some unaccompanied boys incorrectly identified as adults).

Australia signed memorandums of understanding (MOUs) with Nauru in 2012 and 2013. Under these MOUs, Nauru agreed to host asylum seekers transferred by Australia in detention facilities known as “Regional Processing Centres” (RPCs).²

Australia has consistently disavowed responsibility for human rights violations associated with its offshore processing of refugees and asylum seekers even though Australia has exercised effective control over all aspects of the holding and processing of refugees and asylum seekers on Nauru. As a result, the Human Rights Committee and other international bodies have repeatedly concluded that Australia is jointly responsible under international law for safeguarding the human rights of the refugees and asylum seekers it has transferred to Nauru.³ In addition, Nauru is responsible on a joint basis with Australia for human rights violations that take place on its territory.⁴

In recent months, following growing pressure from hundreds of charities, human rights groups, medical and legal organizations, and doctors,⁵ the Australian government has begun to transfer people away from Nauru. Between August and November 2018, the number of child refugees on Nauru reduced from 119 to 12, and most of the children

² Memorandum of Understanding Between the Republic of Nauru and the Commonwealth of Australia, relating to the Transfer to and Assessment of Persons in Nauru and Related Issues, signed August 3, 2013, cl. 10.

³ See, for example, Human Rights Committee, Concluding Observations: Australia, U.N. Doc. CCPR/C/AUS/CO/6 (December 1, 2017), para. 35; UNHCR, Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, January 26, 2007, <http://www.refworld.org/docid/45f17a1a4.html> (accessed November 8, 2018), para. 35. See also *ibid.*, paras. 36-43. For an analysis of effective control, see generally International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001), arts. 16-18, http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf (accessed November 10, 2018).

⁴ As UNHCR observed with respect to Nauru, “the physical transfer of asylum-seekers from Australia to Nauru, as an arrangement agreed by two 1951 Refugee Convention States, does not extinguish the legal responsibility of the transferring State (Australia) for the protection of the asylum-seekers affected by the arrangements. In short, both Australia and Nauru have shared and joint responsibility to ensure that the treatment of all transferred asylum-seekers is fully compatible with their respective obligations under the 1951 Convention and other applicable international instruments.” UNHCR, “UNHCR Monitoring Visit to the Republic of Nauru,” October 7-9, 2013, para. 22.

⁵ See Katherine Murphy, “‘It Galls Me’: The Doctor Turning the Political Tide on Nauru’s Child Refugee Crisis,” *Guardian*, October 17, 2018, <https://www.theguardian.com/world/2018/oct/18/it-galls-me-the-doctor-turning-the-political-tide-on-naurus-child-refugee-crisis> (accessed November 24, 2018); Helen Davidson, “How Australia Finally Started to Care About Asylum Seekers and Refugees on Nauru,” *Guardian*, October 27, 2018, <https://www.theguardian.com/australia-news/2018/oct/27/how-australia-finally-started-to-care-about-asylum-seekers-and-refugees-on-nauru> (accessed November 24, 2018).

were accompanied by their families.⁶ George Brandis, the former attorney general, now the high commissioner to the UK, has confirmed that all children on Nauru will be transferred to Australia by the end of the year.⁷

Transfer from Nauru doesn't mean the children and their families are allowed to move about freely. According to those providing assistance to new arrivals from Nauru, some are being kept under guard in hospitals and motels, separated from family members who may be held in detention or in different states. All families transferred from Nauru remain in legal limbo, and face the prospect of being removed from Australia at some future date. For example, Peter Dutton, the home affairs minister, has stated, "We've been very clear that when they receive medical assistance, then the expectation is that they will return to their country of origin."⁸ Human Rights Watch interviews with refugees and service providers in Australia indicate that continued separation of family members and, in some cases, detention and other restrictions—together with anxiety about the threat of being returned to Nauru—have, in fact, exacerbated mental health problems since their transfer on medical grounds to Australia.

Offshore Operations on Nauru

For months and in some cases years after their arrival in Nauru, children and their families were held in detention centers, surrounded by fences and guarded by security services. They lived in crowded tents where the heat was unbearable, with temperatures indoors regularly reaching 45 to 50 degrees Celsius (113 to 122 degrees Fahrenheit).

Since October 2015, Nauru has allowed asylum seekers greater freedom of movement around the island, a step widely interpreted as a response to litigation in Australia challenging the lawfulness of asylum seekers' detention.

Those the Australian and Nauru governments recognize as refugees are generally provided accommodation in open camps or other housing throughout the island.

⁶ Biwa Kwan, "Politicians, refugee advocates deliver Nauru petition to PM" *SBS News*, November 27, 2018, <https://www.sbs.com.au/news/kids-off-nauru-petition-to-be-handed-to-the-pm> (accessed November 27, 2018)

⁷ Davidson and Wallquist, "All Refugee Children to Be Removed from Nauru."

⁸ Katherine Murphy, "The Coalition Is Right to Remove Children from Nauru—But There's Very Little to Celebrate," *Guardian*, November 1, 2018, <https://www.theguardian.com/australia-news/2018/nov/01/the-coalition-is-right-to-remove-children-from-nauru-but-theres-very-little-to-celebrate> (accessed November 24, 2018).

Families are generally assigned prefabricated units or converted containers, and single men are placed in rooms with space only for a bed and a small shelf.

Harassment and violence, including sexual assault (articles 19, 34, and 39)

Refugees and asylum seekers told Human Rights Watch that they suffer regular violent physical attacks from local Nauruans that with rare exception go unpunished by local authorities. Children as well as adults reported acts of intimidation, harassment, or violence directed at them or family members by Nauruans acting alone or in groups. Types of physical abuse include spitting, throwing bottles and stones, swerving vehicles in the path of refugees and asylum seekers as they walk or ride on motorbikes, breaking accommodation windows, and destroying other property.

Several of those interviewed by Human Rights Watch described acts of violence committed by guards and service providers against children. Similar accounts appear among the 66 reports of assault on children among the Nauru Files, a cache of 2,000 leaked reports that revealed the scale of abuse of children in Australian offshore detention released by the *Guardian*.⁹

Children and adults told Human Rights Watch that to avoid persistent harassment and violence, they frequently avoid leaving their accommodations, particularly at night. Women and girls rarely leave the camps and then only in groups or with male companions.¹⁰

Sexual assault of refugees and asylum seekers on Nauru—by security guards as well as by other refugees or asylum seekers—has also been reported since 2013.¹¹ In at least two cases involving the rape of women refugees while they were on Nauru, Australian courts have required immigration authorities to procure safe and lawful abortions for the women.¹² The Moss Review, an independent inquiry led by former integrity commissioner Philip Moss, described six reports of sexual assault of children, allegedly by contract service providers in some cases and by adult detainees in other

⁹ See, for example, Incident Report SCA 15.0162, February 22, 2015, <http://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive#incident=sca150162> (accessed November 9, 2018); Incident Report SCA 15.0173, February 24, 2015, <http://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive#incident=sca150173> (accessed November 9, 2018).

¹⁰ Human Rights Watch and Amnesty International, “Appalling Abuse, Neglect of Refugees on Nauru.”

¹¹ See, for example, Australian Human Rights Commission, *The Forgotten Children*, p. 188.

¹² See *Plaintiff S99/2016 v. Minister for Immigration and Border Protection*, [2016] FCA 483; *EUB18 v. Minister for Home Affairs*, [2018] FCA 1432.

cases.¹³ In addition, the Moss Review identified five reports of alleged sexual harassment of children by contract service providers.¹⁴

The Nauru Files contain at least one report of sexual assault of a child by a guard. In that case, a woman reported that “their son [name redacted] had said . . . that one Nauruan officer had put his hand up [their son’s] shorts and was playing with his bottom.”¹⁵ At least 10 other reports in the Nauru Files described acts of sexual assault against children, although it is not always clear from the redacted reports whether the alleged perpetrator was a guard or other staff member, a refugee or asylum seeker, or a member of the local community.¹⁶

Attempted Suicide, Other Acts of Self-Harm, and Mental Well-Being (articles 19, 24, and 25)

The United Nations High Commissioner for Refugees (UNHCR) found in 2016 that 80 percent of the surveyed population on both islands suffered from post-traumatic stress disorder, depression and anxiety.¹⁷ Nearly every asylum seeker and refugee on Nauru interviewed by Human Rights Watch expressed concern about their mental well-being, describing high levels of anxiety, trouble sleeping, mood swings, and feelings of listlessness and despondency that began when they were forcibly transferred to Nauru. Children had begun to wet their beds, suffer nightmares, act out, and in some instances had stopped interacting with or even speaking to people outside of their immediate families.

Human Rights Watch spoke with children and with parents of children who had considered or attempted suicide or had engaged in other acts of self-harm, such as

¹³ Moss Review, paras. 3.96-3.106.

¹⁴ Ibid, paras. 3.107-3.111.

¹⁵ Incident Report SCA 15.0051, January 15, 2015, <http://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive#incident=sca150051> (accessed November 9, 2018).

¹⁶ See, for example, Incident Report SCA 15.0165, February 23, 2015 (a girl’s report that a man had “caught her”; asked what she meant, the girl “demonstrated by pinching herself on the bottom and pointed to her vagina”), <http://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive#incident=sca150165> (accessed November 8, 2018); Incident Report SCA 15.0174, February 25, 2015 (reporting that a man in the camp tried to place a girl on his lap and has also “tried to touch her on the chest and bite her on the cheek on 2 occasions”), <http://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive#incident=sca150174> (accessed November 8, 2018).

¹⁷ “UNHCR appeals to Australia to act and save lives at immediate risk,” UNHCR, October 23, 2018, <https://www.unhcr.org/en-au/news/press/2018/10/5bcda38b7/unhcr-appeals-australia-act-save-lives-immediate-risk.html>

cutting their arms.¹⁸ In an indication of the prevalence of these serious concerns, the Nauru Files contain 30 reports of self-harm by children and 159 reports of attempted self-harm by children.¹⁹

The humanitarian medical organization Médecins sans Frontières (MSF), which the Nauruan government barred in October from working on the island, had been treating at least 78 refugee and asylum-seeking patients who had considered or attempted suicide or self-harm. The most common mental health conditions MSF found among refugees and asylum seekers on Nauru were depression, anxiety, and post traumatic stress disorder (PTSD), with significant levels of self harm, suicidal ideation, and suicide attempts, including children as young as 9-years-old.²⁰ MSF's Australia director, Paul McPhun, described the consequences of Australia's offshore processing for refugee and asylum seekers' mental health in these terms:

While many asylum seekers and refugees on Nauru experienced trauma in their countries of origin or during their journey, it is the Australian government's policy of indefinite offshore detention that has destroyed their resilience, shattered all hope, and ultimately impacted their mental health.²¹

Similar accounts have emerged in litigation in which children held on Nauru have sought medical transfers to Australia because of their deteriorating mental health. For example:

- In a 2018 case, the Federal Court of Australia found that “a young girl, not yet a teenager” had attempted suicide and has continued to express the desire to kill herself “because she is stuck in Nauru.” The girl told a psychologist that she “blames the Australian government for her state of mind.”²²
- In a second case in 2018, a mother of a 10-year-old boy applied for their immediate transfer to Australia. The boy was at serious risk of self-harm and suicide and needed specialist psychiatric care that was unavailable on Nauru. He had suffered from night terrors since December 2013 and began to have

¹⁸ Human Rights Watch and Amnesty International, “Appalling Abuse, Neglect of Refugees on Nauru.”

¹⁹ See Farrell, Evershed, and Davidson, “The Nauru Files: Cache of 2,000 Leaked Reports Reveal Scale of Abuse of Children in Australian Offshore Detention,” *Guardian*, August 10, 2016, <https://www.theguardian.com/australia-news/2016/aug/10/the-nauru-files-2000-leaked-reports-reveal-scale-of-abuse-of-children-in-australian-offshore-detention> (accessed November 8, 2018).

²⁰ Helen Davidson, “Médecins sans Frontières Calls for Immediate Evacuation of All Refugees on Nauru,” *Guardian*, October 11, 2018.

²¹ *Ibid.*

²² *FRX17 as Litigation Representative for FRM17 v. Minister for Immigration and Border Protection*, [2018] FCA 63, para. 18(a).

episodes of suicide ideation and threaten other self-harm in October 2014. He attempted suicide three times in January 2018 and was diagnosed that month with a chronic, major depressive disorder.²³

- In a third 2018 case, a 17-year-old boy and his mother requested immediate transfer from Nauru to Australia in order for him to receive appropriate mental health treatment. The boy's mental health symptoms between August 2013 to March 2018 included "nightmares, sleep disturbance, panic attacks, significant weight loss, stress, social withdrawal, hopelessness, withdrawal from school two years ago, impulsivity, head-banging, increased anxiety and protectiveness towards his mother, anger, numerous threats of self-harm by scratching face, significant suicidal preoccupation and at least one thwarted suicide attempt (about 18 months ago when the applicant tried to cut his wrists with a knife which his mother prevented)."²⁴ The court found that the boy's "continued residence on Nauru is a causative and contributing factor in his mental illness and substantial risk of self-harm."²⁵
- A fourth 2018 case involved an adolescent girl who had cut herself repeatedly and had stopped eating or drinking. A medical professional who reviewed the girl's file observed, "A child in this condition if not treated will develop severe dehydration, renal failure and malnutrition. Other complications include pneumonia, other infections, pressure sores and contractures. . . . RON [Republic of Nauru] hospital has been documented as failing to provide adequate supportive treatment and rehydration for this child thus increasing the risk of severe complications."²⁶

The Australian Human Rights Commission, UNHCR, and other independent agencies have observed that prolonged detention in conditions that violate the prohibition on ill-treatment exacerbated the trauma many had suffered from persecution in their home countries and the abuses and other hazards they faced on their journeys to Australia.²⁷

Two agencies, International Health and Medical Services (IHMS) and the Offshore Service for Survivors of Torture (OSSTT), provide mental health services for refugees

²³ *AXY18 v. Minister for Home Affairs*, [2018] FCA 283, paras. 13-18.

²⁴ *BAF18 as Litigation Representative for BAG18 v. Minister for Home Affairs*, [2018] FCA 1060, para. 32.

²⁵ *Ibid.*, para. 51(i).

²⁶ *DWE18 as Litigation Representative for DWD18 v. Minister for Home Affairs*, [2018] FCA 1121, para. 21.

²⁷ See, for example, Australian Human Rights Commission, "New Report: Experts Reveal Alarming Impact of Detention on Children," February 4, 2016, <https://www.humanrights.gov.au/news/stories/new-report-experts-reveal-alarming-impact-detention-children> (accessed November 9, 2018).

and asylum seekers under contracts with the Australian government.²⁸ IHMS, the main health service provider for refugees and asylum seekers,²⁹ appears to rely largely on strong sedative and anti-psychotic medication—for children as well as adults—to address mental health issues. Refugees and asylum seekers told Human Rights Watch and Amnesty International that these medications have severe side effects but provide little relief. The OSSTT officially deals only with previous trauma.³⁰

In the opinion of an IHMS doctor provided as testimony in one court case, “Nauru is ill equipped to handle complex mental health cases, particularly child mental health, and does not have the facilities to handle a complex child psychiatric case requiring inpatient treatment.”³¹ In another case, the judge found, on the basis of expert opinion from several psychiatrists, that the services required to handle complex child and adolescent mental health cases “are not available or adequately available on Nauru.”³² The judges in other cases reached the same conclusion.³³

Right to Health (article 24)

More generally, the quality of medical care for refugees and asylum seekers on Nauru is poor. Medical equipment is rudimentary, and specialist medical attention is not regularly available. Dental services are largely limited to tooth extraction. Refugees and asylum seekers reported that the hospital lacks even basic supplies, such as bandages or sterile gloves.³⁴

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

²⁸ See Rebecca de Boer, “Background Note: Health Care for Asylum Seekers on Nauru and Manus Island,” Parliamentary Library, June 28, 2013, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/AsylumSeekersHealthCare (accessed November 9, 2018).

²⁹ Paul Farrell, “IHMS, the Healthcare Giant at the Heart of Australia’s Asylum System—Explainer,” Guardian, July 20, 2015, <https://www.theguardian.com/australia-news/2015/jul/21/ihms-the-healthcare-giant-at-the-heart-of-australias-asylum-system-explainer> (accessed November 9, 2018).

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

³¹ *AXY18 v. Minister for Home Affairs*, [2018] FCA 283, para. 18.

³² *BAF18 as Litigation Representative for BAG18 v. Minister for Home Affairs*, [2018] FCA 1060, para. 48.

³³ See, for example, *DWE18 as Litigation Representative for DWD18 v. Minister for Home Affairs*, [2018] FCA 1121, para. 25.

³⁴ Human Rights Watch and Amnesty International, “Appalling Abuse, Neglect of Refugees on Nauru.”

necessary expertise or equipment. Those referred for overseas treatment may wait for weeks or even months before they are transferred.³⁵

In one recent case, a 2-year-old girl diagnosed with herpes encephalitis was initially transferred to Papua New Guinea rather than Australia even though the Papua New Guinean hospital could not perform a magnetic resonance imaging (MRI) test under sedation on a child or perform an electroencephalogram (EEG) test, as recommended by IHMS.³⁶ The former IHMS senior medical officer told the court, “Both the offshore processing Centre on Nauru and the Republic of Nauru Hospital have limited outpatient facilities targeted to children, and have limited resources. These facilities would be grossly inadequate to treat a child presenting with [the girl’s] clinical history with the early intervention that is required in such cases.”³⁷

Some of those interviewed said that they had developed serious medical problems in Nauru and that they had received virtually no specialized medical attention. They had heart and kidney diseases; diabetes accompanied by weight loss and rapidly deteriorating eyesight; and back problems leading to reduced mobility, among other conditions. Parents were particularly critical of services available to women during pregnancy and childbirth and said that newborns suffered from persistent infections and other medical conditions.³⁸

Refugees and asylum seekers routinely face neglect by health workers and other service providers who have been hired by the Australian government. They reported that both the IHMS medical staff and Nauru’s hospital often refuse to take their complaints seriously and, in most cases reported to Human Rights Watch and Amnesty International, prescribe nothing but painkillers. Refugees and asylum seekers described several instances in which they tried to call an ambulance when their friends or family members needed urgent help, but the hospital refused to send one.³⁹

In April 2017, the Senate Legal and Constitutional Affairs References Committee found that:

The department [of Immigration and Border Protection] has ultimate decision making power as the contracting agency, makes final decisions in relation to the provision of specialist and emergency medical treatment, and (largely as a

³⁵ Ibid.

³⁶ *DJA18 as Litigation Representative for DIZ18 v. Minister for Home Affairs*, [2018] FCA 1050, paras. 29-54.

³⁷ Ibid., para. 58.

³⁸ Human Rights Watch and Amnesty International, “Appalling Abuse, Neglect of Refugees on Nauru.”

³⁹ Ibid.

result of its capacity building measures) is the primary source of guidance and expertise to the Government of Nauru in relation to the management of all matters associated with the presence of refugees and asylum seekers.⁴⁰

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

- Can you confirm all children have been safely transferred away from the offshore operations on Nauru?
- What steps are being taken to ensure durable solutions for the futures of these refugee and asylum-seeking children?
- Why has the Australian government repeatedly fought legal cases refuting the medical advice of doctors to try and refuse transferring sick children and adults to Australia?
- Given the well-documented and extensive violations of the right to health for many years for children and families on Nauru, why are these refugee children that have been transferred from Australia still facing inadequate medical care in Australia, especially for mental health conditions?
Why are some children transferred to Australia still being held separately from family members, even when it is against the advice of child psychologists and medical professionals?

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

- Provide all children and families transferred from Nauru with permanent legal status in Australia, end family separations, and provide adequate and appropriate medical care including psychosocial support given the trauma experienced on Nauru.
- Immediately end its offshore operations on Nauru and transfer all refugee and asylum seekers to Australia or another appropriate country.
- In the meantime, until these operations are ended, the Australian government should support the government of Nauru to:
 - Respond effectively to complaints of physical and sexual violence.

⁴⁰ Senate Legal and Constitutional Affairs References Committee, Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre, April 2017, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and... (accessed November 8, 2018).

- Provide refugees and asylum seekers with quality medical care, including mental health services, that meets international standards of accessibility, availability, acceptability, and quality.
- Otherwise improve living conditions for refugees and asylum seekers.
- Identify appropriate settlement countries for those who are recognized as refugees.

Detention and Abuse in Youth Jails in Australia

Detention of Children (articles 9 and 37)

Approximately 600 children below the age of 14-years-old are locked up in youth detention centers each year in Australia.⁴¹ Of these detained children, indigenous children are 24 times more likely to be in detention than non-indigenous children.⁴²

Allegations of abuse and mistreatment in youth detention facilities have been reported for years. Multiple inquiries, including a royal commission into the protection and detention of children in the Northern Territory, established in 2016, have confirmed that Australia is failing to ensure children deprived of their liberty are protected and treated with dignity and humanity.

The royal commission report identified “systemic and shocking failures” in the youth detention centers, and declared them “not fit for accommodating, let alone rehabilitating” the children they lock up.⁴³ The abuses documented include the disproportionate use of force when restraining children, verbal abuse including racial slurs by guards, deprivation of food and water, and isolation and solitary confinement.⁴⁴

Isolation and Solitary Confinement

Solitary confinement is the isolation of detainees for 22 hours or more a day without any meaningful human contact.⁴⁵ Solitary confinement of children, despite

⁴¹ Australian Institute of Health and Welfare (AIHW) (2017) Youth Justice in Australia 2015-16, AIHW Bulletin no. 139. Cat. AUS 211, supplementary data table S78b, Young people in detention during the year by age, sex and Indigenous, AIHW, Canberra.

⁴² Australian Institute of Health and Welfare 2018. Youth Justice in Australia 2016–17. Cat. no. JUV 116. Canberra: AIHW, 7-8.

⁴³ Michael Garcia Bochenek, “Shocking’ Detention of Australia’s Aboriginal Children: Royal Commission Report Needs Swift Action,” <https://www.hrw.org/news/2017/11/19/shocking-detention-australias-aboriginal-children>.

⁴⁴ Ibid.

⁴⁵ United Nations Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”), UN Doc E/CN.15/2015/L.6/Rev.1, rule 44.

international law strictly prohibiting its use, is permitted in every jurisdiction (except for the Northern Territory) in Australia.⁴⁶

Solitary confinement of children should be prohibited because of the risk posed to the emotional, psychological and physical health and wellbeing of children. Children are particularly vulnerable because they are undergoing crucial stages of development socially, psychologically and neurologically and these developmental processes can be interrupted or damaged as a result of isolation.⁴⁷

The royal commission report stated that “there is no question that the law should not permit the kind of isolation suffered by children and young people held in ... isolation at ... detention centers.”⁴⁸

Age of Criminal Responsibility

The current age of criminal responsibility in Australia is 10-years-old. It is often the most vulnerable and disadvantaged children who come into contact with the justice system at a young age and recent research has found that early contact with the justice system increases the likelihood of poorer outcomes including being held on remand (in custody prior to trial or sentencing) rather than bailed, further offending and potential life-long involvement with the justice system.⁴⁹ On the other hand, the royal commission report identified that the vast majority of children who are dealt with outside of the formal criminal justice system do not reoffend.⁵⁰ The minimum age should be raised and it should be done in conjunction with measures to ensure children receive appropriate community support directed at addressing risk factors.

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

- What steps have been taken since the findings of the royal commission were published to end the abuse and mistreatment of children in detention?

⁴⁶ Human Rights Law Centre, “Justice for Children: Human Rights Law Centre’s 2018 CROC Shadow Report,” November 1, 2018,

<https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5bda4cba0e2e72d16720f38c/1541033153730/HRLC+CROC+Shadow+Report++Australia+2018.pdf> (accessed November 27, 2018).

⁴⁷ Human Rights Law Centre, “Explainer: Solitary Confinement,” February 8, 2018,

<https://www.hrlc.org.au/factsheets/2018/2/8/explainer-solitary-confinement?rq=solitary%20confinement> (accessed November 27, 2018).

⁴⁸ Commonwealth, Royal Commission into the Protection and Detention of Children in the Northern Territory, Final Report (November 2017), Volume 1, Chapter 14, p. 332.

⁴⁹ Human Rights Law Centre, “Explainer: Raising the Age,” March 20, 2018,

https://www.hrlc.org.au/factsheets/2018/2/8/explainer-raising-the-age#_ftn8 (accessed November 27, 2018).

⁵⁰ Commonwealth, Royal Commission into the Protection and Detention of Children in the Northern Territory, Final Report (November 2017), Volume 1, Chapter 27, p. 413.

- What steps have been taken to ensure the individuals responsible are held accountable, including by bringing criminal charges as appropriate?

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

- Enact the commission’s recommendations and commit to a thorough overhaul of the juvenile detention system.
- Immediately put an end to the harmful practices of the disproportionate use of force, deprivation of food or water, and solitary confinement.
- Grant the Australian Human Rights Commission immediate and unfettered access to all facilities where children are detained.
- Raise the minimum age of criminal responsibility, in line with international standards.

Intersex Children

Right to Health (article 24)

Intersex children in Australia are subjected to medically unnecessary and dangerous procedures before they are old enough to provide informed consent.

An estimated 1.7 percent of the global population is born with bodily traits that do not fit conventional notions of female or male – variations in sex characteristics called intersex. Their sex characteristics may differ from what people think of as “normal.” While these variations usually pose no health risk, in the 1960s surgeons in the US popularized “normalizing” operations, such as procedures to reduce the size of the clitoris or remove testes.

But these procedures are not designed to treat a medical problem, and there is no evidence they help children “fit in” or “function in society,” which some surgeons say is their aim. The operations carry high risks of scarring, loss of sexual sensation, incontinence, sterilization, and psychological trauma like that experienced by childhood sexual abuse victims. Some surgeries can sterilize the person and result in the need for lifelong hormone replacement therapy.⁵¹

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

⁵¹ “Push is on in Australia to End Intersex Abuses: Rights Commission Consultation Exposes Harmful, Unnecessary Medical Practices,” October 25, 2018, <https://www.hrw.org/news/2018/10/26/push-australia-end-intersex-abuses>.

- Pass legislation to ban all surgical procedures that seek to alter the sex characteristics of children too young to participate in the decision, when those procedures both carry a meaningful risk of harm and can be safely deferred. The legislation should provide for the provision of appropriate support services for people who have been subjected to these operations, including access to health care and to social and psychological support.

Education During Armed Conflict

The Protection of Education During Armed Conflict (articles 28, 38 and 39)

Australia has not endorsed the Safe Schools Declaration, an international commitment to protect education in armed conflict.⁵² The declaration includes a pledge to use the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict.⁵³

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

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

- What steps has Australia taken in line with Security Council Resolutions 2143 (2014), 2225 (2015), and 2427 (2018) to take concrete measures to deter the military use of schools?

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

⁵² Safe Schools Declaration, May 28, 2015, https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/utvikling/safe_schools_declaration.pdf (accessed November 6, 2018).

⁵³ Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, March 18, 2014, http://protectingeducation.org/sites/default/files/documents/guidelines_en.pdf (accessed November 6, 2018).

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