Human Rights Law Centre

Externalization of migration and the impact on the human rights of migrants

Submission to the UN Special Rapporteur on the Human Rights of Migrants

Overview

The Human Rights Law Centre (**HRLC**) is a non-profit, non-governmental legal and advocacy organisation in Australia holding consultative status with the UN Economic and Social Council. Our Migration Justice team has acted for hundreds of clients subjected to harsh Australian laws aimed at deterring and expelling migrants.

For more than two decades, successive Australian governments have sought to subvert international legal obligations through externalisation measures. These have included establishing 'regional processing' arrangements in neighbouring countries; intercepting people seeking asylum at sea or airports and returning them to their countries of origin or departure; entering third country resettlement agreements with other nations to prevent recognised refugees from remaining in Australia; and imposing blanket bans on accepting refugees located in nearby transit countries for resettlement.

Australia has continued to fund the 'Regional Processing Centre' in Nauru and, as at early 2025, around 100 people remained there, awaiting processing of their claims. Reports of widespread violence, including sexual violence, against refugees in the Nauruan community remain prevalent. It is unclear where the refugees processed on Nauru might be resettled, noting that, pursuant to the agreement between the two governments, resettlement in Australia or Nauru is precluded. A reported 64 men remain in Papua New Guinea, having previously been subjected to regional processing arrangements in the country, and without viable options for third country resettlement. The Australian government has formally withdrawn its support for these men, many of whom are reportedly too physically and psychologically unwell to be resettled elsewhere.

A serious and unprecedented development in late 2024 drastically expanded Australia's externalisation practices. With limited public debate or scrutiny, laws were passed to allow Australia to permanently deport migrants to third countries against their will, without any safeguards against *refoulement* (including chain or constrictive *refoulement*) or human rights abuses, or any permanent right of residence. Simply put, the laws allow Australia to pay third states to accept the migrants that it wishes to deport. Refugees, stateless people and children may be permanently exiled to countries with which they have no connection, without any ability to ever return to their lives or communities in Australia. The Australian government has already used these laws to attempt to remove three refugees – including one stateless man – to Nauru in early 2025.

These new 'third country reception arrangements,' as well as Australia's ongoing operation of the RPC in Nauru, warrant urgent attention by the Special Rapporteur.

Deportation laws

Background

Prior to November 2023, people whose Australian visas were refused or cancelled, but who could not be returned to their countries of origin,[1] remained in immigration detention indefinitely.[2] The average period of time

[1] For example if Australia owed international protection obligations in relation to them, they were stateless, or there were practical barriers to their removal.
[2] *Migration Act 1958* (Cth) (**Migration Act**) s 189 requires that every person without a visa be detained. There is no statutory time limit on detention nor any right of review.

spent in immigration detention reached a high of 806 days.[3] Such treatment can be understood as Australia seeking to effect constructive refoulement.[4]

On 8 November 2023, the High Court of Australia determined that the Constitution does not authorise immigration detention where there is no real prospect that the removal of a person will become practicable in the reasonably foreseeable future.[5] As a result, the Australian Government was and will be compelled to release people in those circumstances. To date, approximately 300 people have been released as a result of the High Court's decision.

When no longer able to detain migrants indefinitely, the Australian Government instead sought to enhance its ability to remove them. On 28 November 2024, the *Migration Amendment Act 2024* (Cth) was passed into law. It inserted a new s 198AHB into the Migration Act, which operates if Australia enters into an arrangement (referred to as a "**third country reception arrangement**") with a foreign country in relation to the removal of non-citizens from Australia and their acceptance, receipt or ongoing presence in the foreign country. The provision confers a power on the government to take any action and make any payments connected to the arrangement.

Scope of the laws

Australia has stated that its current intention is to apply the new deportation powers to people released from indefinite detention as a consequence of the High Court's decision.[6] But the powers are not limited to this cohort - any person who is liable for removal from Australia[7] may be taken to a third country. This includes not only people whose visas are cancelled on character grounds, but also anyone whose visa has expired or was simply refused for failing to meet relevant criteria. There is nothing to prevent the application of these powers to children or people with immediate family members in Australia.

Two groups are particularly vulnerable to third country deportation:

1. **People previously subjected to regional processing**: Around 900 refugees who were previously subjected to regional processing in Nauru or Papua New Guinea currently remain in Australia on short term bridging visas. The Australian Government maintains they will never be permitted to settle permanently in Australia. There is a risk they could be removed permanently to a third country, as there are no remaining resettlement pathways available for people in this cohort.
2. **People previously subjected to flawed asylum determination procedures**: Around 6,000 people who were refused refugee protection under the flawed and now-abolished "Fast Track" status determination procedure remain in Australia without any pathway to permanency. Many cannot be forcibly returned to their country of origin due to the refusal of those states to accept the involuntary return of their citizens. There is a risk that those who cannot be removed to their countries of origin may instead be deported to third countries.

Implementation

The laws empower Australia to give effect to third country reception arrangements that may be entered into with any other state.

[3] Department of Home Affairs, *Immigration Detention and Community Statistics Summary January 2023* (3 March 2023), available at <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-january-2023.pdf>.
[4] Sanmati Verma, 'Refoulement by another means—'constructive refoulement' and character-based decisions under the Migration Act 1958 (Cth)' (2022) 28(2–3) *Australian Journal of Human Rights* 347–365.
[5] *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 415 ALR 254 (***NZYQ***).
[6] Australian Minister for Home Affairs, *Statement on NZYQ* (media release), 16 February 2025.
[7] Meaning any person in respect of whom the removal duty in s 198 of the Migration Act applies.

In early 2025, Australia entered a third country reception arrangement with Nauru concerning three individuals.[8] The arrangement concerns a 30-year agreement period during which financial compensation will be paid to Nauru. The Australian Government has refused to disclose the amount that will be paid to Nauru.

To give effect to this arrangement, Nauru introduced the *Immigration (Long Term Stay Visa) Regulations 2025)* (Nr), which created the 'Long Term Stay Visa' (**LTSV**). Australian immigration officials applied for and obtained a LTSV for each of the three people who are the subject to the third country reception arrangement, without their consent or knowledge. All three of the individuals are recognised by Australia as refugees. The duration of their Nauruan visas is 30 years. The Regulations provide that a LTSV may be cancelled if the holder departs Nauru for more than 12 months.[9]

At the time of writing, each of the three individuals who are the subject of the first agreement have commenced legal proceedings and have not yet been removed to Nauru.

It is not publicly known whether a further agreement has been reached between Australia and Nauru concerning a broader cohort of people, or whether Australia is pursuing agreements with other states. Australia refuses to publicly release details of such discussions.[10]

Human rights implications

The bilateral agreement between Australia and Nauru is reminiscent of the past decade of failed regional processing. Yet under this arrangement, there is no pretence of any purpose or end point to the removal of migrants to Nauru, beyond their deportation from Australia.

Third country reception arrangements are entered into through the exercise of executive power by the Australian Government. The new provisions of the Migration Act authorise government action giving effect to those arrangements, but the laws create no restrictions as to the contents of the arrangements themselves.

Significant human rights risks arising from third country reception arrangements include:

1. **No permanent right of residence**: there is no legal requirement that a third country reception arrangement guarantee a right of permanent residence in the third country. The arrangements entered into with Nauru for example provide for a 30 year period of residence, with no provision for what may happen to a person at the expiry of their Nauruan visa. LTSV holders are also vulnerable to visa cancellation if they depart Nauru for more than 12 months. This insecurity heightens the risk of chain refoulement (below).
2. **Risk of *refoulement***: Australia intends to remove people to third countries without any rigorous assessment of their risk of harm in that country. Australian law prevents a person from lodging any subsequent protection claim, even if it relates to a different country of reference. The procedures Australian immigration officials have adopted to purportedly assess non-refoulement risks with respect to Nauru have been cursory, procedurally unfair and incomplete,[11] despite overwhelming evidence that people previously transferred to Nauru from Australia (under regional processing arrangements) have suffered serious harm and death.
3. **No guarantee against arbitrary detention**: there is no legal requirement that Australia seek any assurance from a third country that migrants will not be detained arbitrarily. The current agreement with Nauru provides that detention should not be imposed "except in accordance with ordinary Nauruan law", though detention may be arbitrary even if authorised by the law of a state.
4. **Interference with family life:** removals to third countries may permanently separate migrants from family members living in Australia. There is no requirement that migrants have access to family reunion in third

[8] The arrangement was constituted by letters exchanged between the Australian Minister for Home Affairs and the President of Nauru between 31 January 2025 and 12 February 2025. The existence and contents of these letters (partially redacted) are only publicly available as a result of litigation brought by one of the three individuals subject to the interim arrangement – see *TCXM v Minister for Immigration and Multicultural Affairs* [2025] FCA 540, [39]-[50] (***TCMX***).
[9] *Immigration (Long Term Stay Visa) Regulations 2025)* (Nr) r 10.
[10] See eg Commonwealth of Australia, Senate Legal and Constitutional Affairs Legislation Committee Estimates (27 March 2025), pp 46, 70.
[11] For example, initial desk-based 'assessments' were conducted without inviting any submissions or evidence from the person concerned, and without reference to relevant country information. Extremely brief follow up interviews were conducted without notice and without access to legal representation. No review processes are available.

countries. Migrants removed to Nauru for example will not have the ability to sponsor family members to join them and will not have any pathway to Nauruan citizenship. Their ability to travel in order to visit family members overseas is restricted (below).

5. **Restriction on freedom of movement:** there is no requirement that third country reception arrangements guarantee freedom of movement. The arrangement with Nauru is such that even if migrants are able to obtain the necessary identity documents to travel overseas, any departure from Nauru places them at risk of visa cancellation if unexpected events prevent them from returning within 12 months (for example, interruptions to global travel or loss of travel documents).
6. **Risk of chain refoulement:** Australia may enter third country reception arrangements with states that are not parties to the Refugees Convention. There are no protections in law to prevent Australia from deporting a person to a third country which might then return the person to their country of origin. In the Nauru context, this risk is evident despite the provisions of the arrangement which purport to require "no risk of chain refoulement"[12] – as people will have no right of residence in any country other than their country of origin when their Nauruan visa expires or if it is cancelled. There is no pathway to obtaining a visa in Nauru on the basis of refugee status, even if such status is recognised in Nauru.
7. **No guarantee of minimum human rights standards**: the new laws allow Australia to deport migrants to third countries without any assurances as to their safety, dignity or humane treatment. There is no requirement that a third country observe minimum human rights standards or commit to a particular standard of treatment of persons transferred from Australia. The terms of the current third country reception arrangement with Nauru[13] provide little comfort in light of the inhumane conditions that refugees previously transferred from Australia were subjected to, despite the Memorandum of Understanding which governed regional processing expressly requiring that people be treated in accordance with relevant human rights standards.[14]

Transparency, scrutiny and monitoring

There is no mechanism established in law or policy to monitor the implementation of third country deportation powers.

There are no review, appeal or complaints avenues available as of right to people who are subject to these powers.

The amending legislation introduced in November 2024 also sought to avoid civil liability of the Australian Government and its officers in relation to actions taken to remove people from Australia and any harm they may experience in third countries.[15]

Regional Processing

Australia assisted to establish and fund 'Regional Processing Centres' (**RPCs**) on both Nauru and Manus Island, Papua New Guinea. The former RPC operated as a closed detention facility between September 2012 and October 2015, when it was formally rendered into an 'open centre.' The latter RPC operated on Lombrum naval base on Los Negros Island in Manus Province until October 2017, when the Australian government announced the transfer of all remaining detainees to 'open' accommodation near Lorengau town, Manus Island. From that time, most Australian service providers left the facility in Manus Island, leaving its former residents without security and support as well as, in the case of many, a viable settlement alternative. Numerous reports have detailed the violence, lawlessness and medical neglect that characterised life in the RPCs.[16] To date, twelve people have died in the Australian-administered RPCs.

[12] See *TCMX* at [43].
[13] Ibid.
[14] *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 and entered into force 3 August 2013.
[15] Migration Act s 198(13).
[16] See for instance Australia OPCAT Network, Submission to the Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and UN Working Group on Arbitrary Detention (January 2020), pp 68-71.

The 'Regional Resettlement Arrangement' entered into by the governments of Australia and Papua New Guinea formally concluded in December 2021, however it is reported that the Australian government continued to provide a degree of welfare support to previously detained asylum seekers.[17] That support was abruptly withdrawn in November 2023, leaving many asylum seekers and refugees facing homelessness and destitution.[18] Well-known defects in the refugee status determination process in PNG have left many asylum seekers remaining there without a durable resettlement solution, unable meet eligibility requirements for settlement in a third state and at risk of *refoulement* by the PNG government. Reports indicate that, as at late 2024, 64 former Manus detainees remained in PNG without resettlement options.[19]

The Australian government has maintained RPC arrangements on Nauru since 2012. In January 2025, it was reported that there were over 100 people undergoing processing in Nauru.[20] It is important to note that recognition as a refugee does not confer durable status on asylum seekers in Nauru; rather, it forms the basis for ongoing eligibility for a Regional Processing Centre visa, which remains valid until a third-country resettlement option is found. It is currently unclear where recognised refugees processed through the RPC on Nauru may be resettled.

The RPC arrangements on Nauru have been plagued by reports of widespread violence, including gender-based and sexual violence, against refugees in the community.[21] Refugees have reportedly been attacked with weapons including rocks and machetes, refugee housing has been targeted in burglaries and that the personal property of refugees has been destroyed.[22] Crimes against refugees are under-reported and seldom acted on by police.[23] A report released in 2024 indicated that 65 percent of people undergoing processing in Nauru suffered from health conditions,[24] though medical services for refugees are manifestly substandard and have been described as "critically inadequate."[25] Despite the UNHRC ruling in early 2025 regarding Australia's liability for human rights breaches in the RPC, there remains no clear mechanism for the transfer of refugees to Australia, including on critical medical grounds.

[17] Ben Doherty, 'Morrison government struck secret deal to pay PNG to take refugees and asylum seekers' 22 July 2023 *The Guardian* <https://www.theguardian.com/australia-news/2023/jul/22/morrison-government-png-asylum-seeker-deal-refugee>.
[18] Amy Nethery, 'Dozens of refugees are still stranded in precarious situations in PNG – and support from Australia is dwindling' 18 November 2024 *The Conversation* <https://theconversation.com/dozens-of-refugees-are-still-stranded-in-precarious-situations-in-png-and-support-from-australia-is-dwindling-241676>.
[19] Asylum Insight, 'Papua New Guinea Arrangement' <https://www.asyluminsight.com/papua-new-guinea-arrangement>.
[20] Amnesty International, 'Nauru detention centre must be urgently evacuated in light of UN ruling' 10 January 2025 <https://www.amnesty.org.au/nauru-detention-centre-must-be-urgently-evacuated-in-light-of-un-ruling/>.
[21] Senate Legal and Constitutional Affairs References Committee, Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru RPC, and any like allegations in relation to the Manus RPC, Report (2017) [2.30] and [7.14].
[22] See generally Human Rights Watch, *Australia: Appalling Abuse, Neglect of Refugees in Nauru: Investigation on Remote Pacific Island finds deliberate abuse hidden behind wall of secrecy*, Webpage (2016).
[23] Freedom House, Freedom in the World Report 2024 – Nauru (February 2025).
[24] Asylum Seeker Resource Centre, 'Lives at risk in PNG and Nauru as Labor persists with 11 failed years of offshore detention' 19 July 2024 <https://asrc.org.au/2024/07/19/11-years-of-costly-cruelty-offshore/>.
[25] Refugee Council of Australia and Asylum Seeker Resource Centre, Australia's man-made crisis in Nauru, Report (2020) p. 11.