

Repeating Despair on Nauru:

The Impacts of Offshore Processing on Asylum Seekers

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Overview

This paper highlights the human cost of detaining asylum seekers on Nauru, as experienced by hundreds of men, women and children between 2001 and 2008. The voices of those who endured detention on Nauru must serve as a warning to Australia that it is about to repeat a policy that was inhumane – the offshore processing of asylum seekers.

As part of its efforts to deter the arrival of asylum seekers by boat to Australia, Prime Minister John Howard's Coalition Government established offshore processing in 2001. This included an agreement with Nauru for asylum seekers seeking entry to Australian territory by boat to be held on the island while their refugee claims were processed. The International Organisation of Migration (IOM) agreed to manage the camps that would hold the asylum seekers on Nauru. Despite claims by IOM that the island was host to an "offshore processing centre" and not places of detention,¹ it is difficult to conceive of the experiences of asylum seekers on Nauru as anything but indefinite detention and punishment for seeking to arrive to Australia by boat.

1,322 men, women and children were detained on Nauru between 2001 and its closure in 2008. 573 (43 per cent) were finally resettled in Australia and 274 (21 per cent) were resettled in other countries, mostly in New Zealand. One asylum seeker died while detained on Nauru. The remaining 474 (36 per cent) were repatriated to their countries of origin.² The vast majority of those resettled in either Australia or other countries were accepted as refugees (90 per cent) while others were accepted on other humanitarian grounds.³ Of these total figures, 786 asylum seekers detained on Nauru were from Afghanistan, 420 of which were returned to their own country, and all who remained on Nauru were eventually accepted as refugees or humanitarian entrants, most in Australia.⁴

Being detained on such an isolated island, far from legal and social support, was a despairing experience for many men, women and children. The IOM head psychiatrist on Nauru, Maarten Dormaar, reported in 2002 that after three months in detention many asylum seekers were showing 'clear symptoms of suffering or distress'.⁵ Asylum seekers faced living conditions that failed to provide adequate shelter, water, food and sanitation in the early months of the detention facilities on Nauru, and uncomfortable conditions at best as time progressed. Asylum seekers were also denied access to outside information and any means of communication in those early months, making it impossible to find out news on their own countries and families, or even to let their families know where they were. In addition, the assessment processing of refugee claims denied natural justice for many, and those whose claims were rejected through this flawed process were placed under great pressure to return to their own countries.

Examining these experiences of detention on Nauru is necessary to ensure that the impacts of this government policy are understood from the perspective of those whose lives were most affected by it. As the Australian Government establishes offshore processing on Nauru and Papua New Guinea once again, the voices of asylum seekers who were subject to offshore processing before must be heard.

¹ Michael Gordon (2005) *Freeing Ali: The Human Face of the Pacific Solution*, University of NSW Press, Sydney, p. 84.

² Dr Wendy Southern, Deputy Secretary of Department of Immigration and Citizenship, *Official Committee Hansard, Senate, Legal and Constitutional Affairs Legislation Committee, Estimates, 17 October 2011*, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/sup_1112/index.htm (accessed 10 September 2012), p. 143.

³ Michael Gordon (2007) 'The "Pacific Solution"' in Lusher, Dean and Haslam, Nick (eds) *Yearning to Breathe Free: Seeking Asylum in Australia*, Federation Press, Leichhardt NSW, p. 76.

⁴ Janet Phillips (2012) *The 'Pacific Solution' Revisited: A Statistical Guide to the Asylum Seeker Caseloads on Nauru and Manus Island*, Parliament of Australia, Parliamentary Library, 4 September, p. 14.

⁵ Quoted in Susan Metcalfe (2010) *The Pacific Solution*, Australian Scholarly Publishing, North Melbourne, p. 106.

Poor Camp Conditions

The physical conditions of the detention camps on Nauru were grossly inadequate, particularly in the first six months. When the first asylum seekers arrived on Nauru in September 2001, they were housed in a campsite containing large tents that each accommodated up to thirty people. After some months, metal containers that held fifteen people were erected to replace the tents, and a second campsite established as more asylum seekers were sent to Nauru. Both sites were enclosed with high wire fences. In the first six months electricity was only provided to communal areas which meant that there were no means to cool or light the sleeping areas.⁶ Given the tropical climate of Nauru, the weather was often hot and humid and there were many mosquitoes.

It was terrible. The roofs were made of metal and some days the temperature was over 50 degrees under the metal. The walls were plastic. The houses were too long and too hot. These were not conditions for humans.⁷

Given the remoteness of Nauru, fresh food was in short supply in the detention camps and there were reports that the food was often stale and sometimes insects were found in it. There was also little drinkable water in the detention camps, and the situation worsened as the number of those detained on Nauru increased. Often there would be no water for washing clothes, flushing the toilet or for taking a shower, creating unsanitary conditions.

The unavoidable consequence of water shortage is lack of sanitation and cleanliness. Our toilets and bathrooms are particularly very dirty and harbour several types of flies and mosquitoes...This afternoon IOM medical team called us for a meeting and said the increase of diarrhoea is alarming. There are two bloody diarrhoea cases hospitalised at present. The doctors say that our surroundings is not clean and hygienic, and its main cause is shortage of water.⁸

At the beginning, there was no capacity for asylum seekers to make phone calls to their families or anyone else. There was also no access to radio, television or newspapers in the first months of the camp and thus no access to information on what was happening in their own countries. After some months, phones became available but only a few people per day were able to make calls.⁹ This meant that the asylum seekers 'could not contact our families to find out what was happening at home',¹⁰ causing terrible problems later for some of those deported who found upon their return to their own countries that their families had moved.¹¹

Movement outside the camps was possible from early 2002 but always subject to surveillance or restrictions. At first, asylum seekers were allowed to leave the camp with an escort and visit the local shops or internet café. By late 2004 they were allowed to visit the shops, internet café or an area for swimming where "zone escorts" would observe them.¹² By March the following year asylum seekers were allowed to leave the camp during the day, but if anyone 'wandered into the off-limits areas of the airport, the hotel, or government offices, or were late arriving back to the gates of the camp, or argued with [Australian Protective Services], they could be gaoled'.¹³ The level of control over their

⁶ Julie Browning (2006) *States of Exclusion: Narratives from Australia's Immigration Detention Centres, 1999-2003*, PhD thesis, University of Technology, Sydney, p. 179.

⁷ Asylum seeker interviewed by Edmund Rice Centre (2006) *Deported to Danger II*, p. 25.

⁸ Letter from asylum seeker to refugee advocate in Australia, 16 May 2003, located in the Burnside/Durham Collection, Fryer Library, University of Queensland.

⁹ Browning (2006) *States of Exclusion*, p. 179; Metcalfe (2010) *The Pacific Solution*, pp. 29, 109.

¹⁰ Edmund Rice Centre (2006) *Deported to Danger II*, p. 13.

¹¹ One of the asylum seekers detained on Nauru from 2001 to 2003 returned back to Afghanistan to find his family had disappeared. He has since returned to Australia and been found to be a refugee. As at August 2012, he has still not been able to find out what happened to his family. Interview, Perth, January 2012.

¹² Gordon (2005) *Freeing Ali*, p. 84.

¹³ Metcalfe (2010) *The Pacific Solution*, p. 198.

movement served to further reinforce to asylum seekers the lack of control they had over their own lives.

Where ever and when ever we wish to move, we must approve from our owner for it. For single step they fixed time for us. If we miss we will treat like huge criminal and naked. We put in the jail where there is much mosquito.¹⁴

Lack of Adequate Medical Care

As noted above, the unsanitary conditions in the detention camps led to medical problems, including incidences of diarrhoea and other gastro-intestinal diseases, skin and eye infections, and dengue fever.¹⁵ The lack of adequate medical care on Nauru meant that asylum seekers with conditions requiring specialist attention had to wait lengthy periods for it, with some finally being flown to Australian hospitals to receive it. The consequences for these asylum seekers meant months of pain and suffering that could have been averted or at least minimised should they have been in Australia near appropriate medical facilities.

In one case, the lack of medical assistance given to one man with kidney stones meant that he finally had to have one of his kidneys removed.¹⁶ For a woman who was losing her sight, a specialist told the camp management that she required surgery that could not be performed on Nauru. She finally received the surgery in Australia some two years later, after the specialist had reviewed her case and expressed concerns that she had still not been given the treatment she required.¹⁷

Denial of Natural Justice

The figures cited earlier show the majority of asylum seekers detained on Nauru, including Afghans, were eventually found to be refugees or owed protection under other humanitarian grounds (64 per cent). However, this does not account for the strong possibility that many others on Nauru were also likely to have been owed protection. As remarked by one of the men detained on Nauru, 'asylum seekers are presumed guilty until proved innocent.'¹⁸

Many reports from asylum seekers, lawyers and advocates highlight the 'lack of natural justice and fairness' in the refugee claims process¹⁹ and that it was 'a repudiation of Australia's obligations under the Refugee Convention'.²⁰ Despite the fact that many of those detained on Nauru were ultimately returned to their own countries, suggesting that offshore processing was able to return those without legitimate claims for asylum, this claim does not hold up to closer scrutiny.

Most of the refugee claims of asylum seekers on Nauru were processed by Australia's Department of Immigration and Indigenous Affairs (DIMIA)²¹ after the UN High Commissioner for Refugees (UNHCR)

¹⁴ Gordon (2005) *Freeing Ali*, p. 84.

¹⁵ Browning (2006) *States of Exclusion*, p. 181; Metcalfe (2010) *The Pacific Solution*, p. 69.

¹⁶ 'Asylum seekers' health under the microscope' (2003) *The World Today*, 8 July, <http://www.abc.net.au/worldtoday/content/2003/s897542.htm> (accessed April 10, 2012).

¹⁷ Gordon (2005) *Freeing Ali*, pp. 55-58.

¹⁸ Written in a letter from an asylum seeker on Nauru to a refugee advocate in Australia, dated 14 January 2002, Burnside/Durham Collection.

¹⁹ Susan Metcalfe, quoted in Michael Gordon (2007) 'The "Pacific Solution"', p. 85.

²⁰ Briskman, Latham and Goddard (2008) *Human Rights Overboard*, p. 105.

²¹ Now called the Department of Immigration and Citizenship.

agreed to process only some of the early arrivals.²² There was no independent oversight of the processing, no legal advice or representation made available to the asylum seekers, and no capacity for judicial review of negative decisions. Until 2004 it was impossible for any Australian migration agents or lawyers to even voluntarily represent any of the asylum seekers, as visas to visit Nauru up until that time had been denied. Migration agent Marion Le was allowed access to Nauru in 2004 to represent asylum seekers, although her work and those of her two assistants was not funded, and she remained the only agent with DIMIA permission to do so until 2006.²³

Those first detained on Nauru from September 2001 had to wait over seven months for the initial decisions on their refugee claims to be released. By this time, many had endured three or more interviews from DIMIA or UNHCR officials.²⁴ The delay also reflected the changing political circumstances in Afghanistan – in October 2001 Afghanistan was invaded by the US and its allies, leading to the demise of the Taliban regime and the installation of an interim government in early 2002.

The anguish that these interviews created for asylum seekers was acute: ‘everyone was afraid because it was the matter of death and life. If they reject your case everything will finish.’²⁵ Many asylum seekers continued to be afraid throughout the period leading up to their initial decisions. Letters to advocates in Australia highlighted their growing concerns, including about the lack of legal representation:

We know that the International Refugee Convention and human rights principles provide an asylum seeker the right to seek legal advice and to present his claim to a court. We are concerned that a genuine refugee might lose the right of protection, not because of invalid claims but because of not knowing the law, and lack of education, and the ability to present his story well.²⁶

Of those whose claims had been processed by June 2002, most Afghan asylum seekers on Nauru received negative initial decisions – only six out of 114 Afghan asylum seekers processed by DIMIA were recognised as refugees, and 25 out of 244 Afghan asylum seekers processed by UNHCR.²⁷ While DIMIA processing of refugee claims on the Australian mainland at this time had also resulted in low acceptance rates,²⁸ the right of asylum seekers in Australia to have their decisions reviewed by the Refugee Review Tribunal (RRT) meant that many of these decisions were later overturned upon independent review.²⁹ Asylum seekers on Nauru were not afforded the right to have their claims decisions independently reviewed.

Letters to advocates in Australia show that Afghan asylum seekers on Nauru understood that the changing political circumstances in Afghanistan in the aftermath of the US invasion was a key factor

²² ABC Radio National (2001) ‘Levelling the Playing Field or Curbing Fundamental Rights?’ Law Report, 2 October, <http://www.abc.net.au/cgi-bin/common/printfriendly.pl?http://www.abc.net.au/rn/talks/8.30/lawrpt/stories/s380546.htm> (accessed 20 August 2012).

²³ Metcalfe (2010) *The Pacific Solution*, pp. 15, 45-46; Briskman, Latham and Goddard (2008) *Human Rights Overboard*, p. 108.

²⁴ Browning (2006) *States of Exclusion*, pp. 188-89; Metcalfe (2010) *The Pacific Solution*, p. 96.

²⁵ Written account of being detained on Nauru by former detainee, given to Caroline Fleay.

²⁶ Letter to refugee advocate in Australia, 24 December 2001, Burnside/Fryer Collection.

²⁷ DIMIA (2002) ‘Asylum decisions handed down on Nauru’, Media Release, 13 June, http://www.newsroom.immi.gov.au/media_releases/564 (accessed April 10, 2012).

²⁸ Briskman, Latham and Goddard (2008) *Human Rights Overboard*, p. 106.

²⁹ In 2001-2002 the RRT had set aside 62 per cent of negative Afghan decisions and 87 per cent of negative Iraqi decisions. In 2003-2004 the RRT had set aside 90 per cent of negative Afghan decisions. Refugee Review Tribunal (2002) *Annual Report 2001-2002* (2002) <http://www.mrt-rrt.gov.au/ArticleDocuments/121/RRRAR0102.pdf.aspx> (accessed 30 August 2012); Refugee Review Tribunal (2004) *Annual Report 2003-2004* <http://www.mrt-rrt.gov.au/ArticleDocuments/121/RRRAR0304.pdf.aspx> (accessed 30 August 2012).

in so many of their claims being rejected. Complaints were also made about some of the interpreters employed by DIMIA and the UNHCR. According to letters sent to advocates, ‘many Afghan detainees...believed that at least two of the Afghan interpreters used by both DIMIA and UNHCR were hostile to the claims made by Hazara Afghans’.³⁰ Most interpreters used by DIMIA and UNHCR were from Pashtun and Tajik Afghan communities whereas most Afghan asylum seekers were members of the Hazara ethnic minority. Historically there has been much hostility between Hazaras and the larger Pashtun and Tajik communities, and many Hazaras had fled Afghanistan because of the persecution they faced by the Pashtun-dominated Taliban.³¹

For many [Hazara asylum seekers] this...meant that their interviews were conducted in an atmosphere of distrust, and claims based on persecution from the majority Pashtuns in their country were almost impossible to discuss through an intermediary from the same ethnicity. ‘If we complained about the Pashtuns or the Taliban there would be trouble if we were sent back, so we couldn’t tell the truth’, says one man.³²

Given Australia’s agreement with Nauru that asylum seekers would only be detained on the island for a ‘reasonable timeframe’, the Australian government sought to ensure that all asylum seekers were either repatriated or resettled as soon as possible.³³ To this end, in May 2002 the Australian government signed a Memorandum of Understanding with the interim Afghan government allowing for the voluntary return of asylum seekers.³⁴ By September DIMIA and UNHCR had announced three rounds of decisions, each round including a few extra asylum seekers recognised as refugees. But by the end of this period only 268 out of the 1,141 people whose claims had been processed on Nauru were recognised as refugees. For the 697 Afghans who had been rejected (only 54 had been accepted as refugees by this time), reasons offered for their rejection included that there was now a new government in Afghanistan and thus the reasons for fleeing no longer existed. Inconsistencies between decisions were reported, for example, some within a family would have their claims accepted while others did not, including some wives of men who were already in Australia on Temporary Protection Visas.³⁵ The anguish that these rejections generated was widespread and letters to advocates in Australia talked of desperate self-harm attempts.³⁶

In September 2002 failed asylum seekers in Nauru were told that their refugee claims had now been finalised and they would have to return home. Afghan asylum seekers whose claims had been rejected were offered a repatriation package by the Australian government of \$2,000 per person or \$10,000 per family if they agreed to return to Afghanistan within 28 days of being notified.³⁷ The government’s efforts to return asylum seekers to Afghanistan at this time were supported by the UNHCR and IOM.³⁸ In an effort to reinforce that it was now safe for Afghan asylum seekers to return to their own country, in December DIMIA released a report on the Transitional Government in Afghanistan and highlighted that the UNHCR supported the return of asylum seekers. However, the report’s findings were challenged by several researchers on Afghanistan who highlighted that UNHCR support for states’ attempts to repatriate to Afghanistan was likely to reflect its reliance on

³⁰ Browning (2006) *States of Exclusion*, p. 191.

³¹ William Maley (2011) *On the Position of the Hazara Minority in Afghanistan* 7 December 2011, <http://bmrsg.org.au/links/facts-about-refugees/> (accessed March 29, 2012).

³² Metcalfe (2010) *The Pacific Solution*, p. 74.

³³ Browning (2006) *States of Exclusion*, p. 203.

³⁴ Minister for Immigration and Multicultural Affairs (2002) *Media Release*, MPS 34/2002, 17 May 2002.

³⁵ Browning (2006) *States of Exclusion*, pp. 205-6.

³⁶ Elaine Smith (2006) Submission to the Inquiry into the Provisions of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006; Burnside/Durham Collection.

³⁷ Minister for Immigration and Multicultural and Indigenous Affairs (2002) *Media Release*, MPS 38/2002, 23 May 2002.

³⁸ David Corlett (2005) *Following Them Home: The Fate of the Returned Asylum Seekers*, Black Inc., Melbourne, pp. 61-62.

its state funders.³⁹ The DIMIA report was also challenged a year later by one of the government's own analysts who had been asked to produce a report on the security situation in Afghanistan. A senior analyst of the Office of National Assessments, Andrew Wilkie, publicly revealed in early 2004 that he was told by senior management of the Office that his findings that the situation was 'dire' would not be released given the government's attempts to return asylum seekers to Afghanistan.⁴⁰

DIMIA continued to pressure failed asylum seekers to return to their own countries. It told asylum seekers in writing that:

You may not stay in Nauru indefinitely and there is no chance of you going to Australia by staying here longer...The Australian Government is exploring all options for return including involuntary return.⁴¹

Many Afghan asylum seekers felt they had no option but to return to Afghanistan. As one expressed it in a letter to an advocate in Australia,

[I]ast week IOM and DIMIA warned those detainees who have not prepared to return, that they must take a decision to return voluntarily before the government take any action to repatriate them by force and they should not think that the government would allow them to enter in Australia.⁴²

One former Nauru detainee, who was returned to Afghanistan but sought asylum in Australia again seven years later, said that he felt he had 'no choice' about returning to Afghanistan.

If I had known after five years I would have been accepted, I would have stayed...We didn't understand [about the situation in Afghanistan] because we didn't have any communication, any telephone contact, email, nothing.⁴³

There were also reports from some returned Afghans that there had been 'subtle threats from the guards [on Nauru] about injections for those unwilling to go back'.⁴⁴

For those who chose to remain on Nauru, further rounds of processing over the following years finally found the majority of them to be refugees.

Deepening Despair

The despair that the claims processing and pressure to return home created in asylum seekers on Nauru soon manifest with the first round of rejections and intensified over the following months.

I'm not sure what to do should I go back or should I stay here. I can't make my decision. It's like I'm hanging in the air and got nowhere to go...I can't go back to my home land to the same misery and brutality.⁴⁵

There were many incidents of self-harm and very little care provided for those with growing mental health issues.

³⁹ William Maley (2003) 'Comments on Events in the Islamic Transitional Government of Afghanistan' 26 May; David Turton and Peter Marsden (2002) 'Taking Refugees for a Ride? The politics of refugee return to Afghanistan', Islamabad: Afghanistan Research and Evaluation Unit, p. 56.

⁴⁰ Corlett (2005) *Following Them Home*, pp. 198-99.

⁴¹ Quoted in Gordon (2005) *Freeing Ali*, pp. 37-38.

⁴² Smith (2006) Submission to the Inquiry.

⁴³ Interview, Perth, January 2012.

⁴⁴ Edmund Rice Centre for Justice and Community Education (2004) *Deported to Danger: A Study of Australia's Treatment of 40 Rejected Asylum Seekers*, p. 26.

⁴⁵ Letter from asylum seeker on Nauru to refugee advocate in Australia, 29 July 2003, Burnside/Durham Collection.

Two weeks ago a detainee tried to commit suicide. He hit his body with a blade in his room. Someone had seen blood on his abdomen while he was going to bathroom. When we went to bathroom the door was closed...After a few minutes we opened the door and found him lying on the floor and the blood was coming from his body. The security guards also arrived and we took him to the main gate of detention for medication. The security guards took him to hospital. He is still in IOM's clinic in State House detention centre.⁴⁶

The 2002 reports of IOM head psychiatrist on Nauru, Maarten Dormaar, highlighted that after three months in detention most young men who had previously been healthy were exhibiting 'clear symptoms of suffering or distress'. These symptoms included 'sleeping difficulties, constant worrying (about the future, the family in Afghanistan and the possible dangers encountered on return), social withdrawal, not enjoying life anymore and being easily irritated or upset'.⁴⁷

Some of the asylum seekers who remained in detention on Nauru by the end of 2003 participated in a hunger strike and sewed their lips together.⁴⁸ The hunger strike ended after a month when the Minister for Immigration and Multicultural Affairs, Amanda Vanstone, announced that the refugee claims rejected by DIMIA would be assessed again based on new country information on Afghanistan and a migration agent, Marion Le, was finally allowed to visit Nauru and represent the Afghans. UNHCR also reviewed their rejected claims and declared that all 22 of its remaining cases on Nauru were refugees. DIMIA found 146 of its remaining 175 cases on Nauru to be refugees.⁴⁹

Pressures continued to be placed on the few remaining asylum seekers on Nauru to return to their own countries. To this end the Australian government signed a Memorandum of Understanding with the Afghan government in May 2005 that would allow for the involuntary return of Afghan asylum seekers.⁵⁰ The development exacerbated the despair of the Afghans who sent a letter to advocates in Australia in late 2004 saying that:

Australian government has constantly been putting pressure on us for deportation; the same pressure causes us to suffer more physically and mentally. Most of us are going through various difficulties and it will affect our body to suffer till the end of our lives. There is no possible way for us to return back and we can no longer bear being in detention.⁵¹

Following another hunger strike in June 2004, further reviews were conducted over the following few years of the refugee claims of those remaining on Nauru. All except one were finally resettled as either refugee or humanitarian entrants in Australia by the beginning of 2007. The other was accepted by Sweden.⁵²

Being Returned

Most of the 473 asylum seekers who were repatriated to their own countries from Nauru were returned to Afghanistan. Aside from the Australian government's repatriation package that some

⁴⁶ Letter from asylum seeker on Nauru to Elaine Smith, quoted in Smith 2006.

⁴⁷ Quoted in Metcalfe (2010) *The Pacific Solution*, p. 106.

⁴⁸ Australian Government (2004) 'Report of Health Team on Health Services for Asylum Seekers in Nauru: 12-14th January 2004', 29 January; Letter from asylum seeker on Nauru to advocate in Australia, 1 February 2004, Burnside/Durham Collection.

⁴⁹ Gordon (2005) *Freeing Ali*, pp. 46-49.

⁵⁰ Senator Amanda Vanstone (2005) 'Australia and Afghanistan sign new arrangements' Media Release, VPS 059/2005, 17 May.

⁵¹ Letter sent to advocates dated 26 November 2004, given to Caroline Fleay.

⁵² Mary Crock, Ben Saul and Azadeh Dastyari (2006) *Futures Seekers II: Refugees and Irregular Migration in Australia*, Federation Press, Sydney, p. 124; Metcalfe (2010) *The Pacific Solution*, pp. 229-262.

asylum seekers had accepted, there was little or no further support provided upon their return. This was contrary to reports that asylum seekers were told on Nauru that once back in Afghanistan they would be provided with IOM support to find housing and work. Some Afghans reported that they were provided with short term accommodation in Kabul upon their return, while others said they received no assistance at all.⁵³ For example, upon his return to Kabul, one Afghan asylum seeker was left by IOM 'without any support, with little money and dressed in clothing appropriate for the heat of Nauru. It was snowing in Kabul'.⁵⁴

Neither did the Australian government provide any monitoring of what happened to the returned asylum seekers.⁵⁵ Communications with advocates in Australia and interviews conducted with some of the asylum seekers that Australia had returned highlight that many faced unsafe conditions. The research of the Edmund Rice Centre and David Corlett also concluded that many Afghan Hazaras faced dangerous conditions upon their return to Afghanistan, with the vast majority having fled to a neighbouring country.

The Edmund Rice Centre interviewed 36 returned Afghan Hazaras in 2006, most of who had been detained on Nauru, and all said they had not been safe upon their return to Afghanistan. Only one remained in Afghanistan at that time – the others had fled to Pakistan or Iran.⁵⁶ Former Nauru detainees who had been returned to Afghanistan communicated a similar story to their advocates in Australia. Many reported having fled their own country within weeks of their return and being unable to find their families.⁵⁷

After 20 days staying in Kabul we were compelled to leave Kabul because we didn't have any residency to live in and we were afraid of going back to our village and cities, most of us couldn't find our families so we managed to leave Afghanistan again. Some went to other cities, some went to Iran and I with 11 other refugees came to Peshawar. We are still searching for our families.⁵⁸

Life for many Afghan asylum seekers in Pakistan and Iran was and continues to be insecure and unsafe. For Hazara asylum seekers in Iran, it is

very difficult and unsafe. They are illegal residents...; they have no rights and are not accepted as refugees. Because of [the] lack of legal status, the children cannot go to school. [They] can be deported at any moment.⁵⁹

For Hazaras in Pakistan, many of who reside in Quetta, there is the added fear of violent attacks based on their ethnicity and Shia religion.⁶⁰

Others who were to be returned to Afghanistan organised for their families to travel to Kabul from neighbouring countries to meet them. This meant that their families were also returning to dangerous conditions and, for some, this resulted in the deaths of family members and injuries to others. Gholam, an Afghan Hazara who had been detained on Nauru, had asked his family to meet him in Kabul from Iran. After four months, however, his house was bombed killing one of his daughters and fatally wounding the other, and seriously injuring his wife and mother.

⁵³ Corlett (2005) *Following Them Home*, p. 58; Edmund Rice Centre (2004) *Deported to Danger*, p. 4; Edmund Rice Centre (2006) *Deported to Danger II*, p. 25.

⁵⁴ Edmund Rice Centre (2004) *Deported to Danger*, p. 4.

⁵⁵ Edmund Rice Centre (2006) *Deported to Danger II*, p. 43.

⁵⁶ Edmund Rice Centre (2006) *Deported to Danger II*, pp. 2, 41.

⁵⁷ Browning (2006) *States of Exclusion*, p. 209; Burnside/Durham Collection.

⁵⁸ Letter from returned asylum seeker from Nauru to advocate in Australia, 3 February 2003, Burnside/Durham Collection.

⁵⁹ Edmund Rice Centre (2006) *Deported to Danger II*, p. 33.

⁶⁰ Refugee Documentation Centre of Ireland (2012) 'Pakistan - Researched and compiled by the Refugee Documentation Centre of Ireland on 25 April 2012: Treatment of Hazaras in Pakistan' <http://www.unhcr.org/refworld/pdfid/4fb0f57c2.pdf> (accessed 20 August 2012).

I told Australia what would happen if we returned to Afghanistan and it happened. House bombed. Children dead. Mother and wife badly hurt, mother never to recover...We got caught up in Australian politics...My children died so John Howard could win an election.⁶¹

Some of those returned to their own countries continued to suffer from the mental health problems that had manifest during their detention on Nauru. As is now well documented, prolonged experiences of immigration detention have been associated with deteriorations in mental health.⁶² Some decided to accept deportation because of their fears for their mental state while they remained on Nauru. One young Afghan man, Hassan, felt so confused after two years on Nauru that he felt unable to leave once he had signed up for the repatriation package. He spent two months in the medical facility in the camp with depression, anxiety and sleeplessness before finally returning to Kabul. He continued to suffer once he arrived and struggled to find anywhere to live. He described his decision to return to Afghanistan as reflecting the profound hopelessness he now felt.

I was wondering what to do and one day I said, 'OK fine. If this government is not going to help me, I will go back to this country and whatever is going to happen, it doesn't matter, even if I get killed. Whatever happens, I don't really care. For me I am a dead person right now [in Nauru]. I am a dead person...I have no future, no hope, nothing. So there is no difference between staying here and returning to Afghanistan.'⁶³

Others deported had to continue to rely on medication in an attempt to restore or maintain their mental health.

When I came back from Australia, I have mental problem; I have become crazy. I am advised by Doctor to take these tablets...children face difficulties because of me – my ill behaviour. I start thinking about something...I stay on thinking for a long time; it is like I go to another world. [The] last four years in Pakistan has been like forty years for me. My hairs have become white because of mental disturbance.⁶⁴

Aside from the serious security and safety issues associated with being deported back to Afghanistan, the experience of being deported in such a mental state must surely have a significant impact on a person's 'ability to re-establish their lives'⁶⁵ and to cope with the dangerous situations many encountered.⁶⁶

For some of those returned to Afghanistan, death at the hands of the Taliban followed, just as their refugee claims had warned. In 2008 the Edmund Rice Centre confirmed that nine of the returned Afghan asylum seekers from Nauru had been killed by the Taliban, and claimed that another eleven were also likely to have been killed.⁶⁷ A further investigation in 2012 found that another two Afghan asylum seekers returned by Australia had died, one had been kidnapped and was presumed dead, and a further 29 had been found to be 'living in extreme danger'.⁶⁸

⁶¹ Edmund Rice Centre (2006) *Deported to Danger II*, p. 25.

⁶² Australian Human Rights Commission (2011) *2011 Immigration Detention at Curtin: Observations from Visit to Curtin Immigration Detention Centre and Key Concerns across the Detention Network* www.hreoc.gov.au/human_rights/immigration/idc2011_curtin.html (accessed 8 December 2011); GJ Coffey, I Kaplan, RC Sampson and M Montagna Tucci (2010) 'The meaning and mental health consequences of long-term immigration detention for people seeking asylum' *Social Science and Medicine*, 70: 2070-2079; S Rees, D Silove, J Phillips and Z Steel (2010) 'Asylum seekers and psychiatric injury' *Precedent*, Issue 99 July/August, pp. 14-19.

⁶³ Corlett (2005) *Following Them Home*, p. 61.

⁶⁴ Returned Hazara asylum seeker quoted in Edmund Rice Centre (2006) *Deported to Danger II*, p. 52.

⁶⁵ Corlett (2005) *Following Them Home*, p. 206.

⁶⁶ Edmund Rice Centre (2006) *Deported to Danger II*, p. 50.

⁶⁷ Banham, Cynthia (2008) 'Afghans sent home to die', *Sydney Morning Herald*, 27 October, <http://www.smh.com.au/articles/2008/10/26/1224955853319.html?page=fullpage> (accessed 10 April 2012).

⁶⁸ Edmund Rice Centre for Justice and Community Education (2012) 'Research in Afghanistan uncovers grave dangers faced by deportees from Australia' Media Release.

Seeking Asylum Once Again

The experience of having to flee Afghanistan again is also confirmed by some of the former Nauru detainees who sought safety in Australia a second time. A media report in 2008 documented the second attempt of several Afghan asylum seekers to reach Australia, who had previously been on the *Tampa* and detained on Nauru before being returned to Afghanistan. From an immigration detention centre in Indonesia, one said that ‘we know it’s dangerous [to go to Australia] but a whole part of my village was killed. What else can we do?’ Another asked the reporter, ‘if I wasn’t really in danger in Afghanistan, why would I try again after I saw death in the face on the *Tampa*?’⁶⁹ In early 2009 there was a report that a further four Afghan asylum seekers who had been on the *Tampa*, detained on Nauru and returned to Afghanistan, had fled Afghanistan once again and sought asylum in Australia. This time they were found to be refugees. One said that ‘I knew it was a big danger to come by boat to Australia...but I was that desperate’.⁷⁰ Later that year, there was a report about another nine Afghan asylum seekers who had been on Nauru, deported back to Afghanistan and had made their way back to Australia, and who were also accepted as refugees. Two others were waiting for their refugee claims to be finalised.⁷¹

In 2010 at least a further twelve Afghan asylum seekers who had been on Nauru and returned to Afghanistan had arrived back in Australian waters to try again for a life of safety. Visitors to Australia’s immigration detention centres over the past two years have met some of them. As at January 2012, eleven of these asylum seekers had been accepted as refugees in Australia. The other was waiting on his refugee claim to be finalised. Talking with them also reveals years of insecurity since their return to Afghanistan in 2003. For example, after spending seventeen months on Nauru and years since looking for safe haven, one returned asylum seeker to Australia, Ali⁷², was finally recognised as a refugee in September 2011. Ali said he felt he had had no choice but to return to Afghanistan from Nauru in 2003. Without access to any media reports or telephone contact with anyone while on Nauru, he had no understanding of the situation in Afghanistan except for what DIMIA had told him. He returned to Afghanistan with the hope that DIMIA’s claims that it was safe to do so were right. But, as Ali says, ‘it wasn’t. It was worse for us.’⁷³

Ali lasted just one month in his own province before being kidnapped and beaten by the Taliban. He managed to flee his captors and escape to Pakistan. Over the following six years Ali fled between Pakistan and Iran, seeking security but never finding it. He described this time as a ‘very bad experience because not allowed to live freely. That’s why I look to find somewhere to be safe’.⁷⁴ Finally in 2009 he felt he had any option but to once again take the risky journey that the people smugglers were offering. Ali, and the others who have once again arrived seeking asylum in Australia, say their experiences were shared by hundreds of the other Afghans returned from Nauru. Opening a detention centre on Nauru did not deter these Afghans from fleeing the ongoing danger in their own country.

⁶⁹ Quoted in Stephen Fitzpatrick and Mark Dodd (2008) ‘Let me in: Tampa reject Gholam Ali’s new hope’ *The Australian*, 4 December, <http://www.theaustralian.news.com.au/story/0,25197,24748378-601,00.html> (accessed 10 April 2012).

⁷⁰ Jewel Topsfield (2009) ‘Four *Tampa* asylum seekers try again, and this time they find welcoming arms’ *The Age*, 28 March, <http://www.theage.com.au/action/printArticle?id=438435> (accessed 10 April 2012).

⁷¹ Michael McKenna (2009) ‘Refugees Howard rejected are back’ *The Australian*, 30 October.

⁷² Not his real name.

⁷³ Interview, Perth, 15 January 2012.

⁷⁴ *Ibid.*

Conclusions – Repeating the Inhumane Past

Offshore processing on Nauru in the last decade was inhumane. As at September 2012, the indications from the Australian Government are that what these asylum seekers endured on Nauru is about to be repeated.

The experiences of asylum seekers held on Nauru highlight the despair and mental health problems that resulted from detention on a remote island where living conditions were at best uncomfortable and at worst grossly inadequate, and refugee claims processing denied natural justice to many. The accounts of many asylum seekers who were detained on Nauru also show that the indefinite nature of their detention was a core factor in their despair and mental health problems. This supports the findings of the growing number of reports that conclude that long term detention has harmful consequences for asylum seekers.⁷⁵

The legislation passed by Federal Parliament in August 2012 allows for men, women and children to be sent to Nauru (and Manus Island) for offshore processing. It is far from clear if asylum seekers to be sent to Nauru will have their refugee claims processed in a manner that allows for natural justice. The experiences of asylum seekers on Nauru in the past decade highlight the serious shortcomings of the refugee claims processes conducted on the island, and the devastating consequences for many asylum seekers who “failed” their claims and were returned to their countries of origin.

For those who may be recognised as refugees while on Nauru, it is not clear how long they will be forced to remain there. The Expert Panel’s Report recommends that asylum seekers recognised as refugees while on Nauru should not be given a resettlement place any faster than if they had ‘availed themselves of assessment by UNHCR within the regional processing arrangement’.⁷⁶ However, given that the Expert Panel’s recommendations on a regional processing arrangement are yet to be implemented or even given any significant attention,⁷⁷ it appears that detention on Nauru will once again be for excessive periods of time.

As Nauru continues to be a remote island where the local population experiences limited medical facilities as well as limited access to safe drinking water and sanitation,⁷⁸ it is also difficult to see how asylum seekers to be held there will receive adequate living conditions and medical care. Latest reports include that asylum seekers will be initially detained in tents on Nauru.⁷⁹ This suggests living conditions for the first asylum seekers will once again be grossly inadequate.

⁷⁵ For recent reports, see G.J. Coffey, I. Kaplan, R.C. Sampson & M. Montagna Tucci, “The Meaning and Mental Health Consequences of Long-term Immigration Detention for People Seeking Asylum”, *Social Science and Medicine*, 70, 2010, 2078; S. Rees, D. Silove, J. Phillips & Z. Steel, “Asylum-seekers and Psychiatric Injury”, *Precedent*, Issue 99, Jul./Aug. 2010, 19; K. Barlow, “Nurse Breaks Silence on Life inside Detention System” ABC News Lateline, 2 Dec. 2011, available at: <http://www.abc.net.au/news/2011-12-01/immigration-nurse-breaks-silence-within-centre/3707620> (last visited 18 May 2012). See also ABC Four Corners, *Asylum*, 24 October 2011; C. Fleay & L. Briskman, “The Hidden Men: A Report to the Minister for Immigration and Citizenship on Visits to the Curtin Immigration Detention Centre”, November 2011, available at: <http://blogs.curtin.edu.au/human-rights-education/2011/11/22/report-the-hidden-men/> (last visited 27 August 2012); Australia Human Rights Commission “Immigration Detention at Curtin: Observations from Visit to Curtin Immigration Detention Centre and Key Concerns across the Detention Network 2011”, available at: http://www.hreoc.gov.au/human_rights/immigration/idc2011_curtin.html (last visited 30 March 2012).

⁷⁶ Report on the Expert Panel on Asylum Seekers (August 2012), p. 48,

<http://expertpanelonasyumseekers.dpmc.gov.au/report> (accessed 20 August 2012).

⁷⁷ Refugee Council of Australia (2012) *RCOA’S Analysis of the Recommendations of the Expert Panel on Asylum Seekers*, August, p. 11.

⁷⁸ European Commission (2012) *Development and Cooperation: Europeaid – Nauru*,

http://ec.europa.eu/europeaid/where/acp/country-cooperation/nauru/nauru_en.htm (accessed 20 August 2012).

⁷⁹ Sydney Morning Herald (2012) ‘Tents, heat and humidity await asylum seekers’ 29 August,

<http://media.smh.com.au/selections/tents-heat-and-humidity-await-nauru-refugees-3592366.html> (accessed 30 August 2012).

To conclude, decisions made on where and how to process the refugee claims of asylum seekers who seek safe haven in Australia must draw on the experiences of those who bore the brunt of offshore processing last decade. Decisions must also address the reasons why asylum seekers get on boats in the first place, especially since between 70 and 97 per cent of people who have arrived to Australia by boat over the past fifteen years have eventually been found to be refugees.⁸⁰ Alternative policies must be implemented to provide asylum seekers with real alternatives to getting on boats in Indonesia.

The Australian Government's recent announcement that it will increase the number of humanitarian entrants to 20,000 in 2012-2013, as outlined in the Expert Panel on Asylum Seeker's recent report, is a welcome start. It is also welcome that this increase will include an extra 400 refugees who are currently in Indonesia.⁸¹ However, this can only be considered a start – other policy responses are needed that further address the reasons why asylum seekers get on boats. Further options were detailed in many submissions to the Expert Panel on Asylum Seekers.⁸²

There are already asylum seekers in Australia who have been told they will be sent to Nauru for the duration of the processing of their refugee claims and until a resettlement place can be found for them. They were not provided with any alternatives to seeking asylum by boat. To punish them for taking boat journeys to Australia is morally repugnant. Until real alternatives are made available for asylum seekers to getting on a boat bound for Australia, offshore processing will continue to be a form of punishment for arriving by boat and inhumane.

⁸⁰ Janet Phillips (2011) *Asylum Seekers and Refugees: What are the Facts?* Parliament of Australia, Department of Parliamentary Services, Parliamentary Library, <http://www.aph.gov.au/binaries/library/pubs/bn/sp/asylumfacts.pdf> (accessed 30 August 2012).

⁸¹ Chris Bowen, "Refugee program increased to 20,000", Joint Media Release with Julia Gillard, Prime Minister of Australia, and Chris Bowen MP, Minister for Immigration and Citizenship, 23 August, available at: www.minister.immi.gov.au/media/cb/2012/cb189459.htm (last accessed 28 August 2012).

⁸² For example, for a broad range of alternative policy options, see the Refugee Council of Australia Submission to the Expert Panel (2012) www.refugeecouncil.org.au/r/sub/120720_RCOA.pdf (last accessed 30 August 2012).