



Detaining asylum seekers and refugees in offshore detention centres subject to international obligations, despite High Court decision

Following the decision handed down by the High Court of Australia this week in *M68/2015*, UNHCR affirms its long-standing position that Australia maintains responsibility for the protection of asylum seekers and refugees transferred to offshore processing centres under the existing bilateral arrangements with Nauru and Papua New Guinea respectively, and that any such arrangements must meet the respective countries' international obligations.

While the Court's decision upholds the Australian government's authority under Australian national law to enter into agreements with the Government of Nauru and service providers in relation to the detention of asylum seekers transferred from Australia to Nauru, it does not change Australia's obligations under the 1951 Refugee Convention and other international human rights instruments which set out the international standards of treatment which apply to asylum seekers and refugees.

While UNHCR understands the determination of Australia to respond robustly to people smuggling and to dissuade people from undertaking dangerous travel by sea, those responses must not neglect the compelling protection needs of the individuals affected. UNHCR is working to support governments to end the detention of children, ensure that alternatives to detention are available and that, where detention is used, which should only be as a measure of last resort, conditions meet international standards.

UNHCR welcomed Nauru's decision in October 2015 to end the detention of asylum seekers and to expedite their claims for protection, but remains deeply concerned for the welfare of individuals who have been transferred to Nauru. UNHCR has witnessed firsthand the severe impact on the mental and physical health of the asylum seekers and refugees as a result of long-term detention, conditions at the centre, past delays in processing and the absence of timely solutions for anything other than a small number of refugees.

In the case of individuals who may be subject to return to Nauru, UNHCR calls on Australia to undertake individualised assessments of the needs of individual asylum seekers, especially children.

UNHCR also calls on Australia to renew its search for solutions for the individuals affected, as well as its efforts to develop regional cooperative approaches with other States in the region which provide viable alternatives to potentially dangerous journeys by sea for asylum seekers, refugees and stateless persons.

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