

NAURU 2016 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Nauru is a constitutional republic. International observers deemed free and fair the parliamentary election held July 9-11. Parliament re-elected President Baron Waqa who was also a member of parliament.

Civilian authorities maintained effective control over the security forces.

International human rights organizations expressed concern over the treatment of asylum seekers and conditions at the Australian-run Regional Processing Center. There were some allegations of government corruption, and domestic violence remained a problem.

The government owned all media and maintained control over content, including blocking access to Facebook. Some opposition figures alleged the president interfered with the judiciary. Laws protecting workers' rights were rudimentary.

There were no reports government officials committed human rights abuses, and impunity was not a problem.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary Deprivation of Life and other Unlawful or Politically Motivated Killings

There were no reports the government or its agents committed arbitrary or unlawful killings.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The constitution prohibits such practices, and there were no reports government officials employed them.

Prison and Detention Center Conditions

There were no significant reports regarding prison conditions that raised human rights concerns. International human rights organizations criticized conditions for asylum seekers, especially for women and children refugees, at Australia's Regional Processing Center operated by Australian contractors (see section 2.d.).

Physical Conditions: There were no reports of prisoner deaths.

Administration: Prisoners and detainees did not have an ombudsperson to respond to their complaints, instead authorities permitted prisoners and detainees to submit complaints to judicial authorities through their families, lawyers, or directly to the officer in charge, who addressed all complaints. Government representatives made weekly visits to the prison, and police assisted in investigations of prisoner complaints when necessary.

There is no formal legal provision for traditional reconciliation mechanisms. As a mitigating factor in sentencing, apologies and reconciliation frequently played an informal role in criminal proceedings.

Independent Monitoring: The government permits prison and detention center monitoring visits by independent human rights observers, and several such visits occurred. Authorities appeared to discourage visits by independent media reporters who wished to visit the country (see section 2.a., Press and Media Freedoms).

Critics cited a culture of secrecy within the Regional Processing Center.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention, and the government generally observed these prohibitions.

Role of the Police and Security Apparatus

The police force, under the Minister for Police and Emergency Services, maintains internal security and, as necessary, external security. The country has no military force. Civilian authorities maintained effective control over the police, and the government has effective mechanisms to investigate and punish abuse and corruption. There were no reports of impunity involving the security forces.

Arrest Procedures and Treatment of Detainees

Authorities made arrests based either on warrants issued by authorized officials or for proximate cause by a police officer witnessing a crime. Police may hold a person for a maximum of 24 hours without a hearing before a magistrate. Authorities informed detainees promptly of the charges against them. The bail system functioned properly. The law provides for accused persons to have access to legal assistance, but qualified assistance was not always readily available. Detainees had prompt access to family members.

Detainee's Ability to Challenge Lawfulness of Detention before a Court: The constitution allows persons arrested or detained to challenge their detention in the Supreme Court, if there is a potential violation of fundamental rights and freedoms.

e. Denial of Fair Public Trial

The constitution provides for an independent judiciary, and although the government generally pledged to respect judicial independence, some outside government circles alleged instances of government pressure on the judiciary in cases related to a 2015 protest that turned violent.

Trial Procedures

The constitution provides for the right to a fair public trial, but there were reports the government sometimes interfered with judicial independence. English common law provides the basis for procedural safeguards. The safeguards include the presumption of innocence, the right to be present at their trial, adequate time and facilities to prepare a defense, the right to free interpretation as necessary from the moment charged through all appeals, and prohibitions on double jeopardy and forced self-incrimination. Defendants have the right to be informed promptly of charges and consult with an attorney or have one provided at public expense as necessary "in the interest of justice." Defendants also have the right to confront witnesses, present evidence, access government-held evidence, not be compelled to testify or confess guilt, and appeal convictions. In many cases, officials used bail and traditional reconciliation mechanisms rather than the formal legal process, usually by choice, but sometimes under communal pressure. The law extends these rights to all suspects.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

There is an independent and impartial judiciary in civil matters, including access to a court by individuals or organizations to bring lawsuits seeking damages for, or cessation of, human rights violations.

f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence

The constitution and law prohibit such actions, and there were no reports the government failed to respect these prohibitions.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The constitution and law provide for freedom of speech and press; however, the government owned all media and exercised editorial control over content.

Freedom of Speech and Expression: The 2016 Crimes Act created new offenses for “unlawful vilification” and “criminal defamation.” Violations of this offense are punishable by a maximum sentence of three years’ imprisonment.

Press and Media Freedoms: Authorities raised the fee for journalist visas from A\$200 (\$145) to A\$8,000 (\$5,750) in 2014 and the government stated the intent of increasing the fee was to raise revenue. The fee deterred foreign journalists from visiting the country, and the government rejected several visa applications from journalists requesting access to the refugee community and the Regional Processing Center.

Censorship and Content Restrictions: All media was government owned, giving the government significant control over all published and broadcast content.

Internet Freedom

The government sometimes restricted or disrupted access to the internet and continued its 2015 block on *Facebook*, citing concerns about child pornography.

Nongovernmental organizations (NGOs), international organizations, and embassies raised concerns about the government limiting freedom of speech. There were no credible reports the government monitored private online communications without appropriate legal authority. Internet access was available and widely used. According to private sector sources, 64 percent of the population had access to the internet in 2014.

The government passed a law in 2015 that created new offenses related to child pornography and to illegal access to computers or program data. The law applies to information related to national security, enforcement of criminal law, provision of services related to public infrastructure, and the protection of public safety.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

b. Freedom of Peaceful Assembly and Association

The constitution provides for the freedom of assembly and association, and the government generally respected these rights.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at www.state.gov/religiousfreedomreport/.

d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

Neither the constitution nor law specifically provides for freedom of internal movement, foreign travel, emigration, and repatriation, but the government generally respected these rights for its citizens with several notable exceptions. The government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, or other persons of concern.

Abuse of Migrants, Refugees, and Stateless Persons: In August both Amnesty International and Human Rights Watch claimed numerous incidents of abuse targeting the country's refugee community, including assaults, rapes, and bullying

after researchers from the two organizations entered the country unannounced in July. In August *The Guardian* published more than 2,000 case files allegedly leaked from the Regional Processing Center purporting to summarize more than 1,000 assaults, sexual assaults, and self-harm incidents involving asylum seekers from 2013 to 2015. A number of the cases involved children. In response, the government stated that most refugee and advocate claims about conditions in the country were fabricated. The Office of the UN High Commissioner for Human Rights and other international human rights organizations repeatedly called for Australia and Nauru to end offshore detention in the country.

Foreign Travel: In August the government canceled the passports of 20 people, including a former president and former members of parliament. The government charged all of them with violations of the criminal code for involvement in a 2015 anti-government protest that turned violent. This cancellation prevented former president Sprent Dabwido from seeking medical treatment overseas in October, despite a ruling by the Supreme Court authorizing him to travel. The Supreme Court returned Dabwido's passport in November, although he continues to face delays in travel due to problems accessing his medical records.

Protection of Refugees

Access to Asylum: The law provides for the granting of asylum or refugees status, and the government has established a process for providing protection to refugees. The law includes a provision for nonrefoulement.

After the government reopened the Regional Processing Center in 2012 and adopted the Memorandum of Understanding (MOU) with Australia in 2013, the number of asylum seekers in the country increased. As of August, there were 894 refugees, including 135 children, living in the country and an additional 271 asylum seekers, including 39 children, living in the Regional Processing Center.

Access to Basic Services: Within the processing center, the Australian government, through contractors and NGOs, provided basic services, including food, shelter, water and sanitation, and health infrastructure, including health care, education, and psychosocial counseling services. Once processed, depending on the availability of accommodation, refugees could move to purpose-built communities with water, electricity, and shelter, from which they had access to education and health care and could seek employment. Refugee children attended local schools and international human rights organizations reported incidents of bullying, discrimination, and other safety concerns.

Durable Solutions: In 2012 Australia and the government signed an MOU for the government to operate a center to process persons seeking asylum in Australia, and the Regional Processing Center received its first group of asylum seekers in 2012. By August the government had accepted 894 asylum seekers as temporary refugees in the country. Another 271 asylum seekers were awaiting or contesting refugee determination. The government grants five-year visas to asylum seekers after they receive refugee determination. International human rights organizations, including foreign residents who formerly worked in the Regional Processing Center, criticized living conditions at the center, abuse faced by refugees and asylum seekers, including children, the lack of mental health treatment, and lengthy processing times.

Section 3. Freedom to Participate in the Political Process

The constitution and law provide citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

Elections and Political Participation

Recent Elections: International observers considered generally free and fair the most recent parliamentary election held July 9-11. Opposition figures alleged, however, that some changes made to the election law prior to the polls disadvantaged nongovernment candidates. The 19-member parliament then re-elected President Baron Waqa who was also a member of parliament.

Political Parties and Political Participation: Although political parties have the legal right to operate without outside interference, there were no formal parties. The government suspended five opposition members of parliament (MPs) indefinitely and without pay in 2014. Three of the MPs were suspended pending apologies or retractions of comments they made to international media alleging a breakdown of the rule of law in the country. The other two members were cited for disruptive conduct while in parliament. Of the five suspended MPs, four participated in the July parliamentary election and only one was re-elected. Three of the former MPs continued to face criminal charges for their roles in a 2015 political protest.

Participation of Women and Minorities: The law does not prevent women from participating in politics, but their participation was significantly less than that of

men. Four women ran in the July general election and, for only the third time in the country's history, voters elected a woman to parliament. The country's permanent representative to the United Nations, who also served as ambassador to the United States, was a woman. Women also held senior positions in the civil service.

The country has a small and almost entirely homogenous Micronesian population. There were no members of minorities in parliament or the cabinet.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials. Opposition MPs and their supporters made numerous allegations of government corruption.

Corruption: Australian Federal Police continued investigations of allegations that Getax, an Australian-based mining company, bribed local politicians to obtain support for its phosphate mining operations in 2010. The government rejected these allegations.

Financial Disclosure: There are no income and asset disclosure laws for appointed or elected officials.

Public Access to Information: No legal provisions provided for public access to government information, but the government provided access to budget documents and other government information through its Government Information Office.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

The government did not restrict the establishment or operation of local human rights organizations, but no such groups existed. No international human rights organizations maintained offices in the country.

Government Human Rights Bodies: In 2014 the Department of Justice and Border Control opened a new Human Rights Section staffed by a human rights adviser, two human rights officers, and a liaison officer from the Secretariat of the Pacific Community's Regional Rights Resource Team.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

Women

Rape and Domestic Violence: Rape is a crime and carries a maximum penalty of 25 years' imprisonment. The 2016 Crimes Act specifically applies penalties for rape of married and de facto partners. Police investigated all reported rapes, and the courts prosecuted cases. Statistics related to rape cases were not available. There were reports female refugees were subject to sexual harassment and sexual assault, yet such cases were often underreported to police.

The law does not address domestic violence specifically, but authorities prosecute domestic violence cases under laws against common assault. The maximum penalty for simple assault is one year's imprisonment. The maximum penalty for assault involving bodily harm is three years' imprisonment.

The government did not maintain statistics on the incidence of physical or domestic abuse of women, but police officials said they received frequent complaints of domestic violence. Reports from women's organizations indicated abuse occurred, often aggravated by alcohol use. Families normally sought to reconcile such problems informally and, if necessary, communally. Both police and judiciary treated major incidents and unresolved family disputes seriously.

Sexual Harassment: There is no specific law against sexual harassment, but authorities could prosecute harassment involving physical assault under assault laws.

Reproductive Rights: Couples and individuals have the right to decide the number, spacing, and timing of their children; manage their reproductive health and have access to the information and means to do so, free from discrimination, coercion, and violence. The government medical system provided access to contraception and prenatal, obstetric, and postpartum care free of charge. According to the UN Population Fund (UNFPA), adolescent pregnancy rates in the country were among the highest in the region, and access to adolescent reproductive health services and information was limited. The UNFPA also reported there was a high unmet need for family planning commodities and the quality of family planning services was poor.

Discrimination: The law provides for the same legal status and rights for women as for men, including under family, religious, labor, property, nationality, and inheritance laws. Discrimination in employment and wages occurred with respect

to women (see section 7.d.). The Women's Affairs Office is responsible for promoting professional opportunities for women.

Children

Birth Registration: Children derive citizenship if one of their parents is a citizen. The constitution also provides for acquisition of citizenship by birth in the country in cases in which the person would otherwise be stateless. The law requires registration of births within 21 days in order to receive citizenship, and families generally complied with the law.

Child Abuse: The government does not maintain data on child abuse, but it remained a problem, according to civil society groups. In June parliament passed comprehensive child protection and welfare legislation. The Child Protection and Welfare Act 2016, which came into effect on June 10, establishes comprehensive measures, including mandatory reporting, to protect children from child abuse. The law also outlaws corporal punishment in schools. Corporal punishment was legal in homes and alternative-care settings.

Early and Forced Marriage: The Child Protection and Welfare Act 2016 prohibits marriage by male and female children younger than 18 years. According to a UNICEF survey of married women between 20 and 24 years, 2 percent married before they were 15 years old, and 27 percent before they were 18 years old.

Sexual Exploitation of Children: The comprehensive Crimes Act 2016, which came into effect on May 10, prohibits the commercial sexual exploitation of children, the sale of children, offering or procuring a child for child prostitution, and practices related to child pornography. The minimum age for consensual sex is 16 years. The Crimes Act 2016 standardizes penalties for sexual exploitation of children and makes intentional sexual intercourse with a child younger than 16 years punishable by 25 years' imprisonment. Sexual intercourse with a child younger than 13 years carries a penalty of life imprisonment.

The Crimes Act 2016 establishes penalties for taking images of children's private acts and private parts. If the child is younger than 16 years, the maximum penalty is 10 years' imprisonment, and 15 years' imprisonment if the child is younger than 13 years. The same law prescribes even tougher penalties for involving children to produce pornographic material. The maximum penalty if the child is younger than 16 years is 15 years' imprisonment and 20 years' imprisonment if the child is

younger than 13 years. The country's Cyber Crime Act 2015 outlaws the electronic publication and transmission of child pornography.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's *Annual Report on International Parental Child Abduction* at travel.state.gov/content/childabduction/en/legal/compliance.html.

Anti-Semitism

The country does not have a Jewish community, and there were no reports of anti-Semitic acts.

Trafficking in Persons

There were no confirmed reports during the year that Nauru was a source, destination, or transit country for victims of human trafficking.

Persons with Disabilities

The law does not specifically prohibit discrimination against persons with disabilities. No legislation mandates services for persons with disabilities or access to public buildings. Although the government has installed mobility ramps in some public buildings, many buildings in the country were not accessible. The government provides a welfare benefit to persons with disabilities. The Department of Education has a special education adviser who is responsible for education for students with disabilities. As part of efforts to promote participation in society by persons with disabilities, Department of Education teachers provided classes for a small group of students with disabilities.

There is no government agency with specific responsibility for protecting the rights of persons with disabilities. The nongovernmental Nauru Disability Persons Organization advocates for the rights of persons with disabilities in the country. The Mentally Disordered Persons Ordinance 1963 grants some legal protections for persons with mental disabilities. There were no reports of discrimination against persons with disabilities with regard to employment, but social stigma likely led to decreased opportunities for employment.

Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity

The Crimes Act 2016 removed homosexual conduct as a criminal offense. The law does not prohibit discrimination based on sexual orientation or gender identity. The law does not specifically cite sexual orientation, but it could be used to aid in the prosecution of bias-motivated crimes against members of the lesbian, gay, bisexual, transgender, and intersex community. There were isolated reports of violence against persons based on sexual orientation and gender identity.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides that workers may form and join independent trade unions or other associations. It does not prohibit foreign workers from organizing, but it restricts freedom of association for members of the police force. While the right to strike is neither protected nor prohibited by law, a civil servant may not foment or take part in a strike and may be summarily dismissed from the service if found guilty of doing so. Although there are no legal impediments, the law does not afford workers the right to collective bargaining, and it did not take place.

The country lacks formal trade unions and labor laws protecting the exercise of freedom of association rights, including protection from antiunion discrimination. There is no legal right to reinstatement for dismissal due to union activity, but workers have the ability to seek legal redress through the civil court system. The government effectively enforced the law. Penalties for violations took the form of fines, which were adequate to deter violations.

The transient nature of the mostly foreign workforce hampered efforts to organize trade unions. There were no strikes and no reports of antiunion discrimination or retaliation.

b. Prohibition of Forced or Compulsory Labor

The constitution prohibits all forms of forced or compulsory labor. Government enforcement of the law could have been more effective, but the law does not stipulate penalties. Civil courts handle cases of forced labor. There were no reports such practices occurred.

c. Prohibition of Child Labor and Minimum Age for Employment

The law sets the minimum age of employment at 16 years. No regulations govern type of work, occupation, or hours for workers younger than 18 years, nor do they identify hazardous occupations. The Department of Human Resources and Labor is responsible for enforcing the law. The government enforced the law in the public sector but did not conduct any workplace inspections of private businesses.

The only two significant employers--the government and the phosphate industry--respected the law. Some children younger than 17 years worked in small family-owned businesses.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at www.dol.gov/ilab/reports/child-labor/findings/.

d. Discrimination with Respect to Employment and Occupation

Labor laws and regulations do not prohibit discrimination regarding race, color, sex, religion, political opinion, national origin, citizenship, disability, language, sexual orientation, gender identity, age, HIV-positive status or other communicable diseases, or social origin. These persons sometimes experienced discriminatory practices. Discrimination in employment and wages occurred with respect to women. The law does not require equal pay for equal work, and societal pressures and the country's impoverished economic circumstances often limited opportunities for women. While women headed approximately one-third of all households, less than one-quarter of heads of households engaged in paid work were female.

Overall 70 percent of male heads of household and 40 percent of female heads of household were economically active in either paid or unpaid work, according to the Secretariat of the Pacific Community. More than half of the female heads of household were not working and were not able to work (29 percent), unemployed (25 percent), or undertaking other activities. There were no reports the government took any specific action to prevent employment discrimination.

e. Acceptable Conditions of Work

Public-service regulations govern salaries, working hours, vacation periods, and other employment matters for government workers, who constituted more than 90 percent of salaried workers. The government has a graduated salary system for public-service officers and employees. The minimum starting salary for public-sector employees is approximately A\$1.80 (\$1.30) per hour. There is no minimum

wage for private-sector workers. There was no official poverty-level income figure, but approximately 26 percent of the population lived at the subsistence level.

By regulation the workweek in both the public- and private-sectors is 35 hours for office workers and 40 hours for manual laborers, and the regulation also includes the paid annual holidays. Neither the law nor regulations stipulate a weekly rest period, but most workers observed Saturday and Sunday as holidays. There are provisions for premium overtime pay for some public-sector workers, such as the Protocol Department in the Ministry of Foreign Affairs and the Department of Civil Aviation, and majority of public servants receive compensatory leave for accumulated overtime. There is no limit to the maximum number of accumulated overtime hours and no prohibition on excessive or compulsory overtime for workers in the public sector. There are no specific regulations that govern overtime or overtime pay for private-sector workers.

The government sets some health and safety standards, which are current and appropriate for the main industries. The law does not provide workers the right to remove themselves from a hazardous workplace without jeopardizing their employment.

The Department of Human Resources and Labor enforced these laws in the public sector, but no law governs workplace health and safety standards overall. The government did not provide data on the number of labor inspectors it employed. The law allows the ministry the right to inspect a workplace at any time. Authorities can charge with a criminal offense an employer found to be in violation of the Workers Act or the provisions of an employment contract, which was sufficient to deter violations.

The phosphate industry had a history of complying with workplace health and safety requirements, but with the decline of the industry, enforcement of these regulations became lax. Accusations that unfiltered dust discharge from the phosphate plant exposed workers and the surrounding communities to a significant health hazard accompanied the gradual revival of the industry. The government continued to cite high costs as a justification for not acting to eliminate the problem. No data was available for workplace fatalities or accidents.