Is Australia abusing child asylum seekers?
By Nolan Rappaport

Australia only accepts asylum applications from asylum seekers who have a valid visa when they arrive. If they do not have a valid visa, the only relief available to them is a Temporary Protection visa (TPV) or a Temporary Safe Haven visa (SHEV). These visas have time limitations, but when a TPV or SHEV expires, a new one can be requested.

### TPV and SHEV comparison table

<table>
<thead>
<tr>
<th>Feature</th>
<th>TPV</th>
<th>SHEV</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duration</td>
<td>Up to three years</td>
<td>Five years</td>
</tr>
<tr>
<td>Intention to work and/or study in Regional Australia</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Permanent visa pathway after meeting certain work and study requirements in regional Australia</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Permission to work</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Access to Medicare</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Access to social security benefits</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Travel outside of Australia where it is approved in compassionate or compelling circumstances (except to the country from which you sought protection)</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

All non-citizens with unlawful status are subject to mandatory detention. Section 189 of the Australian Migration Act of 1958 requires the detention of unlawful non-citizens. This includes children, even if they are not accompanied by a parent or guardian. Detained non-citizens are released when they are granted some form of lawful status or they are removed from Australia. As of November 30, 2015, there were 174 non-citizen children being held at immigration detention facilities (104 were being held at detention facilities in Australia and 70 at the Regional Processing Center on the Nauru island).

Asylum Seekers Without Visas Who Arrive by Boat

Operation Sovereign Borders. Australia's two leading political parties, the ruling Liberal-National coalition and the Labor opposition, both support tough asylum policies because, among other things, the journey asylum seekers make to Australia is dangerous and is controlled by criminal gangs. The coalition government made Australia's asylum policy even tougher when it took power in 2013, by establishing Operation Sovereign Borders, which deploys military vessels to patrol Australian waters and intercept migrant boats, towing them back to Indonesia or sending asylum seekers back in inflatable dinghies or lifeboats. The Australian government claims that this has restored the integrity of its borders and helped to prevent deaths at sea.
Third country processing. In August 2012, the Australian Government established a third country processing program for non-citizens who come to Australia by boat without a valid visa. The objective of the program is to discourage people from taking dangerous sea voyages to seek asylum in Australia. These asylum seekers are transferred to a third country, unless the Minister for Immigration decides otherwise as a matter of discretion. The designated third countries are Nauru island and Papua New Guinea. On December 30, 2015, the Regional Processing Center on Nauru was holding 537 asylum seekers (including 68 children). As of May 31, 2016, of the 1,194 transferees who had their claims for asylum assessed by the Nauruan Government, 915 (77%) had been found to be refugees, and of the 551 transferees who had their claims for asylum assessed by the Government of Papua New Guinea, 541 (98%) had been found to be refugees.7

According to the Australian Human Rights Commission, the Australian government does not avoid its human rights obligations under international law by transferring asylum seekers to third countries for processing under the laws of those countries. Australia maintains control over the asylum seekers after the transfer is made, so it is still required to ensure that they are treated in accordance with the human rights treaties to which Australia is a party.8

Nauru

Nauru is an island nation with a population of approximately 10,000 people. It’s revenue sources are limited. The opening of the Australian Regional Processing Center for asylum seekers in 2012 sparked growth in its economy. Its dependence on Australia also can be seen in the fact that it does not have military forces. It depends on Australia for military defense.9

Reports Recommending Against Mandatory Detention of Child Asylum Seekers

The Forgotten Children report. On February 3, 2014, the President of the Australian Human Rights Commission (AHRC) began an inquiry on children being held at immigration detention centers. Over several months, AHRC received 239 submissions, conducted five public hearings,
visited 11 immigration detention centers, and conducted interviews with 1,233 current and former detainees. AHRC’s overall conclusion was that mandatory and prolonged immigration detention of children on Nauru was in clear violation of international human rights laws, such as article 37(b) of the Convention on the Rights of the Child, which reads as follows:

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.\(^{10}\) (Emphasis added).

AHRC found further that the detention of children on Nauru was particularly problematic because it is mandatory and not time limited. The children AHRC observed on Nauru were suffering from extreme levels of physical, emotional, psychological, and developmental distress. AHRC recommended that all children and their families in immigration detention be released into the Australian community and that the Migration Act 1958 be amended to set strict limits on the detention of children.\(^{11}\)

**Report of the Senate Select Committee.** On March 26, 2015, the Senate of the Commonwealth of Australia established the Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Center on Nauru. The Committee conducted four public hearings and issued a report that was released on August 31, 2015. The report concludes that the Regional Processing Center on Nauru was not a safe or an appropriate environment for children. It recommended that the Government remove all children and their families from the Regional Processing Center on Nauru as quickly as possible.\(^{12}\)

**UN High Commissioner for Human Rights.** In a press briefing in Geneva on August 12, 2016, Ravina Shamdasani, a spokesperson for the UN High Commissioner for Human Rights, expressed concern about serious allegations of violence, sexual assault, degrading treatment, and self-harm contained in more than 1,000 incident reports from the offshore processing center on Nauru. Many of the alleged incidents involved children. Moreover, many of the asylum seekers on Nauru had been in detention for more than three years. Teams from the UN office have witnessed asylum seekers, including children, suffering from severe mental health problems as a result of their detention and lack of certainty about their futures. Some of these individuals experienced trauma in their home countries and also during their journey to Australia. They were then transferred to Nauru, where they were detained at a Regional Processing Center under harsh conditions. Over the years, their situation has become increasingly dire and untenable. The UN High Commissioner for Human Rights called on the authorities on Nauru and in Australia and urged them to put an end to the practice of detaining child asylum seekers.\(^{13}\)

**The Leaked Reports from the Nauru Regional Process Center**

The Guardian, a US-based online newspaper,\(^{14}\) has posted more than 2,000 leaked reports online that describe incidents at Australia’s detention camps for asylum seekers on Nauru. These incident reports were written by guards, caseworkers and teachers. The incidents described in the reports include attempts at self-harm, sexual assaults, child abuse, hunger strikes, assaults, and injuries. While some of these cases had been reported previously by the Guardian and other
news organizations, the leaked reports set out the totality of harm caused by prolonged detention in Australia’s notorious offshore detention camps. A total of 1,086 incidents (51.3%) involve children, although children made up only about 18% of those in detention on Nauru during the time covered by the reports, which was from May 2013 to October 2015.

The official versions of these reports that were filed at the detention center were routinely altered and downgraded in seriousness by Wilson Security, the private contractor tasked with protecting asylum seekers on the island. Moreover, the leaked reports also reveal that at least 16 serious cases of child abuse and sexual assault were not reported by Wilson Security when it was asked to provide materials to an Australian Senate inquiry on Nauru in 2015.

The logs also reveal the squalid conditions often experienced by asylum seekers at the center, including frequent complaints of cockroaches infesting tents housing the detainees.

The leaked files are available online at http://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive They are divided by year and within each year, by month. The months have rectangles for each incident, and the rectangles are color coded by risk levels. See illustration below. Go to the website and click on the rectangles to see summaries and copies of original reports.

Dr. Peter Young. Health and medical experts have warned of the mental harm caused by prolonged detention. The toll on children’s mental health is particularly heavy. According to Dr. Peter Young, a former medical director of mental health for Australia’s immigration detention system, self-harm and suicide attempts increase steadily after six months in detention.
Dr. Young was part of a group of current and former employees from the Nauru detention center who wrote an open letter to the Australian people demanding a Royal Commission into sexual abuse at the Australian-funded detention centers, accusing the Government of putting child asylum seekers at risk.20

**Position of the Australian Government**

**The Australian Government’s response to the Guardian’s report on leaked files.** The Australian government has strongly defended its immigration policy. The immigration minister, Peter Dutton, repeatedly has praised the quality of care at the Nauru detention center.21 He points out that the Guardian report on leaked documents shows the rigorous reporting procedures that are in place at the Nauru processing center, procedures under which any alleged incident must be recorded, reported, and where necessary, investigated. But many of the leaked incident reports are based on unconfirmed allegations and uncorroborated claims. They are not statements of proven fact. Nevertheless, all of the incidents mentioned in the Guardian report will be investigated.

The Australian Government provides support to the Nauruan Government, including the deployment of Australian Federal Police Officers to work alongside the Nauruan Government and increase their capacity to investigate complex and sensitive incidents. It also takes seriously its role in supporting the Government of Nauru to protect children from abuse, neglect or exploitation.

The Australian Government established an independent Child Protection Panel in March 2015 to investigate the Regional Processing Centers and provide advice on ensuring the wellbeing and protection of the children who are detained at the centers. The Child Protection Panel is expected to issue a report with recommendations for ongoing improvement in mid-2016.22

In addition, the Australian Government has made very significant investments in the upgrading of health and educational facilities on Nauru, which benefit Nauruans, transferees, and refugees living in the Nauruan community.23

The Government of Nauru has enacted legislation to address allegations of child abuse, including the Crimes Act of 2016 and the Child Protection and Welfare Act 2016. Among other things, Nauru’s Crimes Act of 2016, creates new offences to protect children and other vulnerable persons from harm and neglect.24 UNICEF has praised the Nauru Child Protection Act for establishing legal provisions for the welfare, care, and protection of all children in Nauru, and for the enforcement of children’s rights under various international conventions, including the Convention on the Rights of the Child. UNICEF has said it was proud to have supported the Government of Nauru in developing this Act.25

**Comment**

Uncontrolled immigration can pose serious problems. For instance, see my article on what has happened in Europe, “The refugee crisis is being blamed for the terrorist attacks in Europe” (August 2, 2016), http://www.ilw.com/articles/2016,0802-Rappaport.pdf But there has to be a
more appropriate way for Australia to deal with child asylum seekers than the Regional Processing Center system it is using now.

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3 Section 189 of the Migration Act of 1958, “Detention of unlawful non-citizens,”
4 Australian Human Rights Commission, “Information about children in immigration detention,”
5 Australian Government, Department of Immigration and Border Protection, “Operation Sovereign Borders,”
7 Parliament of Australia, “Australia’s offshore processing of asylum seekers in Nauru and PNG: A Quick Guide to statistics and resources” (June 30, 2016),
8 Australian Human Rights Commission, “Submission to Inquiry into the responsibilities of the Commonwealth Government in connection with the management and operation of the Regional Processing Centre in Nauru” (April 27, 2015),
12 Australian Human Rights Commission, “Transfer of asylum seekers to third countries,”
https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/projects/transfer-asylum-seekers-third-countries; the Committee’s final report is available at,
15 Nick Evershed, Ri Liu, Paul Farrell and Helen Davidson, “The lives of asylum seekers in detention detailed in a unique database,”
18 Paul Farrell and Helen Davidson, “Nauru files reveal cases of alleged sexual violence and child abuse not disclosed to parliament” (August 10, 2016),
19 Paul Farrell, Nick Evershed and Helen Davidson, “The Nauru files: cache of 2,000 leaked reports reveal scale of abuse of children in Australian offshore detention” (August 10, 2016),

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About the Author
Nolan Rappaport was detailed to the House Judiciary Committee as an Executive Branch Immigration Law Expert for three years; he subsequently served as the immigration counsel for the Subcommittee on Immigration, Border Security, and Claims for four years. Prior to working on the Judiciary Committee, he wrote decisions for the Board of Immigration Appeals for twenty years. He also has been a policy advisor for the DHS Office of Information Sharing and Collaboration under a contract with TKC Communications, and he has been in private practice as an immigration lawyer at Steptoe & Johnson.