

International Commission of Jurists, Australia

“AUSTRALIA BREACHES INTERNATIONAL LAW IN SENDING ASYLUM SEEKERS TO NAURU”

“Australia is in breach of International Law in its treatment of asylum seekers in Australia by holding them in detention in Nauru and in failing to properly care for the medical needs of those asylum seekers” said John Dowd President of International Commission of Jurists Australia.

“Australia now suffers from a significant level of international opprobrium for the way in which it fails to carry out International Treaty obligations” said Mr Dowd.

“Some of the 267 asylum seekers waiting to be flown back to Nauru are suffering from cancer and terminal illnesses, and the first returns could potentially be made ‘within days’,” Immigration Department chief Michael Pezzullo says.

Article 25(1) of the *Universal Declaration of Human Rights* (1948) provides:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (1976) states:

“1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

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2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b)
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

Article 24 of the *United Nations Convention on the Rights of the Child* (1989) relevantly provides:

- “1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;”

“Australia cannot criticise other countries that breach their international obligations if it is, itself, in such serious breach. Children should not be kept in detention. Australia has a duty of care to people seeking asylum in Australia and cannot divest itself of that duty by passing them over to a country which does not have as developed a system of law and human rights protection and does not have the health standards of Australia” said Mr Dowd.

“It is understood that the government in its policy does not wish to encourage traffickers in asylum seekers but that does not entitle it to ignore its obligation to the individual asylum seeker as provided by the treaties to which Australia has become a party” said Mr Dowd.

“Asylum seekers now in Australia should remain here” said Mr Dowd.

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