

Nauru deal cements Australia's Pacific incarceration policy

Jake Skeers**26 April 2004**

The Australian government's recent "memorandum of understanding" with the tiny Pacific state of Nauru amounts to a take-over of the administration of that country. It also cements the deal struck more than two and a half years ago to incarcerate refugees seeking asylum in Australia on Nauru, thereby denying them their rights under Australian law.

The memorandum between the two countries, announced by Australia's Foreign Minister Alexander Downer on March 5, has an openly colonial character. In return for A\$22.5 million over two years, Australia will install a secretary of finance to take control of Nauru's finances and appoint the Police Commissioner. Downer made little effort to conceal the fact that the Howard government will now run the formally independent republic.

"The Secretary of Finance will be looking at issues including reforms to Nauru's budget processes, exploring new revenue sources, improving revenue collection, and seeking better value for money on all government sector expenditure and activities. Nauru's remaining assets and liabilities will be assessed before the commencement of an appropriate re-structure is undertaken," he said.

The deal is in line with the Howard government's increasingly interventionist policy in the South Pacific region, which began with its September 1999 military intervention in East Timor and escalated sharply in the wake of last year's invasion of Iraq. Last July, under the guise of restoring law-and-order and helping the people of the Solomon Islands, the government dispatched 2,200 troops, police and officials and now effectively controls the Islands' finance ministry, the police and the prisons. There are similar plans to send police and officials to Papua New Guinea (PNG).

Nauru is less important than East Timor, PNG and the Solomon Islands to the economic and military goals of Australia's corporate elite. But the Howard government is

intent on shoring up Nauru as a refugee dumping ground so that it can continue its Pacific detention policy until at least June 2005. In violation of the international Refugee Convention, asylum seekers have been militarily removed from Australian offshore islands and territorial waters and transported to Nauru or PNG's equally remote Manus Island.

Nauru's government was in no position to refuse any of the terms of the memorandum. Downer told Australian Broadcasting Corporation radio: "If we didn't provide this support to Nauru, it simply wouldn't be able to keep power and water going in Nauru, they simply wouldn't have any health services there, or education services ..."

Nauru, the smallest republic in the world with a population of around 12,000, is economically bankrupt and faces an environmental catastrophe. With virtually no industries or employment opportunities, it is almost totally reliant on Australian aid. Canberra was forced to send \$1.2 million last December so that the government could pay its public servants.

Nauru's economic and environmental crisis is the direct result of decades of plundering by Australian corporate interests. Up to 90 percent of the coral island is unusable, resembling a moonscape, after mining stripped away its lucrative phosphate deposits.

Exploitation of Nauru's phosphate deposits began in the early 20th century. In 1906, Germany, the initial colonial ruler, sold the right to mine Nauru's phosphate to a British and Australian company. Upon taking control of Nauru after World War I, the Australian, British and New Zealand governments took over the company, calling it the British Phosphate Company. The company made huge profits due to the enormous demand for fertiliser in Australia.

These governments looted the island's resources, while barely any money went to the people of Nauru. According to *Revenue Transparency*, a report by Global Witness,

mining revenues in 1948 alone were A\$745,000. Only 2 percent went to Nauruans directly or into trusts. In the 1960s, Nauruans began to demand a greater share. By 1966, they received 22 percent of the revenues, while the Nauruan administration received 14 percent. However, the British Phosphate Company attempted to slash the royalties by selling the phosphate at one third of the market price, securing a windfall for its buyers.

By the time of formal independence in 1968, mining had destroyed over one-third of the 21 square kilometre island. The Nauru government took over the British Phosphate Company and mining continued, but by the late 1980s profits fell because previous mining had consumed the major deposits and world phosphate prices dropped.

In 1991, Nauru took the Australian government to the International Court of Justice for its environmental and financial exploitation of the island. After initially denying all responsibility, in 1993 Canberra settled out-of-court for \$57 million and an additional \$2.5 million per annum for 20 years. Britain and New Zealand also paid Nauru \$12 million each as part of the settlement.

This money virtually dried up by the late 1990s, due to poor investments and reported misappropriations by members of the Nauruan government, overseas accountants and other business people. In August 2001, the Howard government seized on the economic crisis in Nauru to pressure it into hosting a prison camp for asylum seekers, in return for cash handouts.

Nauru can legitimately be described as Australia's Guantanamo Bay. The Howard government has effective control of Nauru's detention camps, but uses the country as a convenient proxy in order to deny basic democratic rights to the detainees. Some 284 asylum seekers, including 93 children, remain locked in Nauru's "Topside" camp. Since 2001, Australia has incarcerated more than 1,200 asylum seekers there, mainly from Afghanistan and Iraq, without any access to the Australian courts.

On Australia's behalf, Nauru denies entry to all lawyers, journalists, independent doctors and human rights groups. During a 29-day hunger strike by asylum seekers last January in protest over their poor conditions and indefinite detention, the Nauru government even blocked a team of Australian doctors and psychiatrists from assessing the health of the striking refugees.

The Howard government transported the asylum seekers to Nauru and effectively determines whether they remain in incarceration or not. It also finances the camps, paying the International Organisation for Migration to operate

them. Yet it argues in court that the detention centre falls under Nauruan jurisdiction, that the Nauruan government is detaining the prisoners and that, therefore, the refugees have no rights under Australian law.

In January, Julian Burnside and Eric Vadarlis, lawyers acting for the Nauruan detainees, took a case for wrongful imprisonment to the Victorian Supreme Court. Arguing that the Australian government is in fact detaining the men, women and children, they sought compensation for the detainees and an order that they be brought to Australia, where they could file refugee visa applications.

During the preliminary hearing, the Australian government admitted that Australian Protective Security officers, who have been sworn in as Nauruan Police, guard the camps with the help of Australian security guards. Nevertheless, it applied to have the case thrown out on the ground that the court had no jurisdiction over the actions of a foreign government. Justice Bongiorno rejected the government's application on January 23 and the case is scheduled to begin this month.

The imprisonment of the asylum seekers rides roughshod over Nauru's constitution, which outlaws detention without charge. Under the constitution, the only remotely relevant exception allows for the detention of people who have arrived illegally and are being held for deportation. Given that Nauru and Australia entered into a political deal to house the asylum seekers, no one could argue that they entered Nauru illegally.

The Nauru constitution also guarantees that detainees can seek legal representatives of their choice. However, even after detainees requested representation in writing, Australian lawyers were denied visas to enter the country to represent their clients.

In May 2003, the Chief Justice of Nauru ruled these measures to be valid. Burnside described the judgment as "a disgraceful piece of work: a veil too thin to hide the corruption which it attempts to justify". The court's apparent intent was to avoid a conflict with the Australian government, which could send the country bankrupt.

Principal responsibility rests, however, with the Howard government, which has consigned the detainees to a legal black hole, in clear violation of international law and the most fundamental democratic rights.



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