AMNESTY INTERNATONAL'S SUBMISSION TO THE HOUSE OF COMMONS STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION: CLAUSE 306 OF BILL C-97, THE *BUDGET IMPLEMENTATON ACT*, 2019, NO. 1

10 MAY 2019

I. INTRODUCTION

This written brief sets out the reasons for which Amnesty International is opposed to the measures introduced at clause 306 of Bill C-97. It is divided into four parts.

First, the remainder of the introductory section will set out Canadian law, as it currently stands, regarding claims which are ineligible for referral to the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB). It will further set out the proposed change in Bill C-97 that will add an additional ground of ineligibility for referral of claims to the RPD.

The second section will set out the reasons for which Amnesty International considers Bill C-97 to be inconsistent with international refugee law. The reasons are twofold: first, the proposed change would narrow the scope of refugee protection, and second, it would create a legal regime which discriminates amongst refugee claimants on an arbitrary and punitive basis.

The third section will set out the consequential shift that the provisions in Bill C-97 will have upon Canadian refugee policy. Namely, that Bill C-97 would create a two-tier system of protection which contains substantive differences between the processes applied to different categories of refugee claimants.

The fourth and final section concerns the broader human rights context, illustrating how shortcomings in other countries' protection regimes would be compounded by the restricted approach to refugee protection that is introduced by Bill C-97.

Amnesty International recommends that clause 306 of Bill C-97 be withdrawn and not re-introduced.

Amnesty International is further concerned that other proposed amendments to the *Immigration and Refugee Protection Act*, also included in Bill C-97, have not benefited from full and proper parliamentary review because of the omnibus nature of the Bill. Amnesty International urges that those provisions also be withdrawn and if they are to be re-introduced, that only take place by means of a separate Bill which would be considered on its own merits.

National Office:
312 Laurier Avenue East, Ottawa, ON K1N 1H9
Tel: (613) 744-7667 Fax: (613) 746-2411
info@amnesty.ca

Toronto Office:
1992 Yonge Street, 3rd floor, Toronto ON M4S 1Z7
Tel: (416) 363-9933 Fax: (416) 363-3103
toronto@amnesty.ca

Vancouver Office:
Suite 430, 319 West Pender, Vancouver, BC V6B 1T3
Tel: (604) 294-5160 Fax: (604) 294-5130
vancouver@amnesty.ca

a) Ineligibility for Referral of Refugee Protection Claims

Under Canadian law, there are a limited number of circumstances under which a claim for refugee protection is ineligible for referral to the RPD. Those circumstances are set out under s. 101(1) of the *Immigration and Refugee Protection Act* (IRPA),[1] which states that a claim for refugee protection is ineligible to be referred to the RPD if:

> (a) refugee protection has been conferred on the claimant under this Act;
>
> (b) a claim for refugee protection by the claimant has been rejected by the Board;
>
> (c) a prior claim by the claimant was determined to be ineligible to be referred to the Refugee Protection Division, or to have been withdrawn or abandoned;
>
> (d) the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country;
>
> (e) the claimant came directly or indirectly to Canada from a country designated by the regulations, other than a country of their nationality or their former habitual residence; or
>
> (f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of paragraph 35(1)(c).[2]

b) Changes Under Bill C-97

Bill C-97, the *Budget Implementation Act, 2019, No. 1,*[3] was introduced in the House of Commons on 8 April 2019. It is an omnibus bill containing 388 clauses, and it amends dozens of Canadian laws. Division 16 contains changes to the IRPA, and clause 306 of Bill C-97 amends subsection 101(1) of IRPA to introduce a new ground of ineligibility to those set out above. As drafted, Bill C-97 will render a claim for refugee protection ineligible for referral to the RPD if:

> (c.1) the claimant has, before making a claim for refugee protection in Canada, made a claim for refugee protection to a country other than Canada, and the fact of its having been made has been confirmed in accordance with an agreement or

[1] *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], available online: https://laws.justice.gc.ca/eng/acts/i-2.5/fulltext.html.
[2] *Ibid*, s 101(1).
[3] Bill C-97, *An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures*, 1st Sess, 42nd Parl, 2019, (second reading 30 April 2019).

> arrangement entered into by Canada and that country for the purpose of facilitating information sharing to assist in the administration and enforcement of their immigration and citizenship laws.[4]

Canada has signed information-sharing agreements of the nature specified in Bill C-97 with Australia, New Zealand, the United Kingdom, and the United States.[5] Thus, refugee claimants who have made a previous claim in any of those countries, or any country with whom Canada may negotiate such an agreement in the future, would be ineligible to have their claims referred to the RPD. Their only possibility for receiving refugee protection would be through a Pre-Removal Risk Assessment (PRRA), which will be discussed in greater detail below.

II. INCONSISTENCY WITH INTERNATIONAL LAW

Amnesty International is of the view that the proposed change to Canada's refugee protection law contained in Bill C-97 is inconsistent with international refugee law for two reasons. First, the measure narrows the scope of claims that can be referred to Canada's refugee status determination system, the RPD. Second, the measure discriminates amongst refugee claimants by giving access to an independent status determination procedure to some, while providing an inferior process to others.

a) Narrowing the Scope of Protection

As mentioned above, Bill C-97 narrows the scope of claims that are eligible for referral to the RPD by removing cases where a prior claim has been made in a country with which Canada has negotiated an information-sharing agreement.

The scope of this new ineligibility provision is vast: it is not limited by the time the prior claim was made, the status of the claim in the other country (finalized, accepted, rejected, withdrawn, etc.), the fairness of the refugee determination process in the other country, or whether there are other possible *bona fide* reasons for which a person may seek to request Canada's protection after having done so elsewhere.

It is also arbitrary; it is not based on any assessment of the nature and quality of protection available in the other country, but rather an entirely irrelevant factor: the existence of an information-sharing agreement. Finally, it is a broad class exemption, not a discretionary decision or a factor to be considered by a decision-maker, automatically barring any such claim from being referred to the RPD. While the ambit is presently limited to Australia, New Zealand,

[4] *Ibid*, clause 306.
[5] Government of Canada, *Agreements with other departments and governments*, available online: https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements.html.

the United Kingdom and United States, it will automatically encompass any future information-sharing agreements that Canada may conclude with other countries.

i) Automatic Bars & Ineligibility

When ineligibility criteria were proposed in Bill C-11 in 2001, the United Nations High Commissioner for Refugees (UNHCR) expressed concern that the reforms narrowed the scope of the right to seek refugee protection, by establishing statutory barriers to Canada's refugee status determination procedure. The UNHCR noted its view that "*automatic* bars to consideration of asylum claims are not in conformity with the Refugee Convention [emphasis in original]."[6] Amnesty International considers that the proposed amendment in Bill C-97 is a similar such automatic bar and is inconsistent with Canada's obligations under the *Refugee Convention*.[7]

Similarly, in commenting on Bill C-31 in 2012, the UNHCR stated that "asylum applications should not be considered inadmissible unless the individual concerned has already found effective protection in another country […] or if responsibility for assessing the particular asylum application is assumed by a third country, where the asylum-seeker will be protected from *refoulement* and will be able to seek and enjoy asylum in accordance with accepted international standards."[8] As mentioned above, the ineligibility criteria in Bill C-97 is automatic – there is no consideration of whether *effective* protection is accessible elsewhere, or whether responsibility for the third country has been assumed – and, thus, is inconsistent with Canada's obligations under the *Refugee Convention*.

ii) "Protection Elsewhere" Regimes

Refugee law scholars have commented on the problematic nature of "protection elsewhere" regimes. "Protection elsewhere" measures have included "direct flight" and "safe third country" rules, which oblige a person to claim in the first safe country. "Prior claim" provisions, like the one proposed in Bill C-97 which would preclude a person from accessing the refugee protection system based on a prior claim made elsewhere, are similar in their effect.

Refugee law scholar James Hathaway and Michelle Foster have commented on the legality of "protection elsewhere" regimes, stating that "failure to claim protection in one's region of

[6] United Nations High Commissioner for Refugees (UNHCR), *UNHCR Comments on Bill C-11: An Act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger*, 5 March 2001, at para 40, available online: https://ccrweb.ca/sites/ccrweb.ca/files/static-files/c11hcr.PDF.
[7] *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137, available online: https://www.refworld.org/docid/3be01b964.html.
[8] UNHCR, *UNHCR Submission on Bill C-31: Protecting Canada's Immigration System Act*, May 2012, available online: https://www.refworld.org/docid/4faa336c2.html.

origin or in the first safe country of arrival is not grounds for refusing to recognize refugee status."[9] They note that the text of the *Refugee Convention* is clear: status may only be denied on the basis of "protection elsewhere" based on Article 1(d) (which covers access to UN assistance other than UNHCR assistance) and Article 1(e) (which covers access to protection as a *de facto* national of a country of former residence.[10] While the measure in Bill C-97 does not specifically *deny status* on the basis of "protection elsewhere," it does deny access to the IRB – Canada's refugee status determination system – along the same philosophy: namely, the notion that the claimant has had access to protection in another country before making a request of Canada.

b) Discrimination

Bill C-97 discriminates amongst refugee claimants by giving access to an independent status determination procedure to one group while providing an inferior process to others. By introducing a new ineligibility criterion in Bill C-97, refugees who have made a prior claim in the four countries listed above will not have access to the independent IRB, but rather will have their claims heard by a PRRA Officer.

Article 3 of the *Refugee Convention* prohibits discrimination among refugees on the enumerated grounds of race, religion, or country of origin.[11] Refugee law scholars have examined the extent to which the duty of non-discrimination is strictly limited to the enumerated grounds of race, religion, and country of origin. According to Hathaway and Foster, "[a] purposive reading of prohibition of discrimination on grounds of 'country of origin' would moreover extend also to practices and policies which are *aimed at refugees from a given category of states* [emphasis added]."[12]

While Bill C-97 does not discriminate amongst refugees based on their country of origin or category of states, it does discriminate between those who have made a protection claim in a given category of states and those who have not. In other words, two persons fleeing the exact same scenario would be treated differently if one happened to make a claim in one of the countries with which Canada has an information-sharing agreement and the other did not. Equally, two persons fleeing the exact same scenario would be treated differently if one happened to make a prior claim in a country where there is no information-sharing agreement while the other made a prior claim in a country with which Canada has an information-sharing agreement.

[9] James C Hathaway & Michelle Foster, *The Law of Refugee Status*, 2nd ed (Cambridge University Press, 2014) at 31.
[10] *Ibid*, at 33.
[11] *Supra* note 7, art 3.
[12] James C Hathaway, *The Rights of Refugees Under International Law* (Cambridge University Press, 2005) at 254.

As such, Amnesty International is of the view that the measure introduced by Bill C-97 is an analogous ground of discrimination and thus contrary to the spirit, if not the letter, of this provision of the *Refugee Convention*. The implications of this discriminatory treatment will be discussed in further detail below.

III. CONSEQUENTIAL SHIFT IN CANADIAN POLICY

Amnesty International is of the view that the measure introduced by Bill C-97 represents a dramatic shift in Canadian refugee policy by specifically routing certain claims for refugee protection through a separate mechanism, the PRRA. As mentioned above, under the present law PRRA Officers are empowered with the *jurisdiction* to grant refugee protection. However, PRRA Officers were never conceived to be Canada's refugee status decision-makers;[13] they were provided this residual power as a safety mechanism to ensure that Canada is compliant with its obligations under the *Convention Against Torture.*[14] Canada's refugee status determination system, since the creation of the IRB in 1989, has always been and continues to be that body.

The proposal in Bill C-97 would shift a portion of this responsibility to PRRA Officers. Amnesty opposes this shift for two reasons. First, the measure introduces a two-tier system into Canada's refugee status determination procedure. Second, there are substantial and substantive differences between how the IRB and PRRA Officers will decide upon refugee protection claims.

a) Introduction of a Two-Tier System

Bill C-97 will create a two-tier system of refugee protection. As discussed above, while some refugee claimants will have access to the IRB, claimants captured by the ineligibility provision in Bill C-97 will have their claims decided by a PRRA Officer. While the former system is quasi-judicial and independent, the second system is internal to government.

There are a number of reasons for which a two-tier system is a poor policy decision which undermines the rights of refugee protection claimants. The UNHCR, for example, has previously

[13] The PRRA was only intended to be a protection against refoulement for individuals who although under an enforceable removal order or named in a security certificate, feared persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion and those who were at risk of torture or cruel and unusual treatment or punishment upon return to their countries of origin. See Jay Sinha & Margaret Young, "Bill C-11: The Immigration and Refugee Protection Act," Legislative Summary on Bill C-11, (2001) at 35, available online: https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/LegislativeSummaries/PDF/37-1/c11-e.pdf.

[14] *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, 1465 UNTS 85, available online: https://www.refworld.org/docid/3ae6b3a94.html.

raised its concerns about a two-tier system during discussions around the former Bill C-11, stating:

> Where access to the refugee determination procedure is denied, and claims referred to the PRRA for determination, there is the risk of creating a two-tier system, in which the protection risks of one class of asylum-seekers are assessed by the Immigration and Refugee Board, while those of another are assessed by CIC officials. This could affect both the efficiency of the system and consistency of decision-making.[15]

More recently, the UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection* (reissued in February 2019) has indicated that status determination should satisfy certain basic requirements, one of which stipulates:

> There should be a clearly identified authority – *wherever possible a single central authority* – with responsibility for examining requests for refugee status and taking a decision in the first instance [emphasis added].[16]

It is the view of Amnesty International that the proposal in Bill C-97 erodes the status of the IRB as Canada's single, central authority with well-developed expertise for examining requests for refugee status and taking a decision in the first instance. The substantive differences between the two systems will be discussed in the following section.

b) Substantive Distinctions: Status Determination Under the IRB and PRRA Officers

The consequences of the discriminatory treatment between classes of refugee protection claimants, as envisioned by Bill C-97, are significant. There are at least four substantive differences that will apply to claims which are deemed ineligible for referral to the RPD.

i) Independence

As mentioned above, the IRB is an independent, quasi-judicial decision-making body, while PRRA Officers are not independent of the government – rather, they are employees of Immigration, Refugees and Citizenship Canada.

The proposed changes in Bill C-97 fundamentally undermine the longstanding practice in Canada that refugee claims are considered by an independent, impartial tribunal. While it is

[15] *Supra* note 6 at para 86.
[16] UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection*, reissued February 2019, available online: https://www.unhcr.org/publications/legal/3d58e13b4/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html.

true that the *Refugee Convention* does not mandate a particular form of refugee status determination, the IRB has long been a hallmark of Canada's protection regime, and is lauded the world over as a best practice with respect to refugee status determination.[17] Given that decisions with respect to refugee claims often involve contentious and politicized factors, which can easily be influenced by extraneous factors such as social attitudes or trade and geo-political relationships, independence is vitally important.

ii) Expertise

IRB members receive training and possess specialized expertise in administrative and refugee law, fact-finding, conducting hearings and the evaluation of credibility, all of which is necessary to evaluate refugee protection claims. Moreover, they are given training in cross-cultural questioning and various IRB Chairperson Guidelines (e.g. on gender-related persecution, vulnerable persons, and claims based on sexual orientation and gender identity and expression).[18]

PRRA Officers are not required to have the same level of expertise and training on the technical and legal aspects of evaluating a claim for refugee protection, and are not bound by the IRB Chairperson Guidelines.

iii) Hearings

Under IRPA, the decision to grant a hearing is left to the discretion of PRRA Officers.[19] The *Immigration and Refugee Protection Regulations* set out prescribed factors for determining whether a hearing is required,[20] and as a matter of policy, "[a] hearing will only be held in *exceptional circumstances*, when *all* factors set out in R167 are present [emphasis added]."[21] Unlike the process at the IRB, it is not mandatory.

Importantly, the constitutionally protected right for refugee protection claimants to have access to an oral hearing was affirmed by the 1985 Supreme Court of Canada decision in *Singh.*[22] Even if a PRRA Officer grants a hearing, it is not equivalent to an IRB hearing: the

[17] House of Commons, "Responding to Public Complaints: A Review of the Appointment, Training and Complaint Processes of the Immigration and Refugee Board," Report of the Standing Committee on Citizenship and Immigration, 1st Sess, 42nd Parl, September 2018 at 1, available online: https://www.ourcommons.ca/Content/Committee/421/CIMM/Reports/RP9998461/cimmrp20/cimmrp20-e.pdf
[18] *Ibid*, at 28 -29.
[19] *IRPA, supra* note 1 at s 113(b).
[20] SOR/2002-227, s 167.
[21] Canada, Immigration Refugees and Citizenship Canada, *Processing PRRA Applications: Oral Hearings*, available online: https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/refugee-protection/removal-risk-assessment/applications-oral-hearings.html.
[22] *Singh v Minister of Employment and Immigration*, [1985] 1 SCR 177, 17 DLR (4th) 422.

refugee claimant has no ability to present witnesses, test the evidence upon which the Officer is relying, or make motions to accommodate or facilitate sensitive testimony. The issue of testing evidence is particularly salient, because Bill C-97 does not indicate what evidence will be necessary to "confirm" that a prior claim was filed, how it would be brought into the record, and what procedural rules might govern the challenging of it.

During his testimony before the House of Commons Standing Committee on Citizenship and Immigration on 7 May 2019, Minister of Border Security and Organized Crime Reduction Bill Blair offered assurances that there would be a so-called "enhanced PRRA" for those who are captured by the new ineligibility criterion, which would include an oral hearing. The details of this proposal are not included in Bill C-97, and Parliament must not accept a proposed change to the legislative framework governing refugee protection without those measures being properly tabled before it.

iv) Routes of Appeal & Review

The route of appeal for a negative decision at the RPD is different to that of a negative PRRA. While decisions by the RPD are appealed on the merits to the Refugee Appeal Division (which has the authority to substitute its decision for that of the original decision-maker),[23] the PRRA is only judicially reviewed by the Federal Court.

Judicial review applications to the Federal Court are a two step process, first requiring the leave of that court before the judicial review will be heard.[24] Judicial review at the Federal Court does not involved a full reconsideration of the case on the merits but is limited to more technical grounds of review, is conducted on a more deferential standard to the initial decision-maker, and the court will not substitute its decision for that of the PRRA Officer (but rather return it for reconsideration in case of an error).

These distinct routes of appeal and review have important consequences with respect to removal: while an application for judicial review does not result in an automatic stay of removal, an appeal to the Refugee Appeal Division does result in an automatic stay of removal.[25]

[23] IRPA, s. 110(1), 111(1).
[24] IRPA, s. 72(1).
[25] IRPA, s 49(2)(c). This provision delays the coming into force of a removal order, the practical result of which is the same as a stay of removal.

IV. HUMAN RIGHTS VIOLATIONS AND INADEQUATE REFUGEE PROTECTION IN THE FIRST COUNTRY OF CLAIM

Amnesty International is concerned that the provision in Bill C-97 would have Canada rely entirely upon the refugee status determination procedures in the countries with which Canada has signed an information-sharing agreement. The provision is not even premised on any requirement that the systems in those countries live up to specified international refugee protection standards, let alone an assessment as to whether any of the countries concerned do in fact meet such a requirement. In this sense, Bill C-97 shifts Canada's sovereign, international legal obligations to Australia, New Zealand, the United Kingdom, and the United States (and any other country with which Canada may sign an information-sharing agreement in the future). This is concerning because the human rights protections afforded by these countries generally, and refugee protections more specifically, are not uniformly consistent with international human rights law.

Although the discussion below concerns the United States and Australia by way of example, Amnesty International is of the view that Canadian refugee policy should not provide a class exemption for persons who have made a prior claim. Instead, each claim should be evaluated on an individual basis to determine whether protection ought to be afforded to the claimant.

a) United States

Amnesty International has recently documented a multitude of human rights violations that have been implemented by President Donald Trump's Administration. In the 2018 report entitled *You Don't Have Any Rights Here*, Amnesty International documented three categories of human rights violations that are being committed by the United States against refugee protection claimants: illegal pushbacks at the US-Mexico, family and child separation, and arbitrary and indefinite detention.[26]

Since the publication of that report, the Trump administration has issued two "interim decisions" that further violate the human rights of refugee protection claimants in the United States. One will deny bond allowing release from detention to persons seeking refugee protection until such time as their refugee claim is finalized.[27] As this process can take months or even years, this interim decision will exacerbate the arbitrary detention which has been documented in the above-mentioned report. The other interim decision establishes a general

[26] Amnesty International, "USA : 'You don't have any right here': Illegal pushbacks, arbitrary detention & ill-treatment of asylum seekers in the United States,"11 October 2018, AI Index : AMR 51/9101/2018, available online : https://www.amnesty.org/download/Documents/AMR5191012018ENGLISH.PDF.

[27] United States Department of Justice, Office of the Attorney General, Matter of M-S-, 27 I&N Dec. 509 (A.G. 2019), 16 April 2019, available online : https://www.justice.gov/eoir/file/1154747/download.

rule against according refugee protection for victims of gang violence and domestic violence.[28] That measure will have a disproportionate impact against women, who are more commonly the victims of domestic violence, and opens the possibility for decision-makers in the United States to deny claims of those who are fleeing gender-based violence, such as members of the LGBTI community.[29]

Moreover, human rights organizations have documented the mistreatment faced by members of the LGBTI community in United States detention facilities. For example, in a report entitled *Do you See How Much I'm Suffering Here?,* Human Rights Watch reported in 2016 that transgendered women experience disproportionately high rates of sexual assault when housed with men (both by detainees and guards), and that nevertheless these transgendered women are routinely held in men's facilities.[30] As such, LGBTI claimants – who may not receive adequate protection from the United States – could be disproportionately impacted by the new ineligibility criteria.

b) Australia

Australia has also adopted various policies which have violated the rights of people seeking refugee protection. As part of its Concluding Observations during Australia's Universal Periodic review, the United Nations Human Rights Committee found that the country's "offshore processing" of refugee protection claims was resulting in a number of human rights concerns. It noted that "conditions in the offshore immigration processing facilities in Papua New Guinea (Manus Island) and Nauru, which also hold children, including inadequate mental health services, the serious safety issues and instances of assault, sexual abuse, self-harm and suspicious deaths, and the fact that the harsh conditions have reportedly compelled some asylum seekers to return to their country of origin, despite the risks that they face there."[31] In fact, the conditions faced by refugee claimants who have been indefinitely warehoused on Nauru causes such widespread and severe suffering that Amnesty International has concluded

[28] United States Department of Justice, Office of the Attorney General, Matter of A-B-, 27 I&N Dec. 316 (A.G. 2018), 11 June 2018, available online : https://www.justice.gov/eoir/page/file/1070866/download.
[29] Laura Gottesdiener & John Washington, "They're Refugees Fleeing Gang Violence and Domestic Abuse. Why Won't the Trump Administration Let Them In?," *The Nation* (28 November 2018), available online: https://www.thenation.com/article/trump-asylum-gangs-domestic-violence/.
[30] Human Rights Watch, "Do You See How Much I'm Suffering Here?," March 2016, available online: https://www.hrw.org/sites/default/files/report_pdf/us0316_web.pdf, p. 19-22.
[31] United Nations Human Rights Office of the High Commissioner, *Concluding Observations on the Sixth Periodic Report of Australia*, 1 December 2017, at para 35(a), available online: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/AUS/CO/6&Lang=En .

it amounts to torture,[32] and a recently-launched class action lawsuit reportedly asserts that the government subjected refugee protection claimants to torture, crimes against humanity and intentional infliction of harm in operating these facilities.[33]

[32] Amnesty International, "Australia : 'Island of Despair: Australia's 'Processing' of Refugees on Nauru,"17 October 2016, AI Index : ASA 12/4934/2016, available online : https://www.amnesty.org/download/Documents/ASA1249342016ENGLISH.PDF.

[33] Helen Davidson, "Australia subjected refugees to crimes against humanity, class actions allege," *The Guardian* (9 December 2018), available online: https://www.theguardian.com/australia-news/2018/dec/10/australia-subjected-refugees-to-crimes-against-humanity-class-actions-allege.