

Nauru: a nation in democratic freefall propped up by Australia

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Judges have been sacked, opposition politicians jailed and citizens' rights eroded. Human rights advocates say there has been a breakdown in the rule of law on the Pacific island

As Marise Payne stands in her colourful shirt for the obligatory photo opportunity at the [Pacific Islands Forum in Nauru](#) this week, she might do well to consider the high price Australia pays to prop up one of the most dysfunctional governments on the planet.

As the newly minted foreign affairs minister, the arc of Australia's influence in the Pacific is now Payne's bailiwick, and [Nauru](#) is a country, it seems, edging closer to the cusp of democratic calamity.

Economically it is beholden: Nauru survives essentially on Australian largesse and self-interest.

In 2017-18 the Australian government directly provided two-thirds of Nauru's entire revenue of \$170m either as direct aid, resettlement and visa fees for refugees, fees to the Nauru Regional Processing Centre Corporation, or reimbursements to Nauru's government.

That's before the \$26m in taxes on high earners - paid mainly by Australians - and the airfares and charters on Nauru Airlines, the only way to reach the island.

The economic relationship is one of client state and patron, in the view of many, but it is Australia's publicly uncritical support for Nauru that is proving damaging.

Australia's moral authority as a champion of robust democracy and good governance in the region is taking a battering. By turning a blind eye to the disintegrating rule of law and flagging democracy in Nauru, Australia has abandoned the role of role model.

While New Zealand has [withdrawn aid](#) for the judicial system in protest, Australia continues to pump ever more funds into Nauru.

Rule of law under pressure

Since 2013 there have been [multiple sackings of judges and magistrates](#) who displeased the Nauruan government.

[Opposition politicians](#) have been arrested and jailed, Nauru citizens have had their passports cancelled and Australian staff who raise concerns about the welfare of refugees and asylum seekers with Nauru authorities have been summarily deported.

The organisation Australian Human Rights Lawyers says the breakdown of the rule of law and the withdrawal of the right of appeal to the high court of Australia affects both Nauruans and people

seeking asylum who were sent to Nauru by Australia. They now have no options for challenging decisions in the Nauruan legal process.

“It is critical that any court, especially the highest court in a national hierarchy, protects its processes from abuse by the executive arm of government,” says the ALHR president, Kerry Weste.

“Australia should implore Nauru to comply with the rule of law and ensure that it is not in any way complicit in undermining the structures and institutions that are required for a fair and functional justice system on Nauru.”

Scott Morrison, then minister for immigration, with Nauru’s foreign minister, David Adeang, during a meeting at Parliament House in 2013. Photograph: Lukas Coch/AAP

Meanwhile a whiff of suspicion hangs over the current ruling elite. The Australian federal police has confirmed to Guardian Australia that an investigation into bribery allegations involving the president Baron Waqa, the justice minister David Adeang and a Gold Coast phosphate company, Getax, remains ongoing.

[As the Pacific Islands Forum kicks off](#), another crisis in the judiciary is looming.

[Adeang stood up in parliament](#) on 15 August to effectively threaten the Australian judge Geoffrey Muecke, who had been brought in to hear Nauru’s most controversial case, known as the Nauru 19 case.

“Maybe we have to deal with Justice Muecke first,” he told parliament, arguing the court’s decision in favour of the Nauru 19 over legal fees would cost the government money.

The Nauru 19 are facing charges over an anti-government protest - the government terms them riots - outside parliament more than three years ago. The protest was itself sparked by the last round of expulsions of expatriate Australians who filled the most senior court roles on Nauru.

Democracy ‘seriously undermined’

Mathew Batsiua is a former foreign affairs minister of Nauru and has been a parliamentarian for nearly 15 years. His electorate is the seat of Boe, in Nauru’s south-west. He shares the electorate with his fiercest political opponent: president Baron Waqa.

Batsiua was an opposition MP and a leader of the protests in 2015 after he was suspended from parliament for giving interviews to the media. He is now one of the highest profile of the “Nauru 19” defendants and says Nauru’s democracy has been “seriously undermined” over several years.

“At the core of it is the erosion of the rule of law and the overpowering of the other two arms of the government by the executive,” Batsiua tells Guardian Australia.

Nauru MP Mathew Batsiua was charged with ‘disrupting the legislature’ after attending a protest authorities say was a riot in 2015.

“We saw the alarming and blatant interference of the judiciary in early 2014 when the executive sacked and immediately deported the then magistrate, Peter Law, because they disliked a particular decision he made at that time. When the then chief justice, Geoffrey Eames, intervened and ordered the deportation to be stayed, the president directed the commissioner of police to disregard the chief justice’s orders and to continue with the deportation. The president then cancelled the chief justice’s visa, effectively ... forcing his hand to resign.

“When we [the opposition] attacked the actions of the executive in media interviews, they used their majority in the house to suspend us from sittings of parliament until we apologised publicly for misleading people and uttering comments labelled by the government as against the national interest. We were even labelled traitors. The intimidation and control of the other two arms of the government continues to this present day.”

New legislation has curtailed fundamental freedoms: Nauruans must now seek police permission to hold a peaceful assembly or demonstration. It is also unlawful to criticise government policies or actions if the government judges that criticism might incite political hatred.

In addition the post of “assistant minister” has swelled the ranks of the government to 12, meaning the executive outnumbers the legislature in the 19-member parliament. The government can, effectively, pass laws unchecked.

Malcolm Turnbull, with Pacific island heads of state at last year’s forum. Photograph: Lukas Coch/AAP

Batsiua says Nauru’s international reputation has suffered as a result. He says the government’s “closed-shop” approach regarding its role in Australia’s offshore processing regime had done the country no favours.

“If there was some access allowed then some of the positive stories would have formed part of the complete picture and balanced the negatives out there,” he says.

“For our part Nauru has provided a centre that allows people with claims for asylum to have these claims processed and determined. Those found to be genuine are granted refugee status and are treated as such and given protection. Many have found their footing in Nauru and have forged some normalcy during this transit phase of their lives.”

Guardian Australia sent detailed questions to the Nauru government but received no response.

‘Unconstitutional legislation’

In March, Geoffrey Muecke, who served as chief justice of the South Australian district court for 19 years, was brought in to hear the Nauru 19 case. In June he ruled the government should pay for their legal representation.

The Nauru 19 defendants have been relying on assistance from lawyers mostly from Australia, who have been working on the case for free.

In the interests of a fair trial, Meucke ordered the government pay \$US166,600 in legal fees.

He also ruled that the Civil Procedures Amendment 2018, which was introduced after the Nauru 19 applied for legal aid, was unconstitutional because it aimed to severely limit the opportunities for people facing criminal trial to obtain representation and funding.

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The Sydney solicitor Christian Hearn is one of a team of Australian lawyers who have represented the Nauru 19 pro bono over months. He says that mounting a defence had been a “challenging process”.

“As the case has progressed we have seen the parliament respond to developments in the case with unconstitutional legislation. On several occasions Nauruan government lawyers have suggested our actions as defence lawyers are in contempt of court,” Hearn says.

In the wake of Muecke’s ruling, justice minister Adeang – widely seen as the power behind the throne in Nauru – rose in parliament to express his outrage, referring to the lawyers by the disparaging term “white ears”.

“What the court says and also those children of the white people from overseas, the lawyers who really care for and look after them. For some reason these foreigners from overseas have very different values. They seem to have some different views to us, we who say that these people are guilty and they are giving us the runaround because they are scared to start.”

He [issued a media release](#), saying the government would not comply with the judge’s orders because “the government was not a party to the proceedings ... so it could not lawfully comply with any orders that were made by the judge for payment”.

He warned the Nauru 19 would be locked up and the government would pursue them for debts with the money to benefit the people of Nauru.

“It all starts up there [in the court]. There are things we are trying to speed up now as quickly as possible, but maybe we have to deal with Justice Muecke first,” he said.

In 2017-18 the Australian government directly provided two-thirds of Nauru’s entire revenue of \$170m. Photograph: Torsten Blackwood/AFP/Getty Images

Batsiua says the “direct threat” made against the country’s chief justice by Adeang is an archetypal example of an executive government without check or balance running roughshod over the country’s democratic institutions.

“This behaviour is typical of the government’s attitude to ... anyone that does or says something that is critical or against what the government desires. This lack of tolerance of opposing or different views is a direct threat to our democracy and the rule of law in Nauru.”

This is not an isolated incident.

Arrangement with high court of Australia ends

In December 2016 Nauru’s resident magistrate [Emma Garo](#) failed to get her contract renewed amid controversy over allegedly lenient sentences she gave to three anti-government protesters involved in the same incident as the Nauru 19. They pleaded guilty.

Adeang had earlier warned in parliament that judges should be careful about being too lenient, suggesting their contracts may not be renewed.

She has now returned to the Solomon Islands where she has been appointed chief magistrate.

Nauru’s prosecutor appealed the sentences to the Nauru supreme court and the three defendants had their sentences extended – in one case from three months to 22 months.

When the trio appealed to the high court in Australia, then Nauru’s court of last resort, the high court sent the matter back for resentencing. Their sentences were extended further by the Nauru courts.

A further appeal to the [high court became impossible](#) when the Nauru government announced in April 2018 that it was ending a 44-year old arrangement for the high court to be the avenue of last appeal for the Nauru justice system.

Nauru says it is part of its journey to independence. The new appeal court, announced in July, will be staffed by judges from the Pacific Islands but it is not yet operating.

ALHR says Nauru is in the middle of a rule of law crisis.

“Every country needs an appellate system. Nauru has removed the high court without establishing an alternative. The treaty termination seems to have been designed to deprive certain people of appellate rights,” Weste says.

The Nauru 19 have now filed for their case to be permanently stayed. It will be determined by Justice Meucke on 13 September – just after the Pacific Islands Forum. In the mean time the government says it will appeal Meucke’s rulings on legal aid to its new court of appeal.

Critics not welcome

It is not just the judiciary who have drawn the ire of the Nauruan government.

In 2013 the Nauru commissioner of police, a former Australian federal police officer, [Richard Britten was deported](#). He was well advanced with an investigation into alleged kickbacks from an Australian phosphate company, Getax, to Nauru’s president, Baron Waqa, and the justice minister, Adeang, at the time of his sacking in July 2013.

The [ABC has aired footage](#) showing emails that purport to record payments to Adeang.

Nauru’s former solicitor general, [Steven Bliim](#), also an Australian lawyer, tells Guardian Australia he had been involved in drafting the request for assistance to the United States authorities in order to just get confirmation from Hotmail of the authenticity of the emails.

“After that request was made, and as I understand it was submitted by Richard on behalf of the police, I heard nothing further about it,” he says.

A few weeks later there was a riot at the regional processing centre and Britten was stood down and eventually left the island.

Bliim resigned in 2014 in protest at the sacking of Peter Law.

While the Nauru-based investigation into the Getax case appears to have stalled since Britten left, the AFP is still investigating because of the Australian connection.

A spokeswoman confirmed to Guardian Australia that the investigation is ongoing.

Six Canstruct staff expelled

Expats who work on Nauru repeatedly mention that the local community are extremely reluctant to criticise the government or its policies, because almost all Nauruans work for the government or government companies or have relatives who do.

All news comes via the government newsletter or the state-owned television station.

But criticising the Nauru government also comes with hazards for expats as well.

Retaliation against contractors who report welfare issues is a major concern among Australians now working on Nauru – even when they remain within the official reporting structures.

Six staff from Canstruct, the company which has taken over delivery of welfare and garrison services associated with Australia’s regional processing centre, have been [shipped off the island](#) since December.

The company has refused to comment as have the Nauru and Australian governments.

But Guardian Australia has learned that the expulsions followed formal complaints about a man who is now working for the government of Nauru’s Regional Processing Centre Corporation (NRPCC) in a senior position, who claims to have protection of a government figure.

The complaints involved allegations of abuse of a child and possible breaches of child protection legislation.

The expelled workers were bound by mandatory reporting requirements and would have taken their concerns to the government of Nauru’s child protection authorities.

But in doing so they appear to have jeopardised their own employment and had their visas removed by Nauru authorities.

The first incident is believed to have involved an assault on a child and this was reported to the Nauru authorities. The second incident involved the Nauruan community which had raised child protection concerns about the welfare of young girls.

Welfare staff urged them to take their concerns to the government of Nauru child protection authorities.

Soon after the welfare staff were expelled.

Part of the Canstruct brief is to build capacity within the NRPCC so it can take over the functions filled by Canstruct as early as October this year.

That will effectively see the Australian government providing a multimillion dollar contract to NRPCC to provide welfare, maintenance and garrison services to asylum seekers and refugees who cannot be sent to another destination. That is likely to be several hundred people, who might be in the country for up to 20 years.

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