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Australia's compliance with CERD FACT SHEET 7

Asylum Seekers, Refugees and Non-Citizens

Australian laws, policies and practice continue to violate the human rights of asylum seekers, refugees and other non-citizens, whether they are held in detention or living in the community. The majority of asylum seekers in Australia originate from Afghanistan, Sri Lanka and China. Recently there has also been a significant increase in the number of protection applicants from Afghanistan in particular, but also from Sri Lanka, Iran and Pakistan.¹

Asylum Seekers and Refugees: Mandatory Detention, Christmas Island and Diminished Legal Rights

First, despite some softening of immigration policy, Australia continues its policy and practice of mandatory immigration detention of all 'Irregular Maritime Arrivals', including children. Most asylum seekers who arrive in Australia by boat without a valid visa are subject to mandatory immigration detention, often for periods of 12 months or longer.² In practice, this policy applies mostly to asylum seekers from the Asia Pacific region. Mandatory detention is not only arbitrary, the conditions of detention, particularly in remote detention centres where service provision is difficult, are particularly inhumane and have detrimental impacts on the health, particularly the mental health, of detainees.

Secondly, most Irregular Maritime Arrivals are held on Christmas Island, 2600km from Perth and significantly closer to Indonesia than Australia. Christmas Island has been 'excised' from Australia's migration zone. In their applications for refugee status, off-shore applicants undergo a different process and are denied the same legal rights which are extended to applicants on mainland Australia. In particular, off-shore applicants who are refused refugee status cannot have the decision reviewed and lack proper access to Australian courts.³

Suspending asylum claims of Sri Lankan and Afghan Asylum Seekers

In April 2010 the processing of protection visa applications from Sri Lankan and Afghan asylum seekers was suspended for three and six months respectively.⁴ Sri Lankan and Afghan asylum seekers are to remain in detention indefinitely during the suspension, which is based on the 'evolving' (implicitly improving) situation in those countries. The Government houses these detainees in the remote Curtin Immigration Detention Centre, which was closed in 2002 following serious concerns about conditions and detainee welfare, in particular in relation to mental health.

Non-citizens: Indefinite Detention and Refoulement

Non-citizens in Australia may face three serious human rights violations.

First, stateless people can be detained *indefinitely* under Australian law, even if there is no real likelihood of them being removed in the reasonably foreseeable future. Stateless people have very limited opportunities for them to gain refugee status or secure their release from detention.

Secondly, no legislative protection against refoulement has been enacted in Australia. In practice, Australia can and does return non-citizens to situations where they face the risk of serious human rights abuses, including torture and death. Substantial evidence suggests that torture or even death have occurred as a result.⁵ A bill currently before the Australian Parliament will, if passed, significantly improve Australia's current complementary protection regime. However, protection under the bill falls short of international standards.

Thirdly, non-citizens who are long term Australian residents can be deported on 'character grounds', even in circumstances where they are removed from their long term place of residence to a place where they do not speak the language or have any social or family connections, where they are separated from their children against the considerations of the best interests of the child and where they are separated from their family.

Asylum Seekers in the Community The Right to Work and Social Security

Asylum seekers living in the Australian community also continue to be vulnerable to violations of their economic and social rights. Although most asylum seekers have now secured the right to work, in practice very few asylum seekers (possibly as few as 15%) are able to secure employment. Asylum seekers are not generally able to access social security and rely on other welfare schemes for financial and health assistance. These schemes have limited resources and give priority to certain classes of people, such as unaccompanied minors and people suffering trauma, meaning that other groups of asylum seekers, such as single men, are at grave risk of destitution.

TABLE OF CROSS-REFERENCES

Issue	Relevant CERD Articles	References to Issue in CERD NGO Report
Mandatory Detention	5(a), (e)(iv)	FREDA Submission Part F.4(a), (e), G.4(a)
Application for Refugee Status	5(a)	FREDA Submission Part F.4(b), (c)
Right to Work and Social Security	5(e)(i)	FREDA Submission Part G.4(b), (c)
Refoulement and Deportation	5(b)	FREDA Submission Part F.4(d), (f)
Treatment of Stateless people	5(e)	FREDA Submission Part F.4(e)

Endnotes

¹ *UNHCR News Stories* (20 April 2010); see also *UNHCR Monthly Data Sheet* (Jan-Mar 2010), available at <http://www.unhcr.org/statistics/Latest-monthly-asylum-data.zip>.

² AHRC, *2008 Immigration Detention Report* (2008), available at http://www.hreoc.gov.au/human_rights/immigration/idc2008.html

³ AHRC, *Immigration detention and offshore processing on Christmas Island*, above n 2.

⁴ Chris Evans MP, Stephen Smith MP and Brendan O'Connor MP, 'Changes to Australia's Immigration Processing System' (Press Release, 9 April 2010) available at <http://www.minister.immi.gov.au/media/media-releases/2010/ce10029.htm>.

⁵ See, eg, Australian Refugee Rights Alliance, 'Deportations to China: Australian RSD Processes that Return People to Persecution' (Draft Discussion Paper, 2007), available at http://www.erc.org.au/index.php?module=documents&JAS_DocumentManager_op=downloadFile&JAS_File_id=156.