



SUBMISSION TO THE COMMONWEALTH MINISTERIAL ACTION GROUP ON AUSTRALIA

19 September 2017

This submission from the Commonwealth Human Rights Initiative (CHRI) seeks to draw the attention of the Commonwealth Ministerial Action Group (CMAG) to failures of the Australian federal government in upholding international human rights law and its treaty obligations.

There continue to be serious concerns regarding Australia's policies towards refugees and asylum seekers. Beginning in 2013, the government's 'Operation Sovereign Borders' led by the Australian Defence Forces have adopted a zero tolerance posture towards irregular boat arrivals. Furthermore, its policy to transfer asylum seekers to offshore Regional Processing Centres (RPCs) in Nauru and Papua New Guinea, and their prolonged confinement violates human rights treaties to which Australia is a signatory, as well as Commonwealth core principles and values.

The Refugee Convention

The 1951 Refugee Convention protects the right to seek and enjoy asylum, a right afforded to children, men and women who have to flee persecution or other serious human rights violations. Australia ratified the Convention in 1954.

However, since 2013 under the Migration Act, Australia has denied entry to asylum seekers arriving to the country by boat. The government's policy of "pushbacks" or "turnbacks", where Australian officials intercept and repel asylum-seekers arriving by boat, consistently violates the principle of non-refoulement which prohibits State parties to return persons to places where they are at risk of serious human rights violations. Turning back boats on the high seas violates Article 33(1) of the Refugee Convention, as well as Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), all of which prohibit refoulement.ⁱ

Regional Processing Centres

Asylum-seekers who manage to reach Australian shores are forcibly transferred to offshore Regional Processing Centres (RPC) on Manus Island in Papua New Guinea or the Pacific island of Nauru. Approximately 1200 men, women, and children currently remain in Nauru, and about 900 men in Papua New Guinea.ⁱⁱ

Media and civil society reports have repeatedly highlighted the poor conditions at the RPCs. Although refugees and asylum seekers in Nauru are not officially in detention- they are able to

move around the island- their situation is detention-like. Even those who have been officially recognised as refugees cannot leave the island. Overcrowding, unhygienic living conditions and sanitation facilities, regular searches of their tents by the guards and confiscation of “prohibited” items including food stuff are routine occurrences in the camps.ⁱⁱⁱ A media account of an UNHCR report on the situation in RPCs in Nauru and Manus Island said: “approximately 1.68 square-meter per person, which is half the minimum international standard for prisons. The risks to public health and mental health of such overcrowding are considerable.”^{iv}

Allegations of rape, sexual assault on minors and guards trading marijuana for sexual favours from female inhabitants at the RPCs led to the establishment of an independent review by former integrity commissioner Philip Moss in October 2014. The Moss review found compelling evidence that at least three women have been raped inside the RPC in Nauru and raised concern that sexual assault is likely to be under-reported due to a climate of fear and asylum seekers worried about their future refugee status.

Hopelessness and uncertainty about their future has greatly contributed to mental health issues of the inhabitants. Interviews with refugees, asylum seekers and service-providers at the RPCs reveal high levels of anxiety, instances of self-harm and attempted suicide among those trapped in the islands. The management at International Health and Medical Services, contracted by the Australian government to provide health services at the RPCs, has commented on the correlation between the conditions in the camps and instances of self-harm by the inhabitants: “There’s no denying that the detention environment is a causative factor to mental health distress [...] People’s bodies and their health is one of the only recourses left to them; [...] this is people’s last resort, their only avenue of appeal.”^v The situation is further aggravated by the lack of adequate physical and mental health care.^{vi}

Convention Against Torture

Australia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1989. In 2016 the UN Special Rapporteur on torture investigated allegations of indefinite detention of asylum seekers, detention conditions, alleged detention of children, and escalating violence and tension at Australia’s offshore RPCs.

In his report to the Human Rights Council, the Special Rapporteur noted that the “Government of Australia, by failing to provide adequate detention conditions; end the practice of detention of children; and put a stop to the escalating violence and tension at the Regional Processing Centre, has violated the right of the asylum seekers, including children, to be free from torture or cruel, inhuman or degrading treatment, as provided by Articles 1 and 16 of the CAT.”^{vii} The UN Special Rapporteur on migrants, François Crépeau, who visited Australia in November 2016, echoed that the forced offshore confinement in which asylum seekers and refugees are kept constitutes “cruel, inhuman and degrading treatment according to international human rights law standards.”^{viii} Furthermore, Australian government’s policy of deporting asylum seekers to their country of origin or elsewhere where they may face torture or ill-treatment also violates Article 3 of the CAT.^{ix}

Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) was adopted by the United Nations in 1989 and is considered to be the most comprehensive document relating to children's rights. By ratifying the CRC in 1990, Australia has accepted that it has special obligations towards all children within its jurisdiction.

In November 2016, the Guardian published a large cache of leaked documents from Australia's offshore RPC in Nauru.^x The documents reveal instances of sexual abuse, self-harm attempts and child abuse endured by asylum seekers held by the Australian government in the Pacific island nation. More than half of the 2116 reports involve children although they made up only 18 percent of those held at the RPC between May 2013 and October 2015.

The Australian Human Rights Commission (AHRC) in its 2014 report pointed out the Government of Australia's policies and practices with regard to children at the RPCs violated various provisions of the CRC: prolonged confinement of children amounting to torture, cruel or inhuman treatment violates Article 37(a) and Article 37(b); negative impact on the mental and emotional health of children and inadequate health care facilities violates Article 24(1); and the lack of appropriate measures to protect children from all forms of physical or mental violence, including sexual abuse, violates Article 19(1) and Article 27.^{xi}

Recommendations

Australia's actions towards irregular boat arrivals of asylum seekers and refugees contravenes the government's international human rights treaties and obligations. Further, its policies are against the grain of core Commonwealth values and principles of respect for human rights, inclusiveness, dignity of all human beings, and its commitment to the Universal Declaration of Human Rights and other relevant human rights covenants and international instruments. CHRI urges the CMAG to press upon Australia to:

- Stop refoulement of refugees and asylum seekers to their country of origin or elsewhere where they may face risk of torture and ill-treatment;
- Ensure Migration Act 1958 is applied as per individual cases demonstrated in court and provide legal aid;
- End prolonged confinement of children at the RPCs in Nauru and Papua New Guinea, in compliance with the Convention on the Rights of the Child;
- Implement term limits on detention period of asylum seekers and undertake measures to decrease their processing time;
- Ensure that living conditions, adequate mental and physical health care, and safety and security of refugees and asylum seekers at the RPCs meet international standards;
- Investigate allegations of physical and sexual assault of inhabitants at the RPCs and bring perpetrators to justice;
- Honour its international human rights and Treaty Body obligations.

References

- ⁱ Violeta Moreno-Lax, *The Interdiction of Asylum Seekers at Sea: Law and (mal)practice in Europe and Australia*, Policy Brief 4, Kaldor Centre for International Refugee Law, May 2017, p. 9, available at: https://uploads.guim.co.uk/2017/05/02/Policy_Brief_4_Interdiction_of_asylum_seekers_at_sea.pdf
- ⁱⁱ Helen Griffiths, *Australia's Abusive Asylum Policy Rebuked Again*, Human Rights Watch, June 2017, available at: <https://www.hrw.org/news/2017/06/29/australias-abusive-asylum-policy-rebuked-again>
- ⁱⁱⁱ Amnesty International, *Australia: Appalling Abuse, Neglect of Refugees on Nauru*, August 2016, available at: https://www.amnesty.org/en/latest/news/2016/08/australia-abuse-neglect-of-refugees-on-nauru/?utm_source=dlvr.it&utm_medium=facebook
- ^{iv} Martin McKenzie-Murray, "Leaked UNHCR report: Manus Island World's Worst", *The Saturday Paper*, October 2016, available at: <https://www.thesaturdaypaper.com.au/news/immigration/2016/10/08/leaked-unhcr-report-manus-island-worlds-worst/14758452003831>
- ^v Amnesty International, *Island of Despair: Australia's "Processing" of Refugees in Nauru*, 2016, pp. 21-22, available at: <https://www.amnesty.org/en/documents/asa12/4934/2016/en/>
- ^{vi} *Ibid.*, pp. 24-28.
- ^{vii} Juan E. Méndez, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Human Rights Council, 6 March 2016, A/HRC/4/34, pp. 7-8, available at: <https://static.guim.co.uk/ni/1425873116713/Mendez-report.pdf>
- ^{viii} Ben Doherty, "UN Official Says Australia Responsible for 'Inhuman' Treatment of Asylum Seekers", *The Guardian*, June 2017, available at: <https://www.theguardian.com/australia-news/2017/jun/12/un-official-says-australia-responsible-for-inhuman-treatment-of-asylum-seekers>
- ^{ix} OHCHR, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Assembly Resolution 39/46, 10 December 1984, p. 3, <http://www.ohchr.org/Documents/ProfessionalInterest/cat.pdf>
- ^x Paul Farrell, Nick Evershed and Helen Davidson, "The Nauru Files: Cache of 2000 Leaked Reports Reveal Scale of Abuse of Children in Australian Offshore Detention", *The Guardian*, August 2016, available at: <https://www.theguardian.com/australia-news/nginteractive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive>
- ^{xi} Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014*, 2014, pp. 29-31, available at: https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf