

Project SafeCom Inc. - Information Sheet 3

Mandatory Detention (1)

"Mandatory and non-reviewable detention" was first made law in 1992. Until then, the imprisonment of asylum seekers had been on an ad hoc basis. Successive amendments to the Migration Act in the last decade have placed substantial restrictions of the possibility of judicial review of Department of Immigration decisions.

Recent legislation states:

"Decisions under the Act [relating to detention and deportation, amongst other things, by the Department of Immigration and the Minister] are final ... and conclusive; ... and must not be challenged, appealed against, reviewed, quashed or called into question in any court.

In 1995, the United Nations Human Rights Committee found that the policy and practice of mandatory and non-reviewable imprisonment of asylum seekers was arbitrary and constituted a breach of Article 9 paragraph 1 of the International Convention on Civil and Political Rights.

A 1998 report by the Australian Human Rights and Equal Opportunity Commission (HREOC) found similar breaches of international conventions.

In 1995, Australia was cited in the US State Department's report on human rights abuses for its policy of mandatory detention of asylum seekers. Because the 'migration detention centres' are not defined as prisons but as temporary and often makeshift holding facilities even though refugees have often been held there for several months and in many cases years- requirements in terms of the space of cells, exercise room, and other facilities, are below those of regular prisons.

1. Refugees are not queue jumpers

Fact: In Iraq and Afghanistan, there are no queues for people to jump. Australia has no diplomatic representation in these countries and supports the International coalition of nations who continue to oppose these regimes and support sanctions against them. Therefore, there is no standard refugee process where people wait in line to have their applications considered. Few countries between the Middle East and Australia are signatories to the 1951 UN Refugee Convention, and as such asylum seekers are forced to continue to travel to another country to find protection. Indonesia, for example, is not a signatory.

People who are afraid for their lives are fleeing from the world's most brutal regimes including the Taliban in Afghanistan and Saddam Hussein's dictatorship in Iraq. Antonio Domini, Head of the UN Humanitarian Program in Afghanistan, states that Afghanistan is one of the most difficult places in the world in which to survive.

2. Asylum seekers are not illegal

Fact: Under Australian Law and International law a person is entitled to make an application for refugee asylum in another country when they allege they are escaping persecution. Article 14 of the Universal Declaration of Human Rights states that "Everyone has the right to seek and to enjoy in other countries asylum from persecution."

People who arrive on our shores without prior authorisation from Australia, with no documents, or false documents are not illegal. They are asylum seekers - a legal status under international law. Many asylum seekers are forced to leave their countries in haste and are unable to access appropriate documentation. In many cases oppressive authorities actively prevent normal migration processes from occurring. 'illegals' are people who overstay their visas. There are currently 45,000 people overstaying their tourist and work visas, mainly from the UK, USA and New Zealand.

3. Australia does not take many refugees

Fact: Australia receives relatively few refugees by world standards. In 2001 Australia will receive only 12 000 refugees through its humanitarian program. This number has remained static for three years, despite the ever-increasing numbers of refugees worldwide. Australia accepted 20,000 refugees each year at the beginning of the 1980's. According to Amnesty International one in every 115 people on earth are refugees, and a new

Project SafeCom Inc. P.O. Box 364, Narrogin WA - Phone 041 70 90 130
Email: admin@safecom.org - web: <http://www.safecom.org/refugees.htm>

Project SafeCom Inc. - Information Sheet 3

refugee is created every 21 seconds. Refugees resettle all over the world. However, the distribution of refugees across the world is very unequal.

- Tanzania hosts one refugee for every 76 Tanzanians (1:76).
- Britain hosts one refugee for every 530 Britons (1:530).
- Australia hosts one refugee for every 1583 Australians (1:1583).

4. We're not being "swamped" by hordes of boat people

Fact: 300 000 refugees arrived in Europe to seek asylum last year. In contrast, 4174 reached Australia by boat or plane. In 2000, Iran and Pakistan each hosted over a million Afghan refugees.

The real burden of assisting refugees is borne in the main by the world's poorest nations. The number of arrivals here does not constitute a problem.

5. They are genuine refugees

Fact: 97% of applicants from Iraq and 93% of applicants from Afghanistan seeking asylum without valid visas in Australia in 1999 were recognised as genuine refugees. Therefore, under Australian law they were found to be eligible to stay in Australia.

Generally, 84% of all asylum seekers are found to be legitimate refugees and are able to stay in Australia.

Some people wonder why refugees don't simply stay in Indonesia. This is because Indonesia is not a signatory to the UN convention on Refugees and as a result there is no way of processing refugees humanely in Indonesia. Ironically Australia is a signatory to this convention and according to the UNHCR mandatory detention contravenes this convention.

6. Refugees are not wealthy

Fact: It is alleged that people who have the resources to pay people smugglers could not possibly be genuine refugees. The UNHCR disputes claims about "cashed up" refugees saying that payments made to people smugglers in fact range from \$4000 - \$5000 AUD. In reality, many families and communities pool their resources by selling everything they own in an attempt to send their relatives to safety. People smuggling is dangerous and undesirable. It exists because the official resettlement programs run by the UN are tiny compared with the numbers of refugees concerned. All western nations, including Australia, should accept more asylum seekers from UNHCR camps. However, this does not negate the legitimacy of asylum seekers' claims, nor their need to seek refuge.

7. Detention Centres are not three star hotels

Fact: Australasian Correctional Management is a subsidiary of a billion dollar US company who, by their own admission stand to make \$770 million from the process of mandatory detention. The company has appeared in Federal court 62 times since 1999 for alleged breaches of civil rights. Conditions inside ACM's camps are extremely poor. There are inadequate numbers of beds, inadequate bathroom facilities and culturally inappropriate foods. They even have solitary confinement cells. There is little or no access to communications or legal information in languages other than English. Health care facilities are poor and nurses are given written instructions not to hug or excessively comfort the detainees. In some camps, like Port Hedland, detainees work for \$1 an hour in the kitchens and gardens. Reports from ex-detainees speak of guards frequently telling the detainees that they are hated by all Australians and that upon their release they are likely to be beaten, harassed or worse. The United Nations High Commission on Refugees has noted that Australia's policy of mandatory detention violates Article 31 of the UN Convention Relating to the Status of Refugees, which states that "States shall not impose penalties on refugees who enter without authorisation". Mandatory detention in these camps in remote areas is a violation of human rights and should be abandoned.

Source: *The Edmund Rice Centre in Sydney originally produced parts of this document - other parts were added to this. We took our copy from the Freedom Bus people website: <http://www.refugeefreedombus.org/>*

Project SafeCom Inc. P.O. Box 364, Narrogin WA - Phone 041 70 90 130
Email: admin@safecom.org - web: <http://www.safecom.org/refugees.htm>