



# General Assembly

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## Human Rights Council

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Universal Periodic Review

### **Written statement\* submitted by the Human Rights Law Centre, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 August 2012]

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\* This written statement is issued, unedited, in the language received from the submitting non-governmental organization.

## **Australia's new offshore processing arrangements for refugees and asylum seekers**

During the Universal Periodic Review of Australia in 2011, a number of countries made recommendations regarding Australia's refugee and asylum seeker policy, including Brazil, East Timor, Ghana, Guatemala, Morocco, Norway, Pakistan, the Philippines, Slovenia, Sweden, Switzerland and the United States.

The purpose of this statement is to provide an update on this policy and its human rights implications.

On 16 August 2012, Australia enacted the Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012. The Act provides for asylum seekers arriving by boat in Australia, including unaccompanied children, to be taken to a third country for processing. The Act raises serious issues as to compliance with international human rights treaties to which Australia is a party.

There is a threshold issue as to whether a system of offshore processing for boat arrivals can ever be compatible with human rights. Australia has binding obligations under the Refugee Convention not to impose any punishment or penalties on an asylum seeker on account of their mode of arrival, such as boat. The Convention also imposes an obligation on Australia not to remove or expel a person to a place where they may be subject to serious human rights violations.

Putting this threshold issue to one side, the Act breaches Australia's international human rights obligations in at least the following ways:

- It enables the government of the day to designate any country as a regional processing country, regardless of the human rights protections afforded in that country either under international or domestic law. This is likely to give rise to violations of non-refoulement obligations under the Refugee Convention, the International Covenant on Civil and Political Rights and the Convention against Torture, all of which have been ratified by Australia.
- The Act provides for the removal of unaccompanied children to a regional processing country for a broad range of reasons considered to be in the 'national interest', contrary to the general obligation under the Convention on the Rights of the Child to ensure that the best interests of the child are given primary consideration and the specific obligation to ensure that asylum seeker children receive all necessary human rights protections and humanitarian assistance.
- The Act provides that the rules of natural justice do not apply to a range of Ministerial decisions, including decisions as to which countries should be designated as regional processing countries, whether an asylum seeker should be sent offshore, and which regional processing country an asylum seeker should be sent to. This directly breaches Australia's obligations under the ICCPR to ensure that, in the determination of rights and obligations, a person must have access to the courts and is entitled to a full and fair hearing.

In addition to containing a range of provisions which give direct rise to human rights violations, the Act is seriously flawed in that it does not contain a range of human rights protections that are required by international law. In particular:

- The Act does not provide for any time limit on detention or for any review of detention, in breach of the right to freedom from arbitrary detention under article 9 of the ICCPR. In accordance with the Government's so-called 'no advantage'

policy, this means that people are likely to be detained for periods of five years and more without any review or remedy.

- Based on evidence and past experience, it is highly likely that such prolonged, indefinite detention in remote locations will result in serious physical and mental harm, in breach of Australia's obligations under the ICCPR, the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights.

We draw the Council's attention to similar concerns as to the human rights compatibility of Australia's offshore processing laws raised by organisations such as the Australian Human Rights Commission,<sup>1</sup> Amnesty International,<sup>2</sup> the Asylum Seeker Resource Centre<sup>3</sup> and Human Rights Watch.<sup>4</sup>

In addition to informing the Council on Australia's new policy on offshore processing, we also take this opportunity to update the Council on the situation of asylum seekers in Australia:

- Australian law continues to provide for mandatory detention of 'unlawful non-citizens' and does not allow for judicial consideration of the need for detention in individual cases.
- Immigration detention is not a measure of last resort or for the shortest practicable time. Asylum seekers who arrive in Australia informally are detained as a matter of course before other options have been exhausted. The law does not impose time limits on detention and the government may and does detain people in immigration detention indefinitely.
- As at 30 June 2012, there were 5815 people in immigration detention. More than 1900 people had been detained for longer than six months and 453 people had been detained for longer than two years. There were 591 children in immigration detention.<sup>5</sup>

In addition to being the subject of recommendations during the Universal Periodic Review, Australia's policy and practice of mandatory immigration detention has been criticised by several UN Treaty Bodies and the Special Procedures of the Human Rights Council. Consistent with these recommendations, we call on Australia to take immediate steps to:

- repeal the provisions of the Migration Act 1958 relating to mandatory detention and also those relating to offshore or regional processing;
- enact legislation to ensure that asylum seekers are detained only where strictly necessary and as a last resort;
- enact legislation to ensure that no children are held in immigration detention;
- provide for regular, periodic, judicial review of a person's detention;
- codify in law time limitations on immigration detention; and

<sup>1</sup> [http://humanrights.gov.au/about/media/news/2012/81\\_12.html](http://humanrights.gov.au/about/media/news/2012/81_12.html).

<sup>2</sup> <http://www.amnesty.org.au/news/comments/29512/>.

<sup>3</sup> [http://www.asrc.org.au/media/documents/united-opposition-migration-legislation-amendments\\_.pdf](http://www.asrc.org.au/media/documents/united-opposition-migration-legislation-amendments_.pdf).

<sup>4</sup> <http://www.hrw.org/news/2012/08/17/australia-pacific-solution-redux>.

<sup>5</sup> [http://www.immi.gov.au/managing-australias-borders/detention/\\_pdf/immigration-detention-statistics-20120630.pdf](http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20120630.pdf).

- ensure that all detainees have adequate access to legal counsel, interpreters, communication facilities, education, physical and mental health services and social, cultural and religious support networks.
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