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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by ABC Tamil Oli, 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.

[12 February 2019]

* Issued as received, in the language(s) of submission only.

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Australia's Unjust and Cruel Refugee Policies

An outline of Australia's current refugee policy

A 'Fortress-Australia' attitude has alienated the deterrence-based political approach to asylum-seekers and international refugees. Whilst most refugees meet the UN Refugee Convention guidelines, they are not offered asylum but forced in mandatory indefinite onshore and offshore substandard detention centres (Nauru and Papua New Guinea).

Refugee and Humanitarian Program

During the 2012-13 financial year,¹ Australia's Refugee and Humanitarian program increased from 13,750 to 20,000 places. In September 2015, the Government made 12,000 additional humanitarian places available to refugees from the crises in Syria and Iraq.

Immigration detention and community alternatives

Asylum seekers, arriving without a prior valid visa, face indefinite mandatory detention.

In October 2011, the Government began granting Bridging Visas (subclass E) giving asylum seekers access to Medicare and an allowance, a specified address and other supervision arrangements. As of 31 May 2016, 658 people (including 317 children) were in community detention with 28,329 people living in the community on a Bridging Visa E.

People with a well-founded fear of persecution must be assessed by the Australian Security and Intelligence Organisation (ASIO) before being granted a protection visa. Between January 2010 and November 2011, ASIO issued over 50 refugees with adverse security assessments. Recognised refugees could not be sent back to their original country, but the Government would not release them into Australian communities, instead remained indefinitely in closed detention facilities with no right to appeal. Many remain in detention and have now been detained for over six years.² In July 2013, the UN Human Rights Committee found that this breached the International Covenant on Civil and Political Rights.³

Refugee Status Determination (RSD) and legal advice

Australia introduced a "fast track" RSD process for asylum seekers who arrived by boat between 13 August 2012 and 1 January 2014 and were not taken to Nauru or PNG for offshore processing. If their claims are rejected by the Department of Immigration, these people can no longer apply for review by the Refugee Review Tribunal. The Government has also changed processes for assessing asylum claims, including shifting the burden of proof onto asylum seekers, removing references to the Refugee Convention from Australia's migration legislation, removing the reasonableness test from consideration of relocation options, drawing unfavourable inferences about the credibility of refugee claims and creating new grounds to deny Protection Visas to people who provide false identity documents.⁴

Most asylum seekers who arrive without valid visas are ineligible for government-funded legal advice. Asylum seekers with valid visas, and a small number of asylum seekers who

¹ The year to 30 June 2013.

² Read more about Refugees with Adverse security assessment by ASIO here:
<http://www.kaldorcentre.unsw.edu.au/publication/refugees-adverse-security-assessment-asio>

³ Decisions available at <http://bit.ly/1jcktl6> and <http://bit.ly/1IZLIZt>

⁴ For a briefing on the full suite of changes to RSD and the other laws, see RCOA's document Migration And Maritime Powers Legislation Amendment (Resolving The Asylum Legacy Caseload) Act 2014: What It Means For Asylum Seekers, available at <http://www.refugeecouncil.org.au/wp-content/uploads/2015/02/1502-Legacy-Caseload.pdf>

arrived by boat and have been identified as particularly vulnerable are eligible for free legal advice at the primary stage of decision-making but no longer at the merits review stage.⁵

Since October 2012, Sri Lankan asylum seekers arriving by boat have been subject to “enhanced screening”, about their reasons for travelling. If, in this interview, they do not raise protection concerns, they are returned to their original country without formally lodging a protection claim. Under this system, more than 1,000 people have been “screened out” and returned to Sri Lanka.

Offshore processing

Asylum seekers who arrived by boat after 19 July 2013 are subject to offshore processing and forcibly transferred to detention centres in Nauru and PNG’s Manus Island. If they are deemed refugees, they will be settled in a country other than Australia. Nauru offers recognised refugees temporary visas, with permanent protection available only if they choose to resettle in Cambodia.⁶ PNG has adopted a National Refugee Policy which allows for permanent settlement and a pathway to citizenship, but the process of settlement remains fraught.

In late April 2016, PNG’s Supreme Court ruled that the transfer and detention of asylum seekers on Manus Island breached the right to personal liberty in the PNG constitution. The Supreme Court ordered an immediate end to the detention of asylum seekers in PNG.⁷ UNHCR and Amnesty International⁸ have documented the harsh nature of the conditions in the detention centres and noted the negative impacts of indefinite detention.

In February 2014, peaceful protests on Manus Island degenerated into a riot with security guards and police attacking asylum seekers. One asylum seeker, Reza Berati, was beaten to death and over 60 others were injured. In September 2014, asylum seeker, Hamid Khazaei, died from a sepsis infection three weeks after he cut his foot at the Manus Island centre allegedly due to inadequate medical care and delayed evacuation. In late April 2016, Omid Masoumali, a Nauru refugee, set himself on fire and passed away two days later in a hospital in Brisbane after it took over 24 hours for a medical evacuation to Australia.

"Border protection"

In September 2013, the Government established “Operation Sovereign Borders”, ordering Australian naval and customs officers to turn back boats carrying asylum seekers “when it is safe to do so”. The Department of Immigration reported that from 19 December 2013 until 31 December 2015, 23 boats carrying 685 people had been turned back. In June 2015, allegations emerged that Australian Security Intelligence Service officials paid Indonesian people smugglers to return 65 asylum seekers intercepted on the seas.

As part of turnback operations, asylum seekers were also transferred to Australian vessels and forced to board fully-enclosed “unsinkable” lifeboats which were pushed towards Indonesian territorial waters.

⁵ Some unaccompanied children who arrived with valid visas and have been immigration cleared might be able to continue having access to free migration advice.

⁶ Five refugees recognised in Nauru have taken up the Australian Government’s offer of moving to Cambodia. However, four of them have since left Cambodia and returned to their home countries (Myanmar and Iran).

⁷ Full PNG Supreme Court decision is available here: <https://www.scribd.com/doc/310459779/The-decision#download>

⁸ Report of UNHCR’s monitoring visit to the Republic of Nauru, 7-9 October 2013, <http://unhcr.org.au/wp-content/uploads/2015/05/2013-12-06-Report-of-UNHCR-Visit-to-Nauru-of-7-9-October-2013.pdf>; Report of UNHCR’s monitoring visit to Manus Island, 23-25 October 2013, <http://www.refworld.org/docid/5294aa8b0.html>; *This is Breaking People: Human rights violations at Australia’s asylum seeker processing centre on Manus Island, PNG*, Amnesty International, <http://bit.ly/1cESlhg>

Temporary Protection Visas

TPVs, Temporary Protection Visas (1999-2008) were granted to refugees who arrived by boat, allowing holders to remain in Australia for three years, under the condition that they have little access to support, do not travel outside Australia and/or sponsor family members for resettlement. Negative impacts of these conditions on the health, wellbeing and settlement outcomes of TPV holders have been well documented.⁹

TPVs were however, reintroduced on 5 December 2014 allowing those to work in Australia and access Medicare, income support and English language tuition and can also receive psychological counselling and assistance with employment. However, they cannot sponsor family members, apply for permanent residency, nor return to Australia if they travel overseas (unless given permission from the Minister for Immigration). People on TPVs have difficulty engaging in education and training as they are ineligible for Federal Government financial assistance programs. Those who require income support only receive payments through Special Benefit and those wishing to pursue tertiary study can only continue to receive income support if they are undertaking a vocational course and can be completed in 12 months or less. This seriously limits education opportunities.

Conclusion

The government's policy is harsh and unnecessarily complex. There is little accountability built into policies and on almost all issues, the minister and his bureaucrats have wide discretionary powers. What is forgotten is that most refugees genuinely have a well-founded fear of persecution and many asylum seekers lack evidence to back their claims under Australia's Migration Act guidelines. These rules and regulations not only prevent their voices from being heard but also unfairly demonise and penalise those who are sincerely fleeing from persecution. This is only exacerbated with these individuals not being informed of their rights and protections as people.

In this light we recommend greater education to the Australian public regarding the government's poor and inadequate protections of Asylum Seekers and Refugees. We urge the Australian government step up on its commitment in protecting the Individual rights and liberties of all people by formally reviewing the Migration Act guidelines and implementing reforms that further protect and secure the future of asylum seekers and refugees. Lastly, the United Nations should take actions to help prosecute those persons of whom have ordered and carried out gross violations of human rights through the turning back of boats and mistreatment within detention centres and prosecute the persons of whom are responsible for those suspicious and easily avoided deaths.

This article was inspired by an introduction and conclusion by Michael Cooke from: Recent Changes in Australian Refugee Policy. Retrieved:
<https://www.refugeecouncil.org.au/publications/recent-changes-australian-refuge>.

International Tamil Refugee Advocacy Network (I-TRAN) (Australie) Tamil Movement (Suisse)
NGO(s) without consultative status, also share the views expressed in this statement.

⁹ See the Refugee Council of Australia's policy brief on TPVs at <http://bit.ly/1oYZAb7>