

## Australia Limits Refuge for the Refugee

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### Abstract

Antonio Guterres (2008), United Nations High Commissioner for Refugees (UNHCR) characterized the twenty-first century as one of mass movements of people, within and beyond their borders, escaping conflicts and upheavals. War and human rights violations propel millions of people beyond their borders searching for safety. Climate change, environmental degradation, and economic instability prompt many to search for better life opportunities. Attempts by governments to devise policies to pre-empt, direct, manage, prevent these movements have been erratic. Australia, for example has implemented a series of laws to control movement of asylum seekers, prevent their access to Australia, while choosing a quota driven number of people from refugee camps. Uniquely in the developed world Australia ignores international human rights laws and puts all asylum seekers in mandatory detention. Some countries claim ethnic or religious conflict, national security, or upsetting the population balance due to lack of tolerance among citizens. Politicians appear to believe that being tough on refugees makes their own populations feel more secure. Whatever the reason for non-admittance, refugees are often denied their internationally recognized human rights forced into desperate lives in refugee camps or in detention centres where they are unable to move, to work, or to enjoy any freedoms.

**Key words:** Refugees, human rights, Australian policy

### Introduction

In this article, I explore difficulties facing refugees within a global system in which poorer countries host the majority of people seeking asylum while wealthy nations fail to fully contribute to sustainable protection of refugees. Special focus on the Australian government's harsh treatment of people arriving by boat seeking asylum between the years 1998 and 2008 highlights severe limits on refuge and the extent of measures enacted to deny support. Reasons for individuals and families escaping their homelands to seek protection in Australia and extreme trauma suffered by them seem to be ignored. Rather the idea perpetuated is that people chose to enter Australia because it is such a great country.

Asylum seekers viewed as potential threats to national security have inspired laws and policies which deny human security of people seeking refuge have been implemented. The Australian government

response to asylum seekers has been highly discriminatory reflecting a sense of insecurity, a fear of the 'other' (McMaster, 2002: 6). Investigation of asylum protocols elaborated in international human rights treaties and conventions from the UN Refugee Convention in 1951 to the present reveals that asylum policies grew out of the 'White' Australia Policy and Australia's claims to special status. When UN delegates were drafting the 1948 Universal Declaration of Human Rights and the later International Covenant on Civil and Political Rights (ICCPR), Australia was one of the countries that strongly opposed any guarantee of the right to asylum. This view has prevailed (Brennan, 2003).

Signatory to the 1951 *United Nations Convention Relating to the Status of Refugees* originally and its *1967 Protocol*, the Australian government is morally and legally obliged to respond to those who seek asylum in accordance with these

Conventions. Despite international obligations, people arriving by boat have been denied their rights to land on the nations' mainland and claim asylum. An *asylum seeker* is a person who has not yet been officially recognized as a *refugee*, but who is applying to have her/his status as a refugee recognized under the international definition. It is important to note that a person is a *refugee* the moment s/he fulfils criteria set out in the *Convention Relating to the Status of Refugees*, first signed in Geneva in 1951. The formal recognition of someone does not establish refugee status but confirms it. According to Article 1 A (2) 1951 of the Convention, the legal definition of refugee is:

Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable, or, owing to such fear, is unwilling to return to it.

### **Global Comparisons: Refugees and Asylum Seekers**

Numbers of people requesting international protection varies greatly between countries and years, largely in response to political developments in countries of origin or the introduction of stricter asylum policies in receiving countries. Factors may include welcoming social networks of communities operating in some countries of destination. Most of the world's refugees do not receive formal determinations of their status under the 1951 UN Convention. The United Nations therefore counts those officially recognised as refugees and asylum seekers awaiting determination, beneficiaries of more general forms of protection granted for similar reasons and others it considers as refugees. At the start of 2004, there were

just over 17 million persons 'of concern' to United Nations High Commissioner for Refugees (UNHCR), the lowest figure in a decade. This number included, about 9.7 million refugees, 1 million asylum seekers, and 1.1 million returned refugees. Four years later, the UNHCR identified a 31.7 million "total population of concern" including 11.4 million refugees and 740,000 asylum seekers. More than 14 million people worldwide had fled their homes because of war and persecution (UNHCR, 2009: 16).

People seeking safety are often met with hostility or held for years in "detention camps" in regions bordering the countries they fled. The majority of refugees from Iran, Burma, Somali, Sudan, Iraq, and Afghanistan come from countries where conflict, persecution, human rights abuses have persisted for years. It is unlikely refugees will soon return to their countries. The term "warehoused" refers to populations greater than 10,000 who have been segregated and restricted to life in these camps for five years or more, deprived of basic UN Convention rights. As of 31 December, 2004, almost 8 million people had been "warehoused" for five years or more. The vast majority of this group, almost 7 million, had been "warehoused" for a decade or more (USCRI, 2005: Table 5).

The high number of people recognised as refugees living in such dire circumstances is testament to an international failure to find long-lasting solutions and safe refuge for the world's refugees. The international community fails to equitably share the burden of assisting asylum seekers. In 2001 Iran hosted over 1.4 million Afghan refugees, many of whom had been there for 20 years, as well as a further 500,000 Iraqi refugees from the early 1990s. By the end of 2007, Asia hosted the largest number of refugees (55%), followed by Africa (22%), Latin America and the Caribbean (5%) and At the end of 2007 Pakistan hosted the largest number of refugees, more than 2

million residing in that country, followed by Syria (over 1.8 million), and Iran (approximately 964,000) (UNHCR 2009: 8). All these nations are overburdened with

migrants and refugees, unable to adequately support them.

Country of Asylum	2004	2005	2006	2007	2008	Share 2004-08	Rank 2004-08	Per 1,000 Inhabitants 2004-08 Total	Rank	Per 1US\$/GDP Per Capita Total	Rank
France	58,550	49,730	30,750	29,390	35,160	12%	2	3.3	15	6.1	1
USA	52,360	48,770	51,880	50,720	49,020	14%	1	0.8	27	5.5	2
UK	40,620	30,840	28,320	28,300	30,550	9%	3	2.6	17	4.5	3
Germany	35,610	28,910	21,030	19,160	21,370	7%	5	1.5	21	3.7	4
Canada	25,500	19,740	22,910	28,340	36,900	8%	4	4.1	12	3.5	5
Sweden	23,160	17,530	24,320	36,370	24,350	7%	6	13.8	3	3.4	6
Turkey	3,910	3,920	4,550	7,650	12,980	2%	15	0.4	32	2.6	7
Italy	9,270	9,550	10,350	14,050	31,160	4%	8	1.3	22	2.5	8
Greece	4,470	9,050	12,270	25,110	19,880	4%	9	6.3	9	2.4	9
Austria	24,630	22,460	13,350	11,920	12,810	5%	7	10.02	4	2.2	10
Poland	8,080	6,860	4,430	7,210	7,200	2%	14	0.9	26	2.1	11
Belgium	15,360	15,960	11,590	11,120	12,250	4%	10	6.3	10	1.9	12
Slovakia	11,400	3,550	2,870	2,640	910	1%	18	4.0	13	1.1	17
Czech R.	5,460	4,160	3,020	1,880	1,690	1%	21	1.6	20	0.7	21
Hungary	1,600	1,610	2,120	3,430	3,120	1%	23	1.2	23	0.6	22
Azerbaijan	1,230	1,050	670	540	560	0%	30	0.5	31	0.5	23
<b>Australia</b>	<b>3,200</b>	<b>3,200</b>	<b>3,520</b>	<b>3,980</b>	<b>4,750</b>	<b>1%</b>	<b>20</b>	<b>0.9</b>	<b>25</b>	<b>0.5</b>	<b>24</b>
Ireland	4,770	4,320	4,310	3,990	3,870	1%	19	4.9	11	0.5	25
Finland	3,860	3,570	2,330	1,430	4,020	1%	22	2.9	16	0.4	26
Denmark	3,240	2,260	1,920	1,850	2,360	1%	24	2.1	18	0.3	29

A disproportionate share of the global burden of protecting refugees and asylum seekers is carried by poor developing countries contributing to already existing difficulties in national development. While wealthy nations were spending at least \$12 billion to process asylum claims for refugee status of a mere 15% of the global refugee population, they contributed only US\$1-2 billion to support 85% of the world's refugees in poor nations (Hathaway, 1999: 11). Developing countries host the vast majority of the world's refugees and asylum seekers. Nations with per capita incomes of less than \$2,000, for example, Chad, Tanzania, India, and Pakistan host more than two thirds (71%) of all refugees. Nations, such as Lebanon, Iran, Venezuela, and Thailand with per capita incomes from \$2,000 to \$10,000 host almost one quarter

(24%) of the world's refugees. Nations with over \$10,000 per capita income, like Norway, Italy, Australia, Germany, United States, and the United Kingdom, host just five per cent of the world's refugees (USCRI, 2006: 13).

In 2008, an estimated 383,000 individuals requested asylum in 51 European and six non-European countries (New Zealand, Australia, Canada, Japan, the Republic of Korea, and the United States of America) an increase of 12 per cent compared to 2007 (UNHCR, 2009:3). Countries are ranked on the number of asylum seekers per national population based on the national economy of Gross Domestic Product (Purchasing Power Parity) giving more realistic indications of the countries' capacity to host asylum-seekers. For example, Turkey

ranked fifteenth in the world for the number of people making application for asylum. When national economy was considered Turkey, a relatively poor nation, ranked seven with 2.6 applications and Australia ranked 24<sup>th</sup> with a mere 0.5 asylum applications per 1,000 inhabitants (Table 1).

**TABLE 1: Asylum Applications Submitted in Select European and Non-European Countries**

Source: Compiled from UNHCR, 24 March 2009, *Asylum Levels and Trends in Industrialized Countries 2008: Statistical Overview of Asylum Applications Lodged in Europe and Selected Non-European Countries*, Geneva: UNHCR, Page 13.

The next section explores approaches taken by Australia to reduce numbers of asylum seekers arriving by boat. Why do people risk their lives by taking leaky boats in dangerous waters to reach Australian shores? Two main reasons are the size of the international refugee problem and the other is the limited options available to asylum seekers. Why does Australia deny asylum seekers their universal human rights of seeking refuge? The government restricts free movement and ideas under the guise of national security. Widespread concerns about these practices by contemporary governments have been linked with an increasing sense of security globally, a deep dread and fear of people in need seeking asylum. As signatories to the Refugee Conventions Australia is morally and legally obliged to respond to refugees and those who seek asylum in accordance with the Refugee Conventions.

#### **Australian Humanitarian System**

Most refugees admitted to Australia take one of the 13,000 (Commonwealth of Australia, 2008) yearly allocated places being carefully selected as part of an “offshore” Special Humanitarian Programme (SHP). This resettlement SHP gives visas to two main groups of people, refugees

identified by the United Nations High Commissioner for Refugees (UNHCR) referred to Australia for resettlement and other residents in refugee camps, who have close relative ties with Australian citizens. The second part of the SHP involves “onshore refugees” granting protection visas to people who claim refugee status after their arrival in Australia by air or sea. Some who arrive by air with student, tourist visas or other short term visas may apply for refugee status. Smaller numbers of people who enter Australia by boat without visas and seek protection as refugees are accused of having no documentation, labelled as “unauthorised irregular migrants” and held in detention centres until proof of refugee status is determined or deported from Australia.

In 1996 the Australian government linked the “onshore” and the “offshore” programs thereby reducing the number of “offshore” refugee visas issued for every protection visa offered to an “onshore” asylum seeker creating a two-tiered system. Australia was criticised for creating categories of refugees with different entitlements causing confusion. “Offshore” refugees, called deserving of help, had full rights. “Onshore” refugees were treated as “queue jumpers,” criminals deserving few rights (Refugee Council of Australia 2002). Most refugees admitted to Australia are part of the organized resettlement programs run by the UNHCR, not spontaneous asylum seekers who claim protection once inside Australia.

Border protection expresses a clear exclusionary policy aimed at keeping Australia free of asylum seekers. In response to a small number of asylum seekers arriving by boats the Government introduced legislation (1992) to place all ‘unauthorised arrivals’ on Australian shores in mandatory detention. This policy of mandatory detention was introduced with the development of a system of prison-like camps, until claims for refugee status had been assessed (McMaster, 2002).

**Australian Detention Centres: Privatised Prisons for Asylum Seekers**

The Australian Protective Service, a federal government agency managed security at all detention centres. Services such as food, medical care, education and welfare were provided directly by the Department of Immigration and Multicultural Affairs or through individual contractors. At the end of 1997, responsibility for operating centres was ‘contracted out’ to a private company, Australian Correctional Management Pty Ltd (ACM), a subsidiary of the international security company, Wackenhut Corrections Corporation which specialises in “human containment services”, including prisons. Between 1998 and 2002, ACM managed all seven detention centres (Figure 3) at Curtin, Port Hedland, Perth, Woomera, Villawood, Baxter, and Maribyrnong (Talk, 18 February 2005). George Wackenhut, in a 2000 documentary aired on SBS, welcomed the introduction of mandatory detention in Australia: “Australia is really starting to punish people as they should have all along” (Hooker, 23 February 2005). Wackenhut which managed fifty five private prisons and detention camps in over eight countries could easily celebrate as his corporation profits soared in Australia. The Australian Department of Immigration and Multicultural Affairs (DIMA) was the third largest client globally of Wackenhut in 2000. The company was paid \$328 million during their contract from early 1998 to December 2002. In 2001 Wackenhut had a turnover of more than \$2.8 billion. (Edwards, 21 January 2002).

The two largest American prison corporations, Correction Corporation of America (CCA) and Wackenhut control over 75% of the global private prison market. (Davis, 2003: 97) with the privatisation prison model becoming transplanted into other countries. In Melbourne, Australia (1996) the first private women’s prison was established by CCA. The state government of Victoria “adopted the US Model of

privatisation in which financing, design, construction, and ownership of the prison are awarded to one contractor and the government pays them back for construction over twenty years. It is virtually impossible to remove the contractor because that contractor owns the prison”. There is no independent review (George, 1999: 190). Australian detention centres held asylum seekers, women, men, and children, not criminals, but were being run by private, for profit companies which specialised in prison management.

A Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) investigation in the ACM run detention centres between 1998-2002. A 66 page report detailed riots, abuses, and outbreaks of asylum seekers. Public access to the body of the report denied by DIMIA on grounds that the report’s release would severely affect operation of detention centres was finally assessed finally through freedom of information. The DIMIA report resulted in ACM being served a default notice (2002), for a “serious contractual breach”. A default notice is the strongest penalty available under a contract between the government and private contractor. The DIMIA refused to reveal the details of the default notice as it would harm the business reputation of ACM (Washington, 2003). An Australian Broadcasting Corporation (ABC, 2003) documentary revealed ACM had lied to the government about its management of refugee detention camps to boost profits, covered up child sexual abuse, committed relentless acts of trauma. The company had destroyed medical records of detainees at Woomera detention centre according to staff members In 2002 ACM made a profit of \$8.5million from running the centres. The cost per day/ per person was \$104.

The Australian Government announced that ACM detention centre contracts would be put out to tender. Group 4 Falck Global Solutions Limited was successful and replaced Australian Correctional Management Pty Ltd (ACM) as the private

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contract detention service provider. Group 4 Falck Global Solutions is not a new company but results from complex business ventures. In 2002 Group 4 bought a 57% stake in the American based Wackenhut Corporation. The US Corporation bought back this stake in July 2003 (PSIRU October 2003). The following year in 2004, Group 4 Falck announced a £200 million bid from Geo Group Incorporated for its subsidiary Global Solutions Limited. This was not a new company. It was Wackenhut Corrections Corporation re-named for trade in the United Kingdom. Wackenhut shared ownership of Premier Custodial Group with another company Serco. After a legal battle and charges made by the Competition Commission, Wackenhut sold its share to Serco (PSIRU, May 2003; June, 2003). In 2004, Group 4 Falck, the world's second largest security company, then merged with Securicor (Talk, 18 February 2005).

Global Solutions Limited (GSL) created when businesses in the UK, South Africa and Australia were 'de-merged' from the parent company. Global Solutions Limited (Australia) was established as a wholly owned subsidiary of Global Solutions Limited. Operating Australia wide, GSL employs 1,300 staff with an annual turnover over \$150 million (GSL, Australia, 2008: 4). Australian GSL business interests lie in operating the maximum security Port Phillip prison for the Victorian State Government, the low to medium security Mount Gambier Prison for the South Australian Government, forensic psychiatric facilities in Victoria and Tasmania, prison transport and court security in Victoria and South Australia, public, non-emergency ambulance services in Victoria, and Electronic Monitoring Services in South Australia. GSL attributes their rapid commercial growth and business development being a result of the "outsourcing of government services during the 1990s in the search for innovative funding and management solutions to increasingly complex problems" (GSL Australia, 2008: 4). Privatising prison

services is a profitable global business (Ferguson, 2007).

Corporation can withhold information from the public claiming commercial confidentiality, a major problem with outsourcing detention management to any private company. Public scrutiny of detention centre operations is minimal and accountability for the treatment of detainees is limited (Crock, Saul, Dastyari, 2006: 189). The Baxter Detention Centre, located on part of the site of Australian Defence Force's El Alamein Barracks, became operational in September 2002. It was purpose built by Thiess Constructions Proprietary Ltd. in partnership with Australasian Correctional Management (ACM). Thiess, a large Australian construction company with several government contracts to build private prisons, is a 50% shareholder in Australian Correctional Services (ACS). The other 50 % shareholder is ACM, subsidiary of Wackenhut (New Matilda, 23 February, 2005).

The ACM ran, managed, and formalised a punishment regime at Baxter detention centre introducing a written contract for detainees to sign when they were placed in RED ONE for punishment. This contract was made with no outside reference of any independent or monitoring body. The contract detailed the number of hours in solitary, fresh air, number of weeks they were to be locked up in RED ONE as well as punishments to be imposed if the detainee refused to obey the rules.

Philip Ruddock, Minister for Immigration and Multicultural and Indigenous Affairs, at a Baxter Detention Centre media open-day (19 April, 2003) planned to coincide with a National Protest against Mandatory Detention, stated, "I am personally tired of hearing those long lists of accusations of mistreatment of detainees and the poor state of those held inside Baxter". Ruddock, inspired by recent meetings with American correctional officials to discuss methods of

containment of suspected Taliban fighters in Camp X-Ray, Guantanamo Bay, Cuba, stated, the US Military allowed "quite open access to see how prisoners are treated, so I thought to myself we'd better give it a go" in Australia (DIMIA, 15 April 2003). The Australian Government perceived and treated asylum seekers as dangerous prisoners.

Journalists permitted to tour the Baxter Detention Centre the first time in two years reported shock at the prison conditions for asylum seekers. Detainees were held in solitary confinement sometimes for a month at a time. Each of the five rooms on either side of a corridor had a floor mattress and a 24 hour security camera in each room. Asylum seekers were held in the Red Compound after release from the Management Unit, in order to be "re-integrated". Metal furniture bolted to the floor and peepholes for security guards to look through whenever they wanted guaranteed no privacy (Banham, 29 July 2004).

Detention prisons reflect trans-national trafficking of ideas, culture, and construction of security architecture. Imprisonment is linked with political agendas, media speculation/ representation, and profit drive of global corporations. Individuals seeking asylum arriving by boat have been treated as criminals, a special category distinct from the mainstream, deserving of punishment, not respect. People fleeing persecution, seeking refuge were held outside the normal, in camps as spaces of exception. Language was used to denigrate people seeking asylum, "illegals", "unauthorised aliens", "invading hordes", and "queue jumpers". Australian Government policies focussed on detention of boat arrivals despite far greater numbers of visa overstayers who arrived by air (Crock & Saul, 2002: 23-24). The vast majority of people fleeing persecution in Iraq and Afghanistan came after 1999 due partly to increased harassment by state authorities in countries of first arrival such as Pakistan and Iran

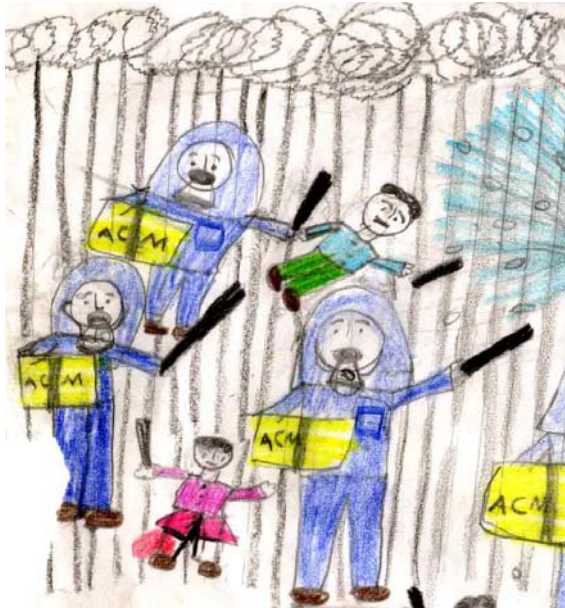
(HRW, December 2002: 15-20). Children, men and women were held in maximum security detention camps run by private prison corporations.

### **Asylum Seekers Punished: Life in Australian Detention Centres**

The right to liberty is a fundamental right, recognised in all major human rights instruments, both at global and regional levels. The right to seek asylum is equally, recognised as a basic human right. The act of seeking asylum can therefore not be considered an offence or crime. Considerations should be given to the fact that asylum-seekers may have already suffered some kind of persecution or other hardship in their country of origin and should be protected against any form of harsh treatment. As a general rule, asylum seekers should not be detained (UNHCR, 1996:3).

The severity of Australian practices in detaining children, men, and women indefinitely in camps run by private security corporations was made public by several reports. After inspecting Australian mainland detention centres, Louis Joinet, head of the United Nations Working Group on Arbitrary Detention, declared he had not seen a more gross abuse of human rights in over 40 inspections of detention facilities around the world (Millet, 6 June 2002). The Australian system combining mandatory, automatic, indiscriminate, and indefinite detention without real access to court challenge was practised by no other country (UNHCR, 2002). The Australian Human Rights Commissioner (AHRC, 2002) visited seven immigration detention centres between 2001 and 2002 raised several areas of concern. Conditions of detention centres resembled prisons with razor wire, electric fences, permanent supervision, handcuffing of detainees escorted outside the centre, even escape from a centre constituted a criminal offence. The harsh environment resulted in many instances of self-harm of children and adults held in these centres.

**Figure 1: Asylum Seeker Child's Drawing  
Woomera Detention Centre**



Source: Project SafeCom Incorporated (Western Australia) 23 June 2002

During ACM tenure running detention centres, hunger strikes, riots, escapes, major human rights abuses and violations were reported by Australian and international media. The operations of ACM were the subject of inquiries by a parliamentary joint committee and also the United Nations Human Rights Commission whose chief investigator described Woomera as “a great human tragedy” with conditions that were “inhumane and degrading”. Three people died in detention and there were many serious breaches of human rights with guards abusing people (HREC, 2001).

A child's drawing (Figure 1) depicts Australasian Correctional Management (ACM) guards armed with batons beating up asylum seekers at Woomera. The child carries a baton and bleeds from her leg. Water is blasted across the area from a cannon located just outside the painting. This was the first time a water cannon had been used on people in Australia. Guards attacked defenceless asylum seekers in an

attempt to control and prevent any movement. In response to threatened forced deportation of two hundred people at Woomera Detention Centre, a hunger strike began in June 2002. Another 20 people sewed together their lips to symbolise the ways they were held and silenced, unable to tell their stories of pain and suffering.

Asylum seekers expressed sadness and desperation of being held in prison like conditions treated as criminals, addressed by guards by their numbers not names. One Iraqi man in Curtin Detention Centre said, “They look at us as a criminal. Even though we are very educated-some doctors, some school teachers, some worked in a bank, some managers-even so guards look at us as animal or uneducated people, they look at us as criminals” (AHRC, 2002: 26). Several individuals stated they had experienced trauma and torture in their countries of origin but expected calm and rest in Australia. But now they are held behind razor wire, caged compounds. One woman explained how her husband was suffering nightmares, sleeplessness, helplessness, and depression: “When he came here it upset him even more after being tortured in Syria. He came here and saw himself in detention with fences all around him. That's why maybe it affected his heart. He doesn't need any treatment for the torture. He's on medication for his heart” (AHRC, 2002: 30).

Detention centre stories were circulated by church, professional medical, psychological, and legal groups, human rights and child welfare groups, concerned Australian citizens working on behalf of asylum seekers. In August 2001, a camera was smuggled into Villawood Detention Centre. The resulting film of Shayan Badraie, a listless six year old detainee, being taken to hospital, resuscitated, returned to detention, where his condition declined was shown on Australian Broadcasting Corporation (ABC) television's *Four Corners*. Callous treatment of a small boy in the name of ‘border security’ was now visible to Australians.



Child psychiatrists, Sarah Mares and Louise Newman published, *Acting from the Heart* (2007), a collection of stories written by Australian advocates for asylum seekers. *From Nothing to Zero* (Lonely Planet, 2003) was a collection of letters written by individual asylum seekers held in detention centres. Tom Keneally (2003: 1), a multi-award winning author who visited asylum seekers in Villawood Detention Centre, described his anger, hurt, and disbelief that the Australian Government so dispassionately locked up indefinitely people who sought refuge:

There appeared in our plain outer suburbs and our desert towns' double-walled gulags. Those who, sincerely or opportunistically, came from afar to seek asylum in our community were detained and isolated not for six weeks, not merely until it was discovered whether they had dangerous powers or connections, or were carrying antibiotic-resistant TB; not for six months, to allow the watchers to observe their behaviour. But for years. The apolitical infant fugitives were detained with their complex and supposedly dangerous parents. The government was officially proud of these installations. Yet there were no signposts to them. In the deserts they were remote. In the cities they seemed to be surrounded by industrial parks with many cul-de-sacs and unexpected crescents leading back to the street you recently left. But at last persistent visitors came suddenly, amidst small engineering works and warehouses, upon the high walls of steel mesh and razor wire. I say walls with reason-first an outer wall topped with the static buzz saws of razor wire to a height which Afghanistan's, Iraq's, Iran's, Bangladesh's champion pole vaulters could not possibly clear. There is an intervening road down which trucks could patrol or go on maintenance errands. And finally an inner wall, similarly exceeding an Olympic standard clearance.

Australian citizens began to question and contest their Government's practises of

mainland detention. The Australian Government sought to deny asylum seekers access to mainland shores.

### **Australia Tightens Borders**

Australia enacted measures to prevent asylum seekers reaching the mainland. The Commonwealth of Australia (1999) changed the *Border Protection Legislation Act 1999* altering the original *Migration Act 1958*. These changes limited asylum seekers' access to refugee procedures. The Act enhanced Australian authorities' rights to board and search ships and aircraft in Australia's territorial sea, in both the "contiguous" and "exclusive economic zones" and on the high seas. It encouraged "hot pursuit" in ships and airplanes, and boarding of ships. The use of "necessary and reasonable force" was to be used when arrests without warrant were made for all persons who had "committed, are committing, or attempting to commit a crime" as defined by the officer. Customs officers were now permitted to carry and use firearms and other defence equipment. In contravention of international immigration law, the Act allowed customs officers to move, seize, and destroy ships, if they appeared unseaworthy or posed threats to navigation, safety, property, or environment. Asylum seekers apprehended en route were brought to the mainland and placed in detention while their refugee claims were considered. Asylum claims barred people who could have access to protection in any country ("safe third country") other than their original country. Australia did not "have protection obligations" to anyone who failed to take "all possible steps" to find refuge in any country in which the person spent seven or more days while en route to Australia.

It is not an offence to come to Australia and seek refugee status. Australia, obligated under the Refugee Conventions to consider all asylum individuals' claims for refugee status, denigrated asylum seekers calling them "unauthorised boat arrivals," enacted legislation to tighten borders, armed the

coast guard to aggressively intercept boats, and formed regional agreements to hinder the free movement of people seeking asylum. Australia paid Indonesia to seek out, intercept and detain asylum seekers blocking their sea flights to Australia. Indonesia permitted Australia to intercept and force back to Indonesia, any boats caught in Australian waters (Mason, 2002:5). The International Organisation for Migration (IOM) is paid to interview detained asylum seekers and inform them of their options. If people agree to return home Australia pays for their trip. Those who want to make a refugee claim are referred to UNHCR for assessment and resettlement. Those who prove refugee status wait in detention until a Refugee Convention signatory country agrees to accept them. In out-sourcing its responsibilities, Australia pays Indonesia to capture asylum seekers, pays IOM to run the detention centres and uses the UNHCR as a contractor to process asylum claims.

**Figure 2: Island Locations for Australia Asylum Seeker Detention**



Map by Bernard Shaw, Western Australia, 2009

The Australian Government Department of Defence (2002: 4-5) in support of the US “war on terrorism” post 11 September 2001 increased border protection and enforced migration laws. “Illegal immigration arrivals” became the focus of border protection with major air and sea patrols across Australia’s northern approaches to deter and prevent “people smugglers from illegally landing people in Australia”. Maritime patrols of Australian coast guard or navy vessels forcibly prevented mainland landing of boats carrying asylum seekers under *Operation*

*Relex* between 2001 and 2003. Most asylum seekers turned back from Australia in October and December 2001 were still detained in Indonesia five years later. Held by the IOM, processed by UNHCR, and paid for by the Australian government, over 100 asylum seekers from Afghanistan, Iraq and Iran were impounded in detention camps in Bogor, south of Jakarta, on the islands of Lombok and Mataram, Indonesia (Figure 1).

Under a new regional *Pacific Solution*, passengers of intercepted boats not returned to Indonesia were transferred by Australian Defence Forces to small island states of Nauru, or Manus Island, Papua New Guinea, where they were immediately detained. An agreement signed between the Nauru and Australian Governments ensured the Nauru Government was paid the costs of visas for entry of asylum seekers, for the sole purpose of being detained. The Australian government enacted a complex series of enforcement and deterrence measures to ostensibly further prevent the entry of asylum seekers by boat on Australian shores and to protect the territorial sovereignty of Australia. Agreements were made with Papua New Guinea and Nauru to detain all boat people seeking asylum in Australia.

Two major legislative initiatives including seven bills comprise the 27 September 2001 *Border Protection Act (Validation and Enforcement Powers)* and the 20 June 2002 *Migration Legislation Amendment (Further Border Protection Measures) Bill*. Australian Government through these acts began to excise islands from being part of Australian territory for purposes of the Migration Act. By 2005 over 4,000 islands were excised or removed from the migration definition of Australian territory. The “excised offshore places” included: Ashmore and Cartier Islands in the Timor Sea; Christmas and Cocos (Keeling) Islands in the Indian Ocean; all islands that form part of Queensland, north of latitude 21° S; all islands that form part of the Northern

Territory, north of latitude 16° S; all islands that form part of Western Australia north of latitude 23° S; the Coral Sea islands Territory; any other external Territory prescribed by regulation or any island of a State or Territory which is prescribed; an Australian sea installation; and an Australian resources installation". If a boat carrying asylum seekers lands on one of these thousands of islands off the mainland coast, people on board are deemed not to have reached Australia. "Non-citizens, who make contact with these places, become persons to whom normal rules do not apply- at least as far as domestic law is concerned" (Coombs 2005: 3).

The Australian Government paid the International Organization for Migration (IOM) to manage detention centres on Nauru and Manus Islands and to cover the costs of accommodation, processing, and incentives. Another US\$75 million/year was budgeted between 2002 and 2006 for activities in other Pacific Island countries to prevent asylum seekers from reaching mainland Australia (Amnesty International 2002). Costs of this extensive scheme to keep asylum seekers out of Australian mainland were disproportionate to the size of the problem. An amount of \$159 million was provided in the 2001-02 with additional estimates for "offshore asylum seeker management". In the 2002-03 Budget a total of \$353 million was allocated for "unauthorised boat arrivals", including \$138 million for a purpose built detention centre on Christmas Island.

Asylum seekers lodging applications from these islands were denied access to the Australian refugee system. For example, people seeking asylum had their applications processed within 90 days on Australian mainland. Asylum seekers on Nauru or Christmas Islands had no such assurance, held indefinitely. Lodging and processing applications took months. Individuals were denied access to basic rights, legal representation, translators, refugee advocates, the media, community

groups and Australian public and human rights organizations. When refugee status of asylum seekers was determined, the Australian Government sought another third country to accept the people. These actions are in direct denial of Australia's international responsibilities as agreed in the 1951 Refugee Act according to international law commentators (Coombs, 2005).

Between 2001 and 2007, 1547 people, mostly Afghans and Iraqis, were taken to Manus and Nauru Islands where twenty-three babies were born. Detained asylum seekers were severely isolated from access to Australian lawyers, medical care, journalists, and human rights advocates with restrictions on entry. Official permission to visit asylum seekers in Nauru was often denied and travel cost was prohibitive (\$5000 Melbourne/Nauru return airfare). The Department of Immigration besides obstructing asylum seekers' access to legal advisors, used interpreters speaking different languages, inadequately researched refugee claims, and mistreated unaccompanied minors as adults. People detained in isolated conditions were harshly treated like criminals held in over-crowded island detention centres, received inadequate medical care, experienced abuse by guards, and suffered from extreme heat and cold. Psychiatrists working for the International Organisation for Migration (IOM) warned of desperate asylum seekers at high risk of committing suicide and reported instances of hunger strikes. A Parliament of Australia Senate Committee (September 2003) noted that over 260 people including more than 70 children had been locked up and isolated in inhumane conditions for over two years in Nauru detention. Denied claims of refugee status added to feelings of hopelessness.

**Figure 3: Location of Detention Centres in Australia and offshore Islands**

Source: Australian Human Rights



mission (AHRC) 2004: 3

The Australian Government disclosed an agreement with the United States (Hart, 2007) to exchange refugees detained on Nauru and Manus Islands with 200 Cuban and Haitian refugees held at Guantanamo Bay. This expensive program designed to deny “people-smugglers and unauthorised boat arrivals” their rightful place as refugees in Australia and United States, bargained human lives for tough border protection policies. The Australian government turned its attention to the construction of a high security detention prison on Christmas Island.

**Christmas Island: High Security Prison for Asylum Seekers**

Christmas Island, 28,000 km northwest of Perth, Western Australia, 380 kilometres south of Java in the Indian Ocean is home to 1200 people of Chinese, Malay and Caucasian heritage. The 135 sq km jungle-clad mountainous island consists mainly of limestone with volcanic rock. More than 60% of the island is national park with one of the world’s largest and most diverse land crab populations. The Christmas Island Permanent Immigration Reception and Processing Centre (Detention Centre) was constructed on a relatively flat 30 hectare piece of land in the remote northwest tip of the island on mining leased land resumed by the Commonwealth from Phosphate

Resources Ltd in 2002. The Department of Immigration announced competition for design and construction of a new detention centre with a capacity of 800 to “advance the quality and style of detention facilities in Australia”. What would be an advanced design for a detention centre? What qualities were sought by the government? Who would decide? Architecture translates an understanding of human life into a three dimensional form. It should aim to dignify human life. Buildings designed to imprison asylum seekers abuses the dignity of human life. Glen Murcutt, distinguished Sydney based architect, citing the Australian government’s denial of the rights of people fleeing persecution to seek asylum and inhumane practices of mandatory detention, refused to participate in the design and construction of a prison for their arbitrary imprisonment (Farrelly, 2002).

Companies experienced in prison design and high security built the detention centre costing \$400 million for construction with additional \$66.6 million to support infrastructure (Tuckey, 2002). The Phillips Conwell Smith architectural firm with 25 years experience in building prisons was awarded the contract, boasting “fully welded, stainless steel door control covers held in place so they are virtually indestructible” to ensure a high security Christmas Island Detention Centre. Steelfinne Fabrications Pty. Ltd, a major supplier for prisons and police stations was contracted to supply and install secure doors, frames, locking systems.

Global Solutions Australia (GSL) private security company with global reach in prison management was chosen to run Christmas Island Centre (GSL Global, 2008: 1). As mentioned earlier, GSL Australia’s major ongoing contracts with Australian Commonwealth and State Governments included management of detention facilities throughout Australia, the maximum security prison in Victoria, low to medium security prisons in South Australia, forensic

psychiatric facilities in Victoria and Tasmania, prisoner transport, court security, and electronic monitoring services in Victoria and South Australia.

This private prison company was charged for breaching the human rights of asylum seekers under Articles 7 and 10 (1) of the *International Covenant on Civil and Political Rights* (ICCPR). While transporting 'asylum detainees' between two mainland detention centres GSL staff used excessive force to push individuals into a van. Each person was held in a tiny separate steel compartment, unable to stand, lie down, or sleep, denied water, and suffered in high temperatures with no air-conditioning. The GSL staff driving the van watched detainees on CCTV but ignored cries for help. The Human Rights and Equal Opportunity Commission (HREOC, 2007) found GSL subjected asylum detainees to degrading treatment, ignored dignity of the human person and deprived them of their liberty. Now the companies' most remote location, "a small tropical island in the middle of the Indian Ocean," is considered a hardship post for GSL staff as "workers find the remoteness of Christmas Island and unfamiliar experience of living on a small island difficult to come to terms with" (GSL Global, 2008: 2).

Asylum seekers are intercepted on the water, prevented from reaching mainland Australia, captured by Australian defence forces, transported to a high security prison run by private prison corporation, on remote Christmas Island legally excised from Australian mainland. Major problems with outsourcing detention management to private companies are that the corporation can withhold information from the public claiming commercial confidential reasons. Public scrutiny of the centre operations is minimal and accountability for the treatment of people detained is limited. Asylum seekers have no independent access to legal, social, medical, community groups. Preventing human rights of asylum seekers to flee persecution, move freely, and seek

refuge in Australia was the major aim of the Australian government. Protection of migration patterns of crabs was a priority. Environmental concerns about prison construction were carefully considered by the government. Thirty tunnels (\$30,000/tunnel) for red crabs along the main road to the Detention Centre were built to prevent harm during migration season (ABC radio, 2002). Boasting care for the environment and wildlife, the government denied independent observers of the detention project.

Some 187 Detention Centre plans were leaked by architects to human rights groups between October and November 2006. Construction designs highlighted solitary isolation cells, hundreds of movement detectors, security cameras under eaves, on roofs, and in each room. CCTV is linked to a remote control room in Canberra, Australia's capital. Detainees wearing electronic ID tags have every movement photographed and monitored. The high level of security was visible with cages, wire covered windows, bolted down furniture. Two high fences, the second one electric, circle the perimeter of concrete and steel building resembling a large cage. A hospital area with an operating theatre indicates that people held in detention were not to be removed even for hospital care. Architects' drawings stipulated areas designated for locking up mothers, babies and small children, including a nursing and diaper changing area. No Australia law makes it illegal to lock up children, babies, and their mothers in detention centres (Australian Human Rights 2007).

Area visits were restricted until a new Government invited fifty community members from human rights groups, UNHCR, Ombudsman, and refugee advocates to visit the Christmas Island Complex (13 August 2008). Passports are needed as Christmas Island is an Australian excised area, a five hour flight from Perth. After a Detention Centre tour, these groups: A Just Australia, Amnesty International

Australia, Asylum Seeker Resource Centre, Asylum Seekers centre of NSW, Victorian Foundation for Survivors of Torture, Immigration Advice and Rights Centre, Jesuit Refuge Service Australia, and the Refugee Council of Australia, wrote (15 August 2008) to the Minister for Immigration and Citizenship (Crikey, 2008) stating that “immigration facilities including the vastly expensive centre are a product of excision,” an “unfair and harmful policy” denying asylum seekers entitlement to “applications for protection determined under the procedures that apply on the mainland” to ensure that those in need of protection are not returned to countries where they would face torture or death. Concerns were expressed about the design of a “high security, prison-like character of the new facility” with “very expensive security systems” in an “extremely harsh and stark environment to detain people seeking asylum.” The group suggested “many better uses for the \$400 million” for construction cost and “additional millions” for upkeep and operating and the severe human costs, “damage to people’s mental and physical health by detaining them in a high security detention centre” intensified by the lack of services including “torture trauma counselling and expert legal advice.”

### Conclusion

Australian deters, intercepts, and detains boat-arriving asylum seekers on offshore, extraterritorial islands, in detention camps, outside Australian legal systems. Islands historically have been spaces of incarceration. The island could be viewed as metaphor for prison. Islands are cut off from mainland and, therefore, used to exclude and isolate individuals from everyday life. Governments have for centuries used islands as offshore sites to detain political dissidents, authors, indigenous leaders, and prisoners of conscience. Detaining asylum seekers, children, women, and men in offshore detention centres is a modern form of government sanctioned inhumanity.

Refugee numbers within the Pacific region are small in relation to those in Asia and African regions. Yet Australia under the *Pacific Solution* allocated hundreds of millions of dollars to detain a small number of asylum seekers from the Middle East and Central Asia in internment detention camps in Nauru and Papua New Guinea. Pacific regional nations have limited funds to deal with tens of thousands of refugees and internally displaced people from conflicts in West Papua, Fiji, Solomon Islands, and Bougainville. Australia’s refugee policy showed no concern for the development of neighbouring Pacific nations, obsessed only with Australia’s interests. The establishment of detention centres on two former colonies of Australia raised legal and territorial questions. Nauru is not signatory to the 1951 Refugee Convention. Papua New Guinea has signed the Convention, but with significant reservations. Australia’s *Pacific Solution* breaches the Constitutions of both countries which prevent arbitrary detention and provisions for the right to a lawyer for detainees. These human rights have been denied asylum seekers on Nauru and Manus Island. UNHCR has explicitly stated that Australia’s policy on detention of refugees on Nauru and Manus Island is a breach of its international human rights obligations.

Australia’s policies challenge spatial, legal, and temporal meanings of national borders. Australia presents a different geographical and political context than European, North American, Asian nations with multiple shared and contested borders over which migrants/ asylum seekers move. Vast expanses of oceans surrounding Australia’s continental island form a natural moat. In a technical sense the policing of these watery borders may be a more feasible logistical engineering feat than patrolling road and rail border crossing, blocking high mountainous passes, or constructing solid walls and electric fences. The excision of islands and reefs from the zone of migration zone was one way in which Australia attempted to pre-emptively block movement of asylum

seekers. For the purpose of protection of national borders, Australia excised, “excised” its own territory legally cutting-off over 4000 islands disowned for the purposes of seeking asylum.

In the 21<sup>st</sup> century, the wealthy democratically elected Australian government denies asylum seekers human rights of seeking refuge. Individuals forced from their lands fleeing torture, conflict, arrest and harassment for religious or political beliefs become homeless and defined as invaders, seek asylum and refuge elsewhere. Refugees challenge the idea of nation state. They are figuratively and physically wanderers, border persons, trying to enter another country. If not excluded or confined they appear to threaten and perforate the territorial integrity of Australia. Under the ostensible guise of securing their borders, Australia engineered its own social and physical landscapes and that of regional nations. Islands are places where the state extends its mainland power outside any limits. Asylum seekers arriving by boat were made prisoners first in mainland detention centres, then on offshore islands, placed outside Australian life. Islands are places where the law acts through force, but where the law has no protective power for those detained. Asylum seekers existed in detentional limbo of indefinite sentencing separated from legal, political, social, economic life caught in a temporal void.

The *Pacific Solution Policy* was ended. Detention centres on Nauru and Manus Islands were closed. Chris Evans (29 July 2008), Minister of Immigration and Citizenship Australia described “Australia’s national interest demands continued efforts to prevent people-smuggling to our shores”. Strong border controls are needed to prevent large numbers of “unauthorised arrivals” coming to Australia due potentially to “massive displacement of persons in the Middle East and Asia caused by conflict and natural disasters” and “well-established people-smuggling operations”. Financial

assistance was given to four Southeast Asian countries to deter, detain, and prevent people leaving by sea for Australia. The asylum seeker deterrence policy includes: extensive border patrol by Defence, Customs and other law enforcement agencies; excised architecture of offshore islands; non-statutory processing of “unauthorised arrivals” at excised places on Christmas Island; mandatory detention of all “unauthorised arrivals”. National interest dominates over human rights of asylum seekers.

Asylum seekers are not criminals. They have committed no crimes. But they are effectively criminalized. Detention centres are run by private prison companies. On Christmas Island, far away from public scrutiny, is Australia’s highest security complex of steel, mesh, and electric fences, a techno-engineered electronic monitoring of detainees with remote cameras recording all movements. With no access to courts, lawyers, media, and public gaze, asylum seekers are at the mercy of the private security guards. Asylum seekers held as criminals on Christmas Island are antithetically denied safe refuge. Christmas Island Detention Centre is a dehumanising prison environment designed by architects experienced in prison construction and run by a private corporation specialising internationally in operating prisons and immigration detention and removal centres. Australia, acting in its “national interest” pays neighbouring Southeast Asian governments not signatory to the UN Refugee Conventions to deter and detain asylum seekers en route to Australia. The Australian government ignores national interests of regional governments while refusing to protect rights of people seeking asylum.

The right to seek and enjoy asylum is guaranteed by a range of international instruments to which Australia is a party. These include the Universal Declaration of Human Rights (Article 14), the Vienna Declaration and Programme Action adopted

by the World Conference on Human Rights, the Convention Relating to the Status of Refugees (Articles 26 and 31), the International Covenant on Civil and Political Rights (Articles 9 and 16), and the International Convention on the Elimination of all Forms of Racial Discrimination (Article 5). Australia's twin policies of mandatory detention and the denial of the right to seek asylum effectively breach all of the obligations assigned by these instruments. On fourteen occasions over the past decade (1998-2008), the UN Human Rights Commission made adverse findings against Australia for immigration detention violations of the prohibition on arbitrary detention in Article 9 (1) of the International Covenant on Civil and Political Rights. The United Nations Committee Against Torture (29 April 2008) raised concerns and objections to Australian Government practices which include mandatory detention of asylum seekers in an offshore, high security prison on Christmas Island. Australia has transformed the physical, legal, and social landscapes of its own territory and that of other countries. This pragmatic approach denies human dignity and respect for human freedoms and ignores international responsibility for offering refuge to refugees. Private prison corporations profit from the governments' outsourcing responsibility of giving refuge to asylum seekers. Individual children, men, and women fleeing persecution are made to suffer.

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