

## THE RIGHTS OF REFUGEES IN DETENTION (A STUDY IN SOUTH AUSTRALIA)

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### ABSTRACT

**Keywords: Refugee, Asylum Seeker, Living in Detention**

*Millions of people flee war and persecution in their countries that are called refugees. Australia has an important responsibility as a member of the international community and The Australian government has some policies for this people. However, in fact there are some problems in treating them because some refugees entered Australia without documents or identifications. They must live in detention for a long time while their status being processed. This report is aimed to show the status of refugee; the rights of refugee; how the Australian treats them by using detention policy; how they live in detention and the effects of it. Finally, it gives some alternative solution that may solve their problems.*

### A. INTRODUCTION

Millions of people flee war and persecution in their countries. They are people like any others, except they have to leave their countries reluctantly and without preparation. They leave their homes, jobs and even their family. Some take the road, some take boats to flee war, violence, natural disaster, or flee persecution for their beliefs or their ethnicities. Australia has an important responsibility as a member of the international community to these people, which are called refugees. The Australian government has some policies for refugees and asylum seekers. However, in fact there are some problems in treating them because some refugees entered Australia without any documents or identifications. Therefore, the refugees as asylum seekers, included children and women, must live in detention for a long time while their status being processed. While they live in detention; there are some problems that affect the asylum seekers, particularly women and children. This report is aimed to show the differences

between refugees, asylum seekers and illegal immigrants; the status of refugees; the rights of refugees; also how the Australian government treats them; the process of status determination; how they live in detention and the effects of living in detention, particularly for women and children. Finally, it gives some alternative solutions that may solve their problems.

This research is done in South Australia, which have some detention center for the refugees. It's so accommodating because the data and condition will be more accurate and reliable. The data is obtained from any references and resources, which has relation to the objective research. The research had been done for 1 (one) month; include 1(one) week to collect the data at the library, 2 (two) weeks to select the data that related to the object and analyze them. Finally, at the last week, the data has been merged into one research report. The data was analyzed by using the descriptive method, which describes the fact and condition of refugee's life in detention center.

## **B. BACKGROUND**

### ***1. The Differences between Refugee, Asylum Seeker and Immigrant***

Firstly, it is important to know the differences between a refugee and a migrant because the terms are frequently confused. Refugees are people who have been forced to leave their countries because they have been persecuted for one reason or another. They have had no opportunity to prepare themselves physically or psychologically for their new life in new place. On the other hand, based on The Refugee Council of Australia (2001), migrants can make a choice and they have time to prepare themselves. Another important distinction is that migrants could go home at any time, while refugees cannot. On the other hand, refugees are different to asylum seekers because some asylum seekers can enter one country legally with documentation, this kind of asylum seekers do not need live in detention, and then they apply for asylum. Asylum seekers only apply for Temporary Protection Visas while refugees apply for refugee status. However, some of asylum seekers are refugees because they do not

have any documents and identifications. This report will focus on refugees as asylum seekers, not asylum seekers in general, because refugees as asylum seekers should not live in detention for a long time even though they had no documents and entered Australia illegally.

## *2. Refugee Status*

According to the 1951 Convention relating to The Status of Refugees and its 1967 Protocol (Goode, 2002), A refugee is:

“Any person who owing to a 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/her nationality and is unable, or owing to such fear, is unwilling to avail himself/herself 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”.

The important points of this definition are:

- That the person has to be outside his/her original country
- The reason for his/her flight has to be a fear of persecution
- He/She has to be unwilling or unable to seek the protection of their own country

Australia as a member of United Nations has signed The Refugee Convention and its protocol, and this means that they were committed to respect the right of asylum seekers. However, each country that signed the Convention is left to run its own method of receiving asylum seekers and processing their status. In 1991 Australia made an amendment to its immigration law by giving the Refugee Status or Temporary Protection Visa (TPV) to the people who claim themselves as refugees or asylum seekers once they have landed in Australia, without documentation (Medecins sans frontiers, 2002). Actually, most of the asylum seekers are really refugees but they should provide a lot of evidence such as document or identification for their status. Usually they do not have any document or identification because they flee in a hurry and have no preparation. Consequently, most of refugees as asylum seekers have been

rejected as refugees and they only get Temporary Protection Visa (TPV). This visa is limited to three years, after that the visa holder must re-apply. It limits access to social protection, immigration arrangement services and medical care. It also enforces full fees for education. TPV holders are allowed to work but usually they do not have sufficient skills and difficult to find employment in a short-term.

### 3. The Rights of Refugees

The ways that Australia and Western countries treat and protect refugees are different from Asia and Africa. Australia receives very few refugees in comparison with Asia and African countries. According to The United Nations High Commissioner for Refugees (UNHCR) (Medecins sans Frontieres, 2002) the three largest movements of refugees in 2001 were 199,900 from Afghanistan to Pakistan, 93,200 from Macedonia to Yugoslavia, and 44,800 from Angola to Zambia. At the same year the number of asylum seekers coming to Australia was 5,649. It can be seen in the table below (table 1), Australia received the fewest of asylum seeker.

*Asylum Applicants in Australia Compared to Other Like Countries, 1995/6-2000/1*

	1995	1996	1997	1998	1999	2000
Australia	7	11, 135	8, 128	8, 390	12, 185	13, 105
Canada	25, 600	25, 600	24, 300	24, 973	30, 124	36, 534
Denmark	5, 100	5, 900	5, 100	5, 699	6, 467	10, 077
Germany	127, 000	149, 200	151, 700	143, 429	138, 319	117, 648
Sweden	9, 000	5, 800	9, 700	12, 844	11, 231	16, 303
United Kingdom	55, 000	27, 900	32, 500	46, 020	71, 160	76, 040
United States	154, 500	128, 200	84, 800	54, 952	41, 377	48, 054

*Table 1:* \*These table is based on DIMA figures as at June, 2001, as well as those contained in the 'World Refugee Survey 2001'.

Basically, protecting and distinguishing refugees is the whole world's responsibility, and Australia, as a member of the international community should play a role in protecting them. Based on The Universal Declaration in Human Rights and The Refugee Convention (Medecins san Frontieres, 2002), every country should take part in providing the rights of refugees such as:

1. *All people fleeing persecution have a right to international protection;*
2. *Refugees and asylum seekers have the right to be treated with humanity, dignity, and respect.*
3. *Refugees also have the right to live in peace, getting education, health care and enough food.*

Refugees are people who have fled their homes in fear of their lives. To judge such people as illegal and opportunist is unfair and misleading. No refugees flee happily; they have no choice but flee from their country and war, persecution or even imprisonment. Often they have to flee in a hurry, sometimes on foot, and without knowing their future. They spend entire days walking without food and without any shelter at night. The weakest people, children and elderly, suffer from hunger, thirst, and disease. Based on this condition, do they deserve to be called illegal or opportunist? Should we let them suffer?

### **C. REFUGEES IN AUSTRALIA**

#### **1. Australian Government Policies for Asylum Seekers and Refugees**

By now, The Australian government has decided to take restriction for asylum seekers, and all of them have been placed in detention while their status is determined. The government has reviewed their cases and almost all of asylum seekers have been rejected as refugees based on the reason that they were economic migrant. They came to Australia because they only wanted to take the challenges in financial and economic advantages (Goode, 2002).

The Howard Coalition Government, which came to office in 1996, created a policy of mandatory detention for unauthorized arrivals such as an expired visa. In fact, most of the people who have expired visas are Americans, British and New Zealanders but they are not placed in detention like other unauthorized arrivals, refugees without documentation for instance. This policy has been heavily criticized both within nation and inter-nation. The table below shows the comparison of unauthorized arrivals and overstayers, in which the overstayers do not stay in detention.

*Numbers of People Estimated as Illegally Overstaying Visa's as Compared to Unauthorised Arrivals*

	Unauthorised Arrivals**	Overstayers*
June 1995	1, 556	51, 300
June 1996	1, 252	45, 100
June 1997	1, 715	46, 200
June 1998	1, 715	50, 950
June 1999	3, 027	53, 150
June 2000	5, 870	58, 748

*Table 2* : This table is based on DIMA figures as at December, 2001.

\* Figures for Overstayers are estimates only.

\*\* Figures for Unauthorised Arrivals are based on the Australian fiscal year.

## **2. Alternative Ways for Refugees as Asylum Seekers to Process Their Status**

It is important to know the process of status determination for asylum seekers, particularly refugees, when they do not have any documents or identification. Based on The Refugee Council of Australia (2001), since 1993 Australia has had a two-stages administrative determination procedure:

### **a. Primary stage**

An asylum seeker applies for an application form for refuge status through the Department of Immigration and Multicultural Affairs (DIMA) and the application are assessed by the Department to fit the criteria for granting the refugee's status. Asylum

seekers apply for Temporary Protection Visas (TPV), whilst refugees as asylum seekers apply for refugee status. The applications can be received from individuals or from family groups. The latter means if one member of the family is determined to be a refugee, the whole family is granted refugee status. This condition is only for particular cases. There are two possible decisions, either the asylum seeker is accepted and he/she is granted refugee status or a TPV; or the alternative is rejecting.

b. Review stage

If the application in the primary stage is rejected, an asylum seeker then has an opportunity to apply for a review application. The Refugee Review Tribunal (RRT) is an independent Commonwealth statutory body which is responsible for reviewing the status of refugees. There are two possible outcomes from the review stage. Either, it is accepted which means that the government grants refugee status or, it is rejected. If it is rejected, there are two other opportunities that could be considered:

- i. Humanitarian Status, which is considered by The Department of Immigration. If it is considered that there may be compelling humanitarian reasons, they should not be returned to their country of origin.
- ii. Judicial Review, which is decided by The Federal Court. The court is not empowered to look at the claim but only to consider whether the determination was conducted in accordance with the law.

#### **D. LIVING IN DETENTION**

While the Department of Immigration and Multicultural Affairs determines the status of asylum seekers, they must live in detention. Usually, this process takes a long time. There are some controversial opinions that whether they should live in detention or not because the conditions of some detention are not good. Therefore, it is significant to know more about the condition of detention in Australia, especially in South Australia. This report will show the condition of Woomera detention center in

South Australia because it is an actual issue in Australia. In fact, it had closed at May 2003 and the asylum seekers were moved to a new detention center at Port Augusta, which is called Baxter Detention Centre, and its condition is quite similar to Woomera (Keogh, 2003).

*1. The Condition of Woomera Detention in South Australia*

*"When I arrived at Woomera, there were too many people there. I saw the barbed wire around the camp and I felt like it was jail."*

*(Ahmadi, 17 years old, from Afghanistan)*

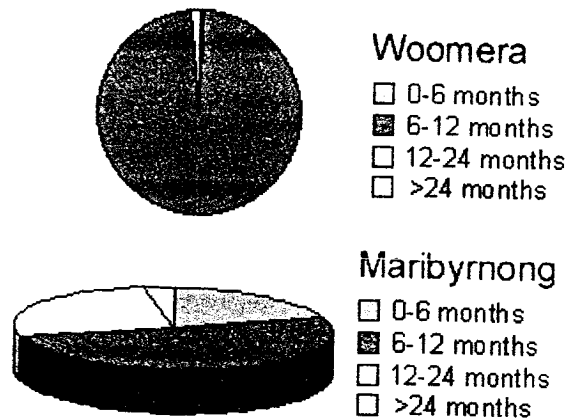
*(Goode, 2002)*

The Woomera Detention Center was located three kilometers outside of the town in unproductive and isolated landscape in South Australia. The Center was fenced off with two rows of metal bars, approximately 4.5 meters high. Coils of razor wire were twisted along the top of the fences (Goode, 2002). This view could help us imaging the conditions of the center, which did not look like a village or community but it looked similar to a prison, less medical facilities, no facilities for family to live together and less protection for women and children. The detainees could not communicate with their families. They were also treated as a guilty people until proven innocent (Refugee Action Committee, 1998). Visitors faced a complicated check-in process; they even have to be screened through an x-ray machine. These conditions then lead detainees into depression and despair. Consequently, detainees faced some problems in psychological, health and services, and education problems.



## 2. The Effects of Living in Detention

### *Length of Time spent in Detention Centres by Adults and Children as at June 2001*



*Chart 1:* These pie charts are based on figures provided by the Department of Immigration and Multicultural Affairs as at June 1, 2001.

The pie charts above (Chart 1) show the length of time spent in Woomera detention compared to Maribyrnong detention's duration, which was much shorter than Woomera. Because of the length of time spent in detention, many children in Woomera suffer from depression and anxiety. Dr Simon Lockwood, a general practitioner at Woomera Community Hospital (Goode, 2002) said that children have problems because they live for a long time in detention. Many children have problems in behavior. They cannot sleep, eat, developed hesitation or nightmares. Another practitioner, Dr Bernice Pfitzner who worked at Woomera fulltime for nine months from October 2000 to July 2001 (Goode, 2002), believed that the lengthy delays in processing visa applications contributed to the emotional problems of the child. Also it presents in a lot of physical ways such as high blood pressure, insomnia and weight loss for the parent and it affects them physically as well as emotionally in look after their children.

Moreover, Dr Marie O'Neill, a psychologist who worked at Woomera from May to December 2001 (Gordon, 2001), observed that many children in detention had already experienced horrible things in their hometowns. According to her, some of them had been deeply affected by those experiences. Some of them had seen things in Woomera that they never should see; it affected them and gave them traumatic experiences. So, it pushes us to think and consider about the detention mandatory policy. Should children and women live in detention? It caused psychological problems and developmental delays for them.

Another problem that had been occurring by living in detention is health services. According to Dr Lockwood (Goode, 2002), the initial medical screening procedures and the health care program in Woomera were adequate. However, Dr Pfitzner discovered there was a major problem maintaining continuity of care because of the six weeks turnover of medical staff, hence it affected to the treatment of children. It brought difficulties in maintaining and updating medical records. There should have been child health nurses and doctors all the time. So, they knew about development, immunization and childhood diseases.

There was such an educational problem by living in detention. Most of the teachers were on six weeks contracts and there was only one permanent education staff officer. So it was difficult to maintain any continuity in the education program. In addition, the program was not compulsory for the children. The Human Rights and Equal Opportunity Commission issued a scathing report on the educational program at Woomera (Goode, 2002), fact-finding in early February 2002 indicated that despite the Australasian Correctional Management (ACM) had effort to provide school opportunity for the children, this was confined to those age 12 and under. There were children over 12 years old who did not receive education at all. All children were taught in one classroom. Education was provided for only two hours a day and four days a week. However, there had a major improvement in the education program at Woomera (Goode, 2002). According to Steve Hollings, National Operations Manager for Detention Services, all the school-age children were attending classes at the former

Catholic school, St Michaels. Although the educational program was still not compulsory, he estimated that around 85% of the teenagers and 95% of the primary-aged children were attending school regularly.

## E. SOME ALTERNATIVE SOLUTIONS

According to Weber (2003), the detentions in Australia are the result of the deliberate policies of successive governments that have ignored many rights of refugees. The Human Rights and Equal Opportunities Commission (HREOC) and other refugee and human rights NGOs such as Australian Council of Churches, National Legal Aid, Australian Red Cross, Refugee Council of Australia, have developed alternative models since 1994 and have submitted draft alternative detention models to the Minister for Immigration and Multicultural Affairs.

In 1998 HREOC developed a further model in a detailed proposal. These models correspond to the following framework for a better approach to refugees and asylum seekers for a period of initial mandatory detention consistent with international law and practice to ensure public health and safety and identification, but only for a limited period of 30 days with two possible extension of 30 days. This will provide a powerful incentive to ensure prompt determination of applications (Weber, 2003).

In addition, detention over the 30 days period should only be allowed in cases where the identity cannot be verified; there are reasonable grounds of a threat to national security, public order, health or safety; a person seems likely to abscond; a person refuses to undertake health screening; or a person has not lodged an application for a Protection Visa (Keogh, 2003). Those given priority for release were children, the elderly, single women and those requiring medical or trauma attention. The decision of release should be made by departmental officers subject to tribunal and judicial review or by an assessment panel with both departmental and outside members.

Another alternative way in the refugee rights movement calls for all detention of asylum seekers to be abolished and that the most traumatized people in the world

should never be subjected of the psychological trauma of detention without good reason. This alternative way sees the liberty of the individual as a fundamental right, a right that is being eroded through the operation of the refugee system (Weber, 2003).

## **F. CONCLUSION**

In conclusion, this report has shown that refugees are quite similar to asylum seekers but they are different with illegal immigrant; the status and the rights of refugees are guaranteed by the Refugee Convention 1951; however the Australian government does not treat them appropriately; the process of status determination spends a lot of time while asylum seekers who are refugees live in detention. There are some bad effects while living in detention, particularly for women and children.

The Australian government has demonstrated a bad policy in treating refugees and asylum seekers because it does not respect the human rights of asylum seekers, the Refugee Convention and other relevant aspects of International Law that Australia has signed and ratified. Nevertheless, asylum seekers should not live in detention, particularly women and children, because they have the same rights with other people. They have the right for a better future, to live in peace and to be treated as the others.

Those problems could be overcome if the Australian Government creates a better policy in the future, or if possible abolishes the policy of mandatory detention, and changes into a new policy that respects the human rights of asylum seekers. The Government should also encourage people to treat refugees like as the others because refugees are a part of the world community.

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