



## **International Presentation Association – UPR Submission – Australia – July 2010**

### **INTRODUCTION**

#### **1. Who We Are**

Established in 1989, the International Presentation Association (IPA) is an NGO in special consultative status with the Economic and Social Council at the UN. Representing Presentation women throughout the world, the IPA has 2,300 members living and working in 22 countries. Priority issues for IPA are: human rights; women and children; Indigenous peoples; the environment and sustainable living.

#### **2. Executive Summary**

The IPA is concerned about policy changes that affect human rights in Australia particularly in relation to Asylum Seekers and Indigenous peoples - Aboriginal and Torres Strait Islander People.

**Key words:** Asylum seekers, government policies, excision, off shore processing, mandatory detention, unaccompanied minors and families with children, 'close the gap', life expectancy, education, Northern Territory Emergency Response, radioactive waste storage, extractive industries.

#### **3. Methodology**

For this report data has been collected from many documents but not limited to Australian and State Government documents, *Human Rights Overboard*, Human Rights Commission Report 2009, websites including Hotham Mission, ANTaR, Oxfam Australia, the Australian Greens, Griffith Review 28, and stories from Asylum seekers.

#### **4. HUMAN RIGHTS AND ASYLUM SEEKERS**

##### **4.1 Human Rights and Off Shore Processing**

Asylum seekers (including children) arriving by boat without valid visas are detained offshore on Christmas Island which is situated 2,400km from Perth, 2000km from Darwin and 360km from Djakarta, Indonesia. The Detention Centre can accommodate 2040 persons. The remote location and limited facilities and infrastructure on Christmas Island make it difficult to ensure implementation of some key aspects of the government's **New Directions in Detention (Budget 2009-10)** – in particular the intention to use immigration detention centres only as a last resort, and the presumption that unauthorized arrivals will be released into the community once their health, identity and security checks are completed within 90 days. The lack of community-based housing further appears to be preventing the release of some detainees from closed detention facilities into community detention. "Offshore" asylum seekers are barred from the refugee status determination system that applies on the mainland under Australian law. Asylum seekers have little or no access to the Refugee Review

Tribunal and very limited access to Australian courts. They must rely on a non-compellable and non-reviewable Ministerial discretion to be allowed to apply for protection visas. The *Migration Act 1958* purports to bar them from challenging the lawfulness of their detention in the Australian courts.

#### **4.2 Asylum Seekers detainees in Remote Communities**

When the number of Asylum seekers exceeds the capacity of Christmas Island Detention Centre they are removed to small remote community locations on the mainland where their access to appropriate services including health and mental health care, legal advice, cultural and religious support, and community-based advocacy and support networks is extremely limited.

Furthermore the remote location of detention centres makes the immigration detention operations less visible and transparent to the Australian public, and less accessible for external scrutiny bodies.

#### **4.3 Human Rights and Detained Children**

Some children are detained in closed immigration detention facilities. There is a conflict of interest in having the Minister for Immigration and Citizenship or DIAC officers act as the legal guardian for unaccompanied minors.

#### **4.4 Suspension of Processing Sri Lankan and Afghani Claims for Asylum**

The decision in April 2010 of the Australian Government to suspend processing the claims of Sri Lankans (with review in 3 months) and of Afghans (review in 6 months) means that men, women and children who arrived after April 9 will remain in limbo. They have been removed to the to-be-upgraded Curtin Airforce Base, 40 kms. from the nearest town with the consequent possibility of health and welfare problems.

The decision was based on the government's belief about the safety and security of each country. The rationale of the decision based on the country of origin is a breach of international law and punishes two groups of people who are found to be refugees.

### **5. RECOMMENDATIONS RE HUMAN RIGHTS OF ASYLUM SEEKERS**

Despite the initial positive legislative changes in 2008, human rights violations in relation to Asylum seekers continue. **IPA recommends:**

- i) Christmas Island detention centre be closed and all Asylum seekers, including boat arrivals, be housed on mainland Australia close to services. Asylum seekers posing no security threat be housed in the community.
- ii) Detained children are to be with their parents or a known carer in community-based housing and the Australian government ensure there are clear policies and procedures regarding their welfare and protection.
- iii) Asylum seekers are to receive the entitlements under international law and the Human Rights Convention they have a right to and be treated with respect and not as offenders. Asylum seekers are not to be detained indefinitely and to be given access to legal, health, emotional supports.
- iv) All Asylum seekers be given up-to-date information on interpreters, access to the Commonwealth Ombudsman or Australian Human Rights Commission, medical, dental and mental health services, contact details for Legal Aid, United Nations High Commissioner for Refugees (UNHCR), Australian Red Cross, major Asylum seeker information and advice groups and Immigration Advice and Application Assistance Scheme (IAAAS) providers.
- v) Failed Asylum seekers be returned safely and with dignity, and never to a place of danger.
- vi) Australian courts be allowed to overturn incorrect, unfair or unlawful decisions of the Department of Immigration and the Refugee Review Tribunal.

## **6. STORIES**

### **6.1 Story 1** Six years in detention

Ahmed grew up with war. In 1999 he was targeted by Saddam's regime and fled to Syria. He flew to Indonesia where he lived as an 'unauthorised resident'. After paying money to a smuggler, he was taken to a tiny boat where he was at sea for three terrifying days. On reaching land someone said he was now in Australia. Police arrived speaking a strange language. He was taken to a camp in the desert where he lived in a hut behind barbed wire. Ahmed became sick and didn't know if he would ever be released. Inside he felt dead. After 6 years he was released.

### **6.2 Story 2** Drownings at Sea

Five Sri Lankans drowned north-west of Australia after trying to swim for help when their boat ran out of supplies. The government was aware of the boat at least a week and a half before the tragedy. The remaining 59 asylum seekers were rescued and taken to Christmas Island after being picked up by a passing commercial ship. Greens Senator Sarah Hanson-Young said 'Something is wrong when we know a boat was there; two weeks later 5 people are dead. We need to take responsibility for looking at our protocols - what we do when we find a boat and in terms of the interception - and those protocols must be made public.'

## **7. HUMAN RIGHTS AND WELFARE OF INDIGENOUS PEOPLES**

The current Federal Government of Australia has taken significant steps to improve the human rights and socio-economic conditions of Aboriginal and Torres Islander peoples, as well as supporting the UN Declaration on the Rights of Indigenous Peoples and apologising to the victims of the Stolen Generations. There has been, however, significant concern about what is being done to "close the gap" in health and education, and about policies that infringe on the human rights of Aboriginal and Torres Strait Islander peoples.

### **7.1 Health and Education**

Aboriginal and Torres Strait Islander people have higher rates of ill-health than any group in Australia. They have a shorter life span and a higher level of infant mortality. In April 2007 the *Close the Gap* campaign was launched with the aim of urging the Federal, State and Territory governments to commit to closing the life expectancy gap between Indigenous and non-Indigenous Australians within a generation. In 2008 the Council of Australian Governments (COAG) agreed to goals relating to Indigenous disadvantage:

life expectancy, child mortality, health, education and employment.

Some improvements have been recorded. In the area of life expectancy, the gap has been reduced from 17 years to 11 years. Indigenous child deaths rates are improving and may halve by 2018. However, health workers claim that many health problems such as anaemia and malnutrition have worsened and figures show that substance abuse and domestic violence have increased.

While Indigenous school retention rates remain considerably lower than those for non-Indigenous school students, the disparity between the two groups is slowly lessening. However, Indigenous students are still much less likely than non-Indigenous students to progress to the final year of schooling.

Social disadvantage is directly related to dispossession and characterised by poverty and powerlessness. Various events have contributed to this including land dispossession and the Stolen Generations.

## **7.2 Human rights and Racial discrimination**

The International Convention on the Elimination of All Forms of Racial Discrimination was signed by Australia 13 October 1966. This was ratified in Australian law with the Racial Discrimination Act on 30 September 1975. There continue to be concerns about racial discrimination in the Northern Territory Emergency Response and in the treatment of Indigenous prisoners - arrests, sentencing and custodial management. There is a lack of respect for the land rights of traditional owners and their management of their lands in the allocation of land for mining and for nuclear waste disposal.

On 21 June 2007 the Federal Government introduced the Northern Territory Emergency Response (NTER). In order to implement NTER, the Federal Government suspended the Racial Discrimination Act 1975. This enabled the Federal Government to impose discriminatory practices such as: restrictions on alcohol, compulsory acquisition of townships (held under the provisions of the Native Title Act 1993) through 5 year leases, control of spending patterns through quarantining a proportion of welfare benefits to all recipients and requiring “store cards” to be used in a limited number of retail outlets. In some stores this has led to a separate “queue” for card holders. The lack of freedom to choose where to purchase food has adversely affected small retail outlets and their employees. The Government plans to extend the compulsory income management for all welfare recipients nationwide.

Since the Report of the Royal Commission into Aboriginal deaths in Custody (April 1991) more than 300 Indigenous prisoners have died in custody. Rates of imprisonment and recidivism continue to be much higher for Indigenous than for non-Indigenous prisoners. Recommendations of both Federal and State Governments have been only partially implemented.

The Federal Government draft legislation, the National Radioactive Waste Management Bill, nominates a pastoral holding in Northern Territory as a site for radioactive waste storage and disposal. Consent has been obtained from only one of the seven clans associated with this land. In addition to environmental concerns, this Government action undermines the Indigenous owners’ sovereignty and control of their lands.

The Federal Government has supported the huge increase in extractive industries in rural Australia. This has had irreparable and irreversible effect on the sacred sites of the Indigenous peoples. As the mining towns have developed, State Governments are increasingly relying upon the extractive companies to provide the services they fail to deliver. High wages to miners cause the cost of living to escalate. As their participation in the mining industry is minimal, the Indigenous people, along with other non-mining residents, experience financial and social difficulties in these towns.

## **8. RECOMMENDATIONS**

That the Federal Government

- i) Develop a holistic approach to addressing Indigenous disadvantage across the whole country that comply with recommendations made by the treaty-monitoring bodies of the UN – to which Australia is a signatory.

- ii) Reinstate the protections of the Racial Discrimination Act and amend the NTER as recommended by the UN Special Rapporteur (August 2009)
- iii) Prior to action, engage in genuine two-way consultation with Indigenous peoples. Plan and work in partnership with Indigenous people's institutions and decision-making bodies. Improve the efficiency and coordination of services.
- iv) Give financial and logistic support to programs developed and implemented by Indigenous peoples' own institutions.
- v) Act to preserve and promote indigenous languages. To read in one's own language is a human right. Groups who maintain their language and practice their culture enjoy better social, emotional and health outcomes than groups that do not.

## **9. STORIES**

### **9.1 Story 1 Death in custody**

An 18-year-old Aboriginal man, on remand in a Brisbane prison on misdemeanour charges, became ill. After initially receiving a headache tablet, he was repeatedly refused medical attention by prison staff. He suffered in agony for 10 days. Other prisoners had to carry him around and when they protested to prison guards, one of the guards made the comment: "If he can go to the toilet, there's nothing wrong with him." When the teenager became unconscious and fellow Aboriginal prisoners kept calling to the prison staff, he was finally taken to hospital. He died four days later.

### **9.2 Story 2 Failure of intervention**

About 500 people live in the township of Kintore (near the west Australian border), the celebrated home of the modern desert painting movement. A prominent artist lives in a block house with 27 residents while next door, a shire councillor has 29 people living in her home. No new houses are to be built in Kintore. Six houses in the community stand derelict and a further two, formerly used for Aboriginal housing, have been taken over for health and social service use. No local contractors will be involved in the repairs and renovations that have been scheduled.

### **9.3 Story 3 Inadequate consultation re nuclear waste site**

Muckaty Station, a cattle station in Northern Territory, is being assessed by the Federal Government as a possible site for a radioactive storage and disposal facility. Seven Aboriginal clans are the traditional owners of this area. The Ngapa clan support hosting the facility, while other traditional owners of Muckaty oppose it. There are also claims that some members of the Ngapa clan were amongst those who had signed a petition opposing the facility. One member of the Ngapa clan stated: "We don't want it. There are plenty of sacred sites. There is not just Ngapa in there, there are other groups too. There was not a meeting in town consulting all of the Traditional Owners for the land, they just got the individual people they knew. The others, we were left out. We are going against it, we are fighting against it. We are going to challenge them in court and then through our court- Aboriginal Law and culture with the dot paintings on our body."

The proposed waste dump law excludes the Muckaty Traditional Owners from procedural fairness and appeal rights, removes Aboriginal Heritage and environmental protections and overrides any Commonwealth, State and Territory laws that could be used to oppose or challenge the dump plan.