

UN report condemns "inhuman" Australian detention of refugees

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5 August 2002

Australia's indefinite detention of asylum seekers came under fresh international criticism last week after a United Nations report condemned the policy as "degrading and inhuman". Media commentators spoke of Australia replacing apartheid South Africa as a target of global denunciation, with the report declaring that the mandatory imprisonment of asylum seekers violates international law.

The UN report, written by former Indian Supreme Court chief justice Rajendra Bhagwati, found that men, women and children who had been in detention for months, and sometimes one or two years, were "prisoners without having committed any offence. Their only fault was that they had left their native home and sought to find refuge or a better life on the Australian soil."

Bhagwati stated that the Australian government is detaining children in breach of the Convention on the Rights of the Child, which prohibits the imprisonment of children, except as a last resort for the shortest possible time. He said the mandatory detention system also violates the International Covenant on Civil and Political Rights, which outlaws arbitrary detention and the denial of access to legal review of incarceration.

After visiting Australia's detention centres between May 24 and June 2 as a personal envoy of UN Human Rights Commissioner Mary Robinson, Bhagwati reported that children are suffering mentally and physically in the camps. "These children were growing up in an environment, which affected their physical and mental growth and many of them were traumatised and led to harm themselves in utter despair," he concluded. Wrist-slashing and suicide threats are rife.

Robinson released the report in Geneva and endorsed its contents, calling on Australia to meet its international human rights obligations, particularly in relation to the detention of children. She recommended a follow-up visit by another representative next year. Robinson originally requested Bhagwati's visit in February following a 16-day hunger strike by 350 asylum seekers in the semi-desert Woomera camp. After initially threatening to block the visit, the government delayed the inspection but permitted it to proceed, so as not to openly call into question Australia's international image.

Australia remains the only country that compulsorily detains all asylum seekers who arrive independently, without

permission. As of May 3, there were 1,495 detainees, including 181 women and 170 children. As well as "unauthorised arrivals," they included more than 500 people detained for over-staying visas or breaching visa conditions.

Having interviewed current and former detainees, including children, and spoken with human rights groups and lawyers, Bhagwati concluded that basic legal rights are denied. In contravention of international law, detainees are unable to seek judicial review of detention because the Migration Act requires all "unlawful non-citizens" to be detained, regardless of their circumstances.

Asylum seekers who are "screened out" after the initial assessment stage because they do not meet the technical requirements for refugee status "might be seriously handicapped on account of ignorance about their rights" and could be the most in need of legal advice. Other concerns included the use of punitive isolation cells and the imprisonment of detainees in jails.

Furthermore, "accessing legal aid in regard to complaints about treatment and conditions in the detention centres presented a genuine difficulty." Lawyers, psychologists and non-government organisations are often prevented from entering the detention centres to see their clients. Lawyers and officers from the government's own Human Rights and Equal Opportunity Commission cannot enter a camp without a specific request from a detainee. Other organisations and individuals have to obtain permission from Immigration Minister Philip Ruddock.

Bhagwati found that Australia also breaches the International Covenant on Economic, Social and Cultural Rights, which recognises a child's right to education. While "children are in fact given access to education to some extent, it would appear that, at least in Woomera detention centre, the education services are at best wholly inadequate." Interviewed on the Australian Broadcasting Corporation's *Lateline* program, Bhagwati said the education facilities at Woomera consist of a single room with a "few playthings". "Some sort of alphabet was taught," which could barely be described as schooling.

In his report, Bhagwati condemned the detention system for its detrimental effect on families. He criticised the government's refusal to consider family reunion when

assessing refugee claims. Since the introduction of temporary protection visas in 1999, successful applicants have been denied the right to bring their families to Australia, despite being accepted as genuine refugees. In a number of cases that have come to light, one member of the family is living on a temporary refugee visa in Australia, but the rest of the family remains incarcerated.

Bhagwati pointed out that even in the case of the Woomera housing project, husbands are denied the right to live with their families. The government set up the pilot scheme allowing some women and children to live outside the camp as a means of heading off mounting concern about the impact of its policy.

As soon as the report was released, the Howard government thumbed its nose at the UN. In an orchestrated response, leading ministers sought to undermine Bhagwati's credibility, sending relations between the UN and Australia to a new low. Foreign Affairs Minister Alexander Downer, Attorney-General Daryl Williams and Immigration Minister Ruddock issued a joint statement attacking his report as "emotive," "fundamentally flawed" and lacking objectivity.

They accused Bhagwati of interfering in domestic politics, and insisted that mandatory detention would remain. "It [the report] misconceives the government's policy and ignores the fact that people in immigration detention have arrived in the country illegally," they stated.

Having been given a draft copy of the report for their comment, they produced a 12-page rebuttal, listing 30 criticisms and dismissing the report outright. Contemptuous of basic democratic rights, they accused refugees of lengthening their own detention by appealing to tribunals and courts against visa denials. They even blamed parents for bringing their children with them when they fled persecution.

In separate media comments, Ruddock and Downer went further. Downer declared that Bhagwati had been duped by immigration activists, while Ruddock accused Bhagwati of coming to Australia "with preconceived views.... he spent all his time here talking to lawyers and advocates".

Ruddock's comment is particularly revealing. The specific purpose of Bhagwati's visit was to investigate whether the detention facilities and system were in accord with international law. It seems that his only "preconceived view" was that the Australian government should abide by the refugee, civil rights and children's rights covenants that it is a party to.

The government's hostile response continued its practice of demonising refugees and seizing upon their desperate efforts to escape oppression, in order to divert attention away from the domestic social crisis produced by its own policies. The joint statement reiterated the "border protection" stance that the government has adopted since turning away the *Tampa* refugees last September. "The policies reflect Australia's sovereign right under international law to determine who will enter our borders and be permitted to remain, and the conditions under which they may be removed."

At the same time, three ministers claimed that Australia remained committed to "core" international human rights instruments. Their sensitivity on this issue arises because Australia has a record of invoking "human rights" concerns as a cover for intervening to protect its interests in the Asia-Pacific region and elsewhere. Just three years ago, in 1999, the Howard government dispatched some 5,000 troops to East Timor to defend Australian interests, particularly in the Timor Gap oil and gas fields, on the pretext of defending the human rights of the Timorese people.

Two years ago, the government threatened to quit the UN system of oversight committees on civil rights after UN authorities cited mandatory sentencing provisions in Western Australia and the Northern Territory for breaching international covenants. At that point, the government backed down, anxious to avoid further diplomatic damage.

The Labor Party highlighted this concern in criticising the government's latest confrontational response. Labor first introduced mandatory detention in the early 1990s, instigating the demonising of asylum seekers, and remains firmly committed to the policy. However, it urged the government to explore options such as the release of children and community detention in order to deflect the UN criticism.

Labor's foreign affairs spokesman Kevin Rudd warned that Australia could not pick and choose when it wanted to be part of the UN system. "Australia for the past 50 years has made huge use of the UN system in pursuit of Australia's national and international interests. Most recently, we've used extensively the UN as far as our interests in East Timor are concerned."

As Labor's record on refugee detention demonstrates, these differences have nothing to do with defending the basic democratic rights of asylum seekers; they are entirely bound up with pursuing the interests of Australian big business. Nevertheless, the Howard government is intent on pursuing an increasingly unilateralist approach, taking its anti-UN rhetoric and defiance of international law to new levels.



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