

The New South Wales Council for Civil Liberties (CCL) is one of Australia's leading human rights and civil liberties organisations. Founded in 1963, NSWCCL is a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. To this end the NSWCCL attempts to influence public debate and government policy on a range of human rights issues by preparing submissions to parliament and other relevant bodies. (CCL) thanks the Senate Committee for an extension of time to make this submission.

This week is the tenth anniversary of the murders of two asylum seekers whom Australia returned to the countries from which they fled—murders in at least one of the cases by the very people the refugee had claimed would kill him.

Of necessity, this submission is brief. CCL would happy to address the issues further by presenting evidence to the Committee. We have had the benefit of reading the submissions by Liberty Victoria, the Australian Section of the International Commission of Jurists and Human Rights Watch and we endorse those submissions.

Introduction

Malaysia is more of a managed democracy than a real one. Its long years of discrimination against its Indian and Chinese ethnic minorities and its treatment of its own indigenes, and its use of the Internal Security Act and the Sedition Act to crush dissent show a lack of respect for human rights.

Its record of treatment of asylum seekers and declared refugees has been poor—it has repatriated asylum seekers at the Thai border; it has prevented them from earning a living; and they have been subjected to imprisonment, beating and other abuse. Although conditions have improved a little recently, beatings still take place, and it still refuses to ratify the Refugee Convention. There is no guarantee that it will not revert to its earlier mistreatment as soon as it becomes politically expedient.

The terms of reference.

1. The Australia-Malaysia Transfer and Resettlement Arrangement (the arrangement) breaches Australia's obligations under the Refugee Convention, (RC) the International Covenant on Civil and Political Rights (ICCPR and the Convention on the Rights of the Child (CRC).

The arrangement breaches Article 32(1) of the RC, in that the expulsion of refugees to Malaysia is not to be done other than on grounds of national security or public order. But processing asylum seekers in Australian courts, and their subsequent settlement here are not threats to either. Further, there will be no due process of law involved, as required by that Article.

Because of Malaysia's bad record with respect to refugees and the lack of security from refolement in that country, the arrangement is in breach of Article 33(1). Article 16(1) guarantees access to the courts within Australia for refugees who arrive here. That access is denied under the arrangement.

2. The arrangement breaches Australia's obligations under the ICCPR. Specifically, it is in breach of Article 12, which guarantees a right of aliens to stay within a jurisdiction 'until a decision to have them removed has been reviewed by a competent authority and where their interest can be represented'. It is in breach of article 24, in that it fails to provide protection to children.

3. The arrangement is in breach of Australia's obligations under the CRC. It is in breach of Article 19 in that Malaysia has no laws guaranteeing the rights to be free from mental and physical abuse, and it has a bad record, including severe corporal punishment of children. Similarly Article 37, which guarantees freedom from cruel, inhumane and degrading treatment, is breached.

Malaysia does not have any law guaranteeing protection and humanitarian assistance for children who are asylum seekers. Since the arrangement is not enforceable and specifically allows for the two governments to proceed with their own legal changes, Article 22 is breached.

3. Malaysia, as noted above, has a poor track record in relation to human rights. There is no provision for independent oversight of its practice under the agreement; and given the prickliness of successive Malaysian governments over criticism from outside, it is not likely that such oversight could be included.

4. The arrangement, and any arrangement which transfers unaccompanied minors who are asylum seekers outside of Australia creates an intolerable conflict of duties for the Minister for Immigration as guardian on those children and as administrator of the arrangement. It is difficult to see how any decision to transfer unaccompanied minors to Malaysia could be compatible with the Minister's duty of care to those minors.

Alternative solutions

Any alternative proposal needs to address the issue of what refugees are supposed to do. To expect them to remain in camps where they are at risk of typhoid fever and cholera, and where rapes and murders are common, is absurd. To expect countries much poorer than Australia, or countries such as India, with its huge poverty problems and the very large number of refugees it has already accepted—to expect such countries to bear the burden while Australia continues to accept only a very modest number of refugees—is unreasonable.

Any acceptable proposal must guarantee fair processing of asylum claims, with an appeal process to courts on the merits of the claims. It must ensure that asylum seekers have access to legal advice from lawyers of their own choice, and that the officials involved are not able to arbitrarily prevent



access them. CCL is aware that a prominent and distinguished barrister was prevented from assisting refugees in Nauru because his visa was cancelled on his arrival at the airport.¹

Above all, any acceptable solution must ensure that refugees are safe from attack and from disease, that their claims to asylum are processed expeditiously, and that they are re-settled quickly after their status as refugees has been determined. They must not be left for years without knowing that they are any closer to being re-settled—if there is to be a queue, it must be real. Refugees must know where they are in the queue and how they are progressing. The time spent in it must be short.

And an acceptable solution must comply with Australia's international obligations.

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¹ At that stage the Australian Government was handling Australian's visas on behalf of the Nauru Government.