

INTERIM REPORT

NO LIABILITY – TRAGIC RESULTS FROM AUSTRALIA'S DEPORTATIONS

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INVESTIGATION INTO THE FATE OF DEPORTED PEOPLE

Reports of death, disappearance, imprisonment and torture, of fear-filled lives spent in hiding, privation and despair have filtered back to Australia about some people Australia has removed after disallowing their claims for protection on refugee or humanitarian grounds. Disquiet about this situation was expressed to the 2000 Senate Committee¹ by bodies such as HREOC (Human Rights and Equal Opportunity Commission), Amnesty International, the Australian Refugee Council and various legal aid and trauma treatment organisations. In 2002 a coalition of religious groups, COPAS, including leaders from the major Christian denominations, Jewish, Moslem and Buddhist groups, petitioned the Federal Government to heed the reports of terrible things happening to some² deportees and cease sending people to countries where protection of their safety and rights is very problematic. The study reported here was designed to clarify the situation behind this widespread disquiet.

GOVERNMENT POLICY

The Government asserts that deportation is a sovereign right and essential to border protection. Removal is seen as the essential sanction for people who come or stay here unlawfully. What happens to people when they are 'removed' from Australia is apparently not a concern of Government. The Government shows no signs of acting on the opinion of the 2000 Senate Committee that *some form of monitoring may be the only way in which Australia can be assured that its refugee determination processes are correctly identifying genuine refugees and humanitarian cases. [11.36]*. Nor has the Government apparently taken any action to implement Recommendation 11.1 of the same Senate Committee i.e. that the *Government place the issue of monitoring on the agenda for discussion at the Inter-Government /Non-Government Organizations Forum with a view to examining the implementation of a system of informal monitoring*³.

Few reasonable people would dispute that Australia has a right to protect its borders. However, that right is not absolute. A basic concern for life, human rights and justice underpins most of the concerns expressed to the Government about the way it implements its border protection policies. In addition, Australia is obligated under a variety of International Conventions not to remove people to places in which they are not safe. These legal obligations are discussed later in this report.

¹ Senate Legal and Constitutional Reference Committee, *A Sanctuary Under review: An Examination of Australia's Refugee and humanitarian Determination processes*: www.aph.gov.au

² 'Some' is the operative word. Disquiet has been aroused by particular cases and people returning to particular risk situations. It may well be true as the Refugee Council of Australia told the Senate Committee that it *acknowledged that generally speaking people are able to return to their countries without difficulty. [11.26]*

³ The Senate Committee did not recommend a Government monitoring process. It took into account state sovereignty issues, diplomatic ramifications if Australian officials should formally monitor foreign nationals in overseas countries and potential dangers to the returned persons arising from such official attention. It recognized that UNHCR is not resourced for the task and finally made a recommendation (No 11.1) that the task be undertaken by NGOs in consultation with Government.

WHAT COUNTS AS EVIDENCE ABOUT THE FATE OF DEPORTED PEOPLE?

At the 2000 Senate hearing above, Mr Sidoti, representing HREOC, called for a random sample of returnees to see what is happening in their lives. In this study we found that it is impossible to set up such a sample. A sample has to be based on known numbers. DIMIA does not publish the statistics on returned persons which would be the first step in setting up a random sample based study. Even the 2000 Senate Committee recognized it did not have access to the numbers of 'returnees' saying only *it is certainly in the thousands*. [11.57]

As an alternative, Mr Sidoti also called for random checks based on risk assessment factors to decide where Australia should be monitoring returnees and where not. We decided to follow this approach and interview returnees from relatively high-risk countries of origin or currently residing in high-risk alternative countries. Initially we hoped to contact returnees through people with whom they were linked in Australia, but few such links survive the deportation process. We then began traveling to overseas countries to contact deportees directly. This is a difficult process which is continuing.

METHODOLOGY

To provide comparable information, interviews were conducted on a standardized format. Where possible we sought corroborative material evidence to check the returnee's story. Where we could not find this and to control for any possible collusive fabrication, we looked to see if the pattern of an account was mirrored in independent interviews with other returnees in similar situations. We have also checked the internal consistency of each account given us, a strategy also used by the Refugee Review Tribunal in assessing credibility. We are satisfied that our data provide a reliable case for the Government to answer.

To date we have conducted interviews with returnees in three overseas countries. We have also drawn on reliable accounts from deportee contacts and expert respondents in Australia. This is an on-going study. To date we have interviewed 20 people overseas. We have also drawn on another 8 authenticated accounts. We plan to expand the number of interviews before writing the final report.

RISK FACTORS

Our interviewees came from the following States with the high-risk profiles noted below.

Iran. Political and religious dissent is punished very harshly in Iran often with death or cruel, inhuman and degrading treatment. Rights to freedom of speech, press, assembly and association are severely restricted. Discrimination is experienced by ethnic minorities such as Azeris and Kurds and by religious minorities – Sunni Muslims, Baha'is, Christians, Jews, Mandaeans and Yaresans. Conversion from Islam is not permitted. The judiciary often acts as an arm of government policy and is not independent. Vigilante groups practise intimidation and violence with tacit support of members of government. In particular jeopardy are critics of the Shi'ia clergy dominated government and people who do not conform to the rigid Islamic dress and behavioral codes. Afghan and to a lesser extent Iraqi refugees are systematically denied the means to subsist by recent Iranian laws intended to reduce the large refugee populations hosted by Iran. Support for this description may be found in the footnoted reports by the US State Department, United Nations, US based Human Rights Watch, The Australian Refugee Council, Amnesty International and the Australian Uniting Church sponsored

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Deportation Task Group⁴. These accounts contrast sharply with the more sanguine report of DFAT's (Department of Foreign Affairs and Trade) Fact Sheet on Iran, possibly affected by the desire to protect Australia's trading interests.

Syria Syria has not signed the Refugee Convention and has no domestic laws to protect Iraqi, Bedoon or Afghan refugees living there. Iraqi refugees are theoretically eligible for a visitor's visa for up to six months. Like over 3000 accepted applicants waiting for UNHCR resettlement, they might just be successful in this claim. However, many do not make this problematic application because of justifiable fears of long delays and being identified and *refouled* by the Syrian authorities in the process. They then live very precariously without legal status, with severe restrictions on employment and freedom of movement, denial of access to health care, education and housing, combined with constant risks of arrest, detention and deportation. Undocumented refugees are very vulnerable to harassment and extortion by the Syrian police, threatening arbitrary arrest or *refoulement*. This is particularly true of the Bedoons. Support for this description may be found in the footnoted reports⁵ of the US State Department, Human Rights Watch, UNHCR and Amnesty International.

Iraq The official human rights situation in Iraq changed markedly with the fall of the regime of Saddam Hussein but the resultant murderous civil disorder and dislocation of normal services make it problematic for any returnees. In addition, some are still afraid of reprisals from those who forced them to flee in the first place.

Afghanistan Despite the establishment of the Hamid Karsai Government ending the tyranny of the Taliban, areas outside Kabul are still considered to be without effective civil government and subject to lawlessness and insecurity. While the UNHCR is encouraging voluntary repatriation of refugees, NGOs like Amnesty International and Human Rights Watch are critical of this policy.⁶

Nigeria Despite being oil rich, most of the Federal Republic of Nigeria's 120 million population (60 percent Muslim and 40 per cent Christian) struggles for daily existence, suffering prolonged droughts, inflation, high unemployment, official corruption and ethnic tensions among the 250 separate ethnic groups. Those who have suffered most from a succession of brutal military regimes are the Ibo peoples who unsuccessfully tried to secede, sparking the Biafran Civil War (1967-70). Later, the Ogoni people, led by the subsequently executed Ken Sara Wiwa, protested against environmental damage and injustice in the

⁴ **US State Department**, Country Reports on Human Rights Practices (2001) Iran; **UNHCR** Report on the situation of human rights in the Islamic Republic of Iran prepared by the Special Representative of the Commission on Human Rights, Mr. Maurice Danby Copithorne Document No E/CN.42002/42; **Human Rights Watch** By Invitation Only- Australian Asylum Policy 2003; **Amnesty International** Annual Report Iran 2002; **Refugee Council of Australia** Report on Second Field Visit To Iran September 2002.

⁵ **Human Rights Watch** By Invitation Only- Australian Asylum Policy 2003; **US State Department**, 'Country Reports on Human Rights Practices 2002: Kuwait' 31 March 2003; **UNHCR**, 'Chapter 6: Statelessness and Citizenship' in *The State of the World's Refugees: A Humanitarian Agenda, 1997*; **Amnesty International** Index MDE 13/027/2003 7 August 2003 (on recent refoulements from Syria to Iran)

⁶ **Amnesty International** *Afghanistan: Continuing need for Protection and Standards of Return of Afghan refugees* 25/07/02

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exploitation of their oil-rich lands and against the impact of the introduction of the strict Islamic punishment code of Sharia Law in some of the 36 states.

Zimbabwe The political situation in Zimbabwe has gradually deteriorated since 1996, when Robert Mugabe won another six years in government. At the beginning of 1999, popular frustration with economic mismanagement and increasing corruption led to the formation of the Movement for Democratic Change (MDC), with a strong base in the unions and support from commercial farming interests. When the MDC won 57 of the 120 elective parliamentary seats in the June 2000 poll, Mugabe then moved to remove or suppress his opponents in the judiciary, the media and other centres of influence. Now Zimbabwe is in a parlous state, with the economy all but collapsed and the government manipulating widespread famine so that the people in opposition strongholds suffer most. Strong military backing is used for the forced removal of white farmers in a brutal land redistribution programme, which has earned Mugabe widespread scorn internationally. MDC President Morgan Tsvangirai is now on trial for alleged treason, charged with an almost certainly fabricated plot to assassinate Mugabe.

RESEARCH FINDINGS

We set out to examine the process of removal, the conditions people were placed in, and their status in the country to which Australia removed them. The question we set out to answer initially was:

1. Is the Australian Government sending or attempting to send asylum seekers to places which are not safe?

During the research process evidence suggested to us that a new theme was emerging, in terms of some of the methods used by Australia in the process of removal. This prompted the need to answer the following two questions:

2 Has the Australian Government encouraged refugees to obtain false papers and is there is evidence of bribery and corruption?

3. Is the conduct of removals consistent with Australia's legal obligations and values?

1. Is the Australian Government sending refugees or attempting to send them to places which are not safe?

Our answer to this question has to be *Yes*. We cannot say how frequently it happens but among the 20 people we interviewed overseas, many were in serious danger as a result of our deportation arrangements. For some, this occurred immediately on arrival at their destination or at an intermediate port. For some, the danger arose as they tried to live in the country to which Australia had sent them.

A. In danger immediately on arrival or at an intermediate port on the deportation journey.

C5. On arrival in Nigeria, **C5** was immediately taken aside for interrogation because of his membership in the Biafra independence movement and connection with Christians opposed to the imposition of Sharia law - the reasons for his asylum claim in the first place. He was told he faced severe interrogation, detention and indefinite imprisonment without trial but was given an escape chance by one officer who seemed sympathetic to the Biafran Liberation cause. This officer offered him the chance to make a run for it while handcuffed on the drive from the

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airport to headquarters; the officer said he would pretend that the escape had happened while he was dealing with a flat tyre. All his belongings (suitcases and \$1600 US) had to be abandoned in the process (by accident or as a bribe). **C5** escaped further dangers by making contact with friends, who warned him that he was on the *most wanted list* and got him out of Nigeria and eventually into a First World country to begin a new appeal for asylum.

T1 On arrival in Damascus, **T1** was taken from the airport to the Political Security Prison where he was beaten. Relatives paid a bribe for him to be released after a month. **T1** believes ACM had supplied negative information about him to the Syrian authorities because he had been a leader in the detention centre and had made contact with Australian journalists. We clearly could not verify this allegation although the interviewer noted physical scars and wounds consistent with **T1**'s story of beatings after arrival in Syria.

P5 In late 2000 in Abu Dhabi on the deportation journey to Syria, an Iraqi deportee **P5**, was arrested traveling on a false passport (obtained, he alleged, on ACM advice). His passport was recognized as a forgery. In custody he was made to strip naked and was interrogated. He was threatened with being sent to the Iraqi Embassy in Abu Dhabi. **P5** threatened to jump out the window, stating that as a member of the anti-Saddam groups he would be hung if he were to go back to Iraq. This saved him and he was deported back to Australia only to have the Australian authorities again risk his security by deporting him 3 months later on the same forged passport and again via Abu Dhabi where he was held on the plane during transit. The researchers have the passport with the double set of stamps as supportive evidence of this account.

C6* In August 2002, after nearly 3 years of detention, the Australian authorities sent C6 to Kenya. C6 is an 18-year-old Hutu, orphaned eight years earlier in the murderous Hutu/Tutsi conflict. He was escorted under guard to Johannesburg and on to a Kenya airlines plane to Nairobi. He had emergency travel documents from the Australian authorities but these were taken from him at the airport in Nairobi, an action witnessed by the Christian Brother and lawyer who came to meet him. Once again he became stateless and without documents with the predictable consequence of further imprisonment.⁷

C7*⁸ who has now been granted refugee status in a first world country according to Amnesty International, agreed to 'voluntary' deportation after suffering multiple beatings and rape in Silverwater prison in Sydney where he was held following charges of 'behavioral misconduct' in detention. He was deported to the Democratic Republic of the Congo (DRC) because DIMIA refused to accept that he was citizen of Angola. P&I, a private South African 'people mover' company was employed to secure travel documents that showed falsely that **C7** was a DRC citizen. In transit through South Africa, **C7** successfully demanded to speak with officials from the Angolan Embassy who ascertained that he was indeed a citizen of Angola. By this chance success **C7** avoided landing stateless in the DRC without residence, money or indeed the necessary language, French.

⁷ One month later, **C7*** left Mombassa in search of a more friendly African country, running the risk of detention, or worse, as he crossed more borders without papers. Some Australian friends discovered that in **C7**'s attempt to enter South Africa, he was detained in Lindela prison. This case does not come from ERC interviews but from associates in Nairobi and an Australian person who has visited this man twice.

⁸ Again this case does not come from our interviews but from Amnesty International sources

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C2 is a young Zimbabwean whose asylum case rested on his involvement in the Movement for Democratic Change, (MDC) and the dangers he experienced through his witnessing and later seeking redress for the political assassination of his father and cousin. He was refused asylum in Australia and told that within a fortnight he was to be deported back to Zimbabwe. Such a deportation he believed would bring certain death in the light of his previous experience, harassment, near death 'accidents' and finally of torture in prison graphically described in his affidavit:

I was kept... for about five days. I had all sorts of things done to me I had electrical cables attached to my feet (toes) and they switched on the power from a low current up to a point when the current was too much for me and I would pass out. On one particular incident / occasion I was kicked in the face while I was lying down. This broke my nose, jaw and broke off two front teeth. I thought I would never get out of there alive. I could not eat any solids and just drank water. During those days they kept on driving the point across to me that I should have listened to advice and kept my mouth shut and should not have pursued my father's murder and kept out of MDC affairs They told me I was going to 'join' my father. This torture continued for days but I was later released. The pressure from our family lawyer, my wife and mother, facilitated this. We filed a report to the Police but nothing came out of it. C2's deportation to this situation was narrowly avoided with the help of Australian friends who bought tickets for him and his family so that he could go to another first world country where there is some possibility of having his claims for asylum seeker status granted.

B Dangers After Arrival

Australian authorities seem to have a sanguine view of the prospects of Iraqi, Palestinian and Kuwaiti Bedoon deportees in Syria. Australian officials seem to have been oblivious of the risk to Iraqis of *refoulement* by Syrian authorities or of abduction by agents of Saddam Hussein before the fall of his regime. Nor do they seem to have understood the dangers and discrimination faced by people dumped with short-term visas in Syria, in particular Palestinians or stateless Bedoon from Kuwait. Some accounts from our interviews illustrate these perils.

P5's case for asylum was based on his public opposition to Saddam in the period 1969 – 1974 and the documented hanging of his associates. He told the interviewer: *The Australian Government said that it was true that Iraq is too dangerous for you but your wife has made it out of Iraq to Syria and you too have lived in Syria. So they said, you can go to Syria. After the 1998 border was opened between Iraq and Syria, Syria was no longer safe for people like me who were enemies of Saddam.*

The situation has changed radically since the fall of the Saddam Hussein regime but until that point Iraqi people we interviewed had lived in fear of being *refouled* by Syria or assassinated by Saddam's agents who could easily cross the border. Some like **P1** and **P2** say they still cannot rid themselves of fear.

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Once their short-term visas expire in 1-6 months, life for the stateless Bedoon, in Syria is characterized by continual fear, insecurity, loss of basic civil rights, discrimination and poverty. In their common view Bedoon claims before a Melbourne Court were all accepted and those before a Sydney judge all rejected. The depression is palpable in **P4**'s typical account. Along with all Bedoons in the Kuwait army, he was ejected and discriminated against, on suspicion of being under Iraqi influence. after the Gulf war: *I am very tired. I have no future. I am dizzy from the situation. I cannot go to Kuwait. Also the money my wife's family sends, \$200.00, is not enough to live on. I am dizzy. I do not know what to do. What can I do? Where shall I go? Where shall I stay? I don't know what to do. In tourists season, I dress like a Kuwaiti man but the rest of the year is a real problem when you can easily be asked about ID. Persecution is a big problem – we are in danger because our accent is different. Some people are informing the police because we have no passport... That is the reason for persecution. Children cannot go to school because they need a passport to go to school. I take them to the Mosque each day, where there is a school for studying Islam.... They can listen but if someone wants to study then they must have ID. We have no ID so my children have to do unofficial study.*

Other Bedoon deportees presented a similar picture. Thus **P2** said: *I live like a street person. I have no country. No identity. No money. I carry nothing in my hands. I have an unknown destiny. T2* says he very concerned about safety issues: *No-one has picked me up yet, but I have to avoid trouble all the time; I need to turn the other cheek if I am in a fight as I do not want to be seen by police'. T2* has changed accommodation 7 or 8 times as he is concerned that Security may be looking at him. **T5** did not report to Syrian authorities after arrival as required as he was highly anxious about what would happen to him. He believed he would be deported. **T5** is currently very anxious about his legal status in Syria and is constantly looking over his shoulder for the Security police. He keeps a very low profile, often not leaving his house for days. Security police have stopped him once and requested papers. He was forced to give a bribe of 500 Syrian pounds to the police to 'ensure' his safety. A Palestinian is similarly living in a security limbo. He is constantly concerned about the Security Police, stating: *I get a scared feeling when I see security or a policeman. I feel scared – it is a real problem.*

The researchers have concluded that, at the very least, Australian authorities appear to have acted without care of the dangers they have risked for detainees in the deportation process. The defence that many of these 'returnees' were so called 'voluntary' returnees is unacceptable. Some agreed to be returned as a possible lesser of two evils – the dangers of removal against indefinite, life wasting detention in Australia, isolated from family contact. The UNHCR has three times held that Australia's policy of mandatory detention of asylum seekers is in breach of international human rights law.⁹

It is hard to understand why the perceived imperative to remove asylum seekers from Australia outweighed the danger of secondary *refoulement* to countries where they had been oppressed; and in a number of cases the Australian authorities recognized this oppression. In other cases, such as that of the stateless Bedoons, people were deported with short term papers. This was done with the apparent knowledge of Australian authorities that such people would face a semi-underground life, excluded from normal employment, in terror of discovery and with active discrimination against themselves and

⁹ Australian Human Rights News 18/09/03

their children in perpetuity, living outside the law in another state.

2. Has the Australian Government encouraged refugees to obtain false papers and is there is evidence of bribery and corruption?

This question was not an original focus of this research. It arose as a pattern emerged suggesting that agents of the Australian Government might themselves be involved in practices used by 'people smugglers'. Of the ten recorded interviews with Australian deportees in Syria, six told us that they were encouraged to get false passports. Some declined to do this.

We note that DIMIA spokespersons have publicly said that *There were safeguards to ensure that deportees did not travel on false passports.... If there was any doubt about travel documents people have obtained themselves, the department referred them to the 'relevant authorities' for comment on their authenticity.*¹⁰

This denial has to be put against the fact that six people interviewed separately in Syria told us the same story and gave names of officials who had encouraged them to buy passports from 'people smugglers'. One such official allegedly told the deportee that if he disclosed this as a complaint, he would be in detention for 10 years. In addition, one interviewee, **P5**, gave us his now not needed false passport stamped with two deportation journeys out of Australia.

As described above, the second journey was needed precisely because the falsity of the passport was discovered in Abu Dhabi and **P5** was returned to Australia. It is not possible to believe that these facts were not known by the Australian officials who organised the second journey on the same passport and made special arrangements to take **P5** through several stopover check points with the help of Australian Consular officials.

Further material evidence of the duplicity among some Australian officials comes from a ticket purchased by Australian officials in Canberra for an interviewee to return via Syria to Kuwait. No entry documents were available for Kuwait and the person alleges he was told to enter Syria on the short visitor's visa and then continue to live there illegally. He was given a ticket purchased by DIMIA for travel from Sydney to Kuwait and included a seven day 'stopover' in Damascus. If questioned at Damascus airport he was told to show the Syrian officials the ticket as evidence of the fact he was only staying for seven days. The ticket and plan were only revealed to the deportee on the day of departure from Australia. The researchers have accepted this story as true. The ticket coupon provides evidence; the person is trapped without documents in Syria, and the policy of providing travel documents only at the point of departure happens frequently.

Another repeated theme in the stories is the practice of being given currency to put in travel documents to secure acceptance by immigration officers in different countries on the journey. Specific amounts were mentioned that needed to be placed inside travel documents and handed to immigration officials upon arrival. Again, the researchers tend to accept this allegation because it is so widely told by interviewees in independent interviews.

¹⁰ Sydney Morning Herald, September 30, 2003 p2.

3. Is the conduct of removals consistent with Australian values and legal obligations?

a. Legal Obligations

The 2000 Senate Committee¹¹ sets out Australia's critical obligation to people in need of protection. It is *non-refoulement*. People who are found to have refugee status derive this right from the 1951 *Refugee Convention* and 1967 *Protocol* to which Australia was an early signatory. It means they have the right not to be returned to the country where they have a *well founded fear of persecution* on the grounds of *race, religion, nationality, membership of a particular group or political opinion* – the so called 'Convention reasons'.

People who fail to establish that they are refugees but are deemed to be in need of protection also have claims for *non-refoulement* under the 1984 *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) and the 1996 *International Covenant on Civil and Political Rights* (ICCPR).¹² To establish a *non-refoulement* right under the CAT there must be *substantial grounds for believing* that a person will be in danger of torture on return. The Convention states that *all relevant considerations* must be taken into account including *a consistent pattern of gross, flagrant or mass violations of human rights*. The *non-refoulement* right under the ICCPR is mainly derived from Article 7 that no one shall be subjected to *cruel, inhuman or degrading treatment or punishment*. This is wider than the definition of torture under the CAT and does not have a nexus with Convention reasons or specific targeting. It applies particularly to people caught up in situations of generalized violence and war.

Australia has never incorporated the *non-refoulement* provisions of the CAT or the ICCPR into its domestic law. This means that people who seek to rely on Australia's signing of these international agreements depend on the Immigration Minister's discretion. It also means that there is no *illegality* in, or legal appeal process for, apparent breaches of these conventions in Australian law. There is much disquiet about this in Australia. The 2000 Senate Committee recommended that *the Attorney General's Department, in conjunction with DIMA, examine the most appropriate means by which Australia's laws could be amended so as to explicitly incorporate the 'non-refoulement' obligation of the CAT and ICCPR into domestic law*. **Recommendation 2.2.** The Government did not respond. Currently, the Senate is enquiring into the exercise of the Minister's discretion.

The *Refugee Convention* prohibits countries making reservations about Articles 1 and 33 – the definition of a refugee and the *non-refoulement* provision. Australia has however, particularly in recent years, placed a number of reservations in the Migration Act, which limit the application of our international obligations of which the following are most significant.¹³

¹¹ op.cit. Chapter 2

¹² The obligation may also arise under other international law instruments such as the Convention on the Rights of the Child (CROC)

¹³ Australian Lawyers for Human Rights *Refugee Law Kit* Chapter 3 provides a summary of these limitations

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In 2001, the definition of persecution was narrowed¹⁴ so that the reasons for persecution set out in the Convention will not apply unless the reason for persecution is essential and significant, it involves serious harm and systematic and discriminatory conduct. High Court judgments have in the past preferred a wider definition noting that *Persecution for a Convention reason may take an infinite variety of forms from death or torture to the deprivation of opportunities to compete on equal terms with other members of the relevant society*¹⁵. Recent judgments have criticised Australia's abandonment of a wider definition.¹⁶ Such narrowing of the definition can lead people with internationally justifiable refugee claims to depend on the CAT or ICCPR. Hence they are protected only by the doubtful exercise of Ministerial unchallengeable discretion.

The Refugee Convention prohibits discrimination so that asylum seekers, or categories of them, are blocked from the same entitlements and services available to other Australian permanent residents. Nevertheless, Australia has a complex system of such discrimination involving mandatory indeterminate long-term detention for people who arrive without a visa – the boat people largely. It has a variety of visas. The Temporary Protection Visa (TPI) limits residence (until recently to 3 years) and does not allow family reunion or even temporary departure in family crises. Other visas, e.g. for people who apply late for refugee status limit also the right to work and to access medical, educational and social security benefits and services. Australia has excised some of its territories from the *migration zone* so that people arriving in those areas are removed to other countries (the Pacific Solution). Such people cannot apply for protection in Australia except with the Minister's discretion and then only for a TPI. There have also been, attempts to restrict access to the courts by asylum seekers for review of protection visa decisions although these restrictions have been, at least in part, successfully challenged in the High Court.¹⁷

Whether or not the removals investigated in this research are consistent with Australia's legal obligations depends largely on the quality of the processes used to determine whether people are at risk as defined by the covenants and conventions of international law above. In turn, the quality of that assessment depends on the natural justice of the process, the quality of information available to the decision makers and on the reservations with which the international obligations have been incorporated into Australia's domestic law.

Enough has been said above to indicate that a persuasive case can be made that Australia has institutionalized a perverted system to define its international legal obligations. The failure to incorporate some key international law obligations into domestic law, despite the Senate Committee's recommendation in 2000 is also evidence of this perversity.

What this study highlights is the pain and danger inflicted on people who, on the face of it, have claims to our protection. The following section of the report highlights the way in which

¹⁴ Migration Legislation Amendment Act (m0.6) 2001 (Cth) section 5.

¹⁵ McHugh in Applicant A & Anor v Minister for Immigration and Ethnic Affairs [1997] 190 CLR 225 quoted in Australian Lawyers for Human Rights Refugee Law Kit 2003 p 13

¹⁶ Loc.cit Kirby J in Minister for Immigration and Multicultural Affairs v Khawar[2002] HCA 14 [108]

¹⁷ Australian Lawyers for Human Rights Refugee Law Kit 2003 Chapter 3

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our harsh and indeterminate detention system (criticised by the UNHCR, as already noted) pushed people to accept unsafe 'voluntary' removal. Hence some went to situations in which they faced the threat of death (P5)(C2) or torture (T1). Others went to a life on the run in terror of the Syrian security police (P1, P2, P4, T1, T2, T5). As a result most have a difficult time surviving and can see no end to this problem.

At this stage in the research we do not have access to the records of the determination process through which the protection rights of our interviewees were determined. Nor was this a focus of the research. Without such information it is not possible to make findings about the quality of the process experienced by our interviewees. From the viewpoint of the asylum seekers, however, the process appears as a lottery in which much information was excluded. Thus the kind of protection available in Syria was allegedly misunderstood at the RRT. Bedoons applying in Melbourne were all accepted. Bedoons applying in Sydney were not. These experiences of the interviewees are given in their own words in the next section of the report.

B Australian Values

Is the conduct of removals consistent with Australian values? How does our national self-image stand up to the experience of the deportees?

I went to Australia to seek asylum, not to be tortured. If they had told me in one week whether I was accepted or not, it would have been better. I tried for 1 year and 8 months to leave Australia but I was informed by the Australian Government that there is not one single country in the world that will accept you. We were begging them to give us any document. I feel a gang of people control all of Australia like a Mafia. I don't know anything outside the razor wire. I have not seen anything good I witnessed suicide attempts, attempts at cutting wrists, cutting chests, sewing lips and jumping onto razor wire. (P2)

P4 reflects on Australia and his whole experience. He came looking for freedom, safety and justice. Instead we found nothing but traps, built of steel bars, bad laws, and dishonest politics... They destroyed me, 3 years and 3 months. What crime did I do? There is no reason they put me into jail and then give me \$200.00 to go to Syria. My crime was to say, I am a refugee when I got to Sydney off the plane.

He makes complaint about the 'lottery' aspect of the review process – an opinion shared by many lawyers met in the course of this study: *What has made our imprisonment harder to bear is the manner in which our claims have been considered. For some asylum seekers, the process has been fair, but that is more a matter of luck than justice. When two people with identical circumstances are interviewed by different officials, one will receive a visa, while the other will not. Ignorance about the culture and politics of our homelands, flawed translations, and even the temperament of officials have all led to unfair decisions. Whatever evidence we present, whether it is our personal testimony or a report from a respected authority, it can always be ignored or dismissed by an official whose mind is already made up.*

Misinformation about Bedoon safety in Syria, the harshness of treatment leading up to deportation, the long delays in processing contravene the Australian values of mateship and a fair go.

The RRT told me that I could live in Syria. The RRT accepted that I was stateless from Kuwait but told me that the Syrian government would accept all Arabic speaking people; but the Visa I was issued for Syria was only for 3 months. The government of Australia did not care. The Certificate of Identity had a Syrian Visa that expired after 3 months on 8 April 2002. A

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member of the RRT, a Sri-Lankan person from Sydney, told me that I could stay in Syria for 15 years and could get Syrian citizenship. The Federal court accepted that I was a Bedoon and said, "you have a case but you can live in Syria". Australia did not care what happened after I got to Syria. (P4) He quotes the lawyers' advice. They said to me, "we know you have a just case but it is finished. Stay here and live like a dog or go from Australia".

P2 described his own desperate situation. *I had 2 choices: whether I would commit suicide in the Detention centre or whether I would leave Australia. As a group, we were considering suicide. We wrote to the media, TV, government and Churches asking "please save us". When I remember Australia, my heart is torn to pieces.*

P3 laments the curious injustice and inconsistency of Australians. *I find it very sad and tragic for Australia that the Government there now, is fighting the war against Saddam and yet this is the thing we were also prepared to do to get rid of Saddam Hussein and for this, I spent 2 years and 3 months in detention.*

Some of the processes of deportation contravene common decency standards: chemical injection undermines a person's capacity to be alert to dangers and to respond to demands e.g. when facing potentially critical interviews with immigration officials on arrival or on the journey; inhumane treatment denies the dignity of the human person; secrecy and lack of transparency in the actual deportation process screens the Immigration Department from scrutiny by the Australian people who often do not know what is going on.

Explaining his reason why he agreed to go from Australia 'voluntarily', **P2** said *I had witnessed what happens to resisters, Algerians, Turkish people. I saw people injected. One Turkish man was provided by DIMA with a false passport and they deported him forcibly. I witnessed a lot of cases like this.*

An actual example of injection is graphically described by a former ACM Officer*¹⁸ when he was told: *we have an 'extraction'; he's high risk, whatever that meant. I mean I didn't know anything then. I just followed orders. We get this guy out of bed early in the morning. We pull the sheet off him. He's in his pygamas or those long pants that those people wear. He clings on to the bedstead; this is a steel bedstead. My job is to unwind his fingers, struggling, shouting he won't go. There are nurses. First time I'd seen a 'chemical restraint' used. They must have broken about three needles on him. I'm thinking there must be a better way. This bloke's not an animal.*

P2 regards the secrecy of the ACM guards as *very strange. They took us to the airport. Our friends were to come and say goodbye to us but ACM staff had keys to airport doors and we were taken directly to the plane. We were restrained from seeing anybody.*

C4 refers to the inhumane detention of the Iraqis on the *Manoora*, sent to Nauru after being promised to go to Australia: *We refused to land in Nauru and were kept on the boat for one month in a room large enough for 100 and we were 350. We could not breathe; there was not enough room and the toilet facilities were terrible, terrible. There was not enough food and the food had too much chili in it so that no one could eat it.*

¹⁸ This deportation happened during the ACM officer's first week of employment in the maximum-security section of Villawood IDC. AA was deported to Algeria; this account was told to Ngareta Rossell on October 18, 2002.

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These damning indictments are the views of deportees who have had unfortunate experiences and it could be argued that it is not the only view of Australia. But it does raise some questions. Is this a mirror in which Australians need to look at themselves? For the sake of protecting our borders, was it necessary so to besmirch our image as a freedom loving and just nation? Could we not have protected our borders in more humane and compassionate ways?

In his Jessie Street Trust Lecture of 2001, Marcus Einfeld reminded us that though we are generally a kind and generous people, illusion is always a possibility. *It is just that we are not as good as we say or think we are.* Referring to our treatment of asylum seekers generally, he goes on to say: *Indeed, while this situation persists, we are engaged in an empty, untruthful boast about our supposedly superior standards.*¹⁹

¹⁹ ABC Background Briefing Sunday 3/06/01