

AUSTRALIA

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Head of state: Queen Elizabeth II, represented by Peter Hollingworth

Head of government: John Howard

Death penalty: abolitionist for all crimes

International Criminal Court: ratified

The government continued its controversial policy on refugees and asylum-seekers and sought international support for its restrictions on the rights of refugees and asylum-seekers under international law. Under the "Pacific Solution" approach, so-called boat people seeking asylum in Australia were arbitrarily detained and transferred between detention facilities in Australia, Nauru and Manus Island, Papua New Guinea.

Background

The treatment of asylum-seekers and refugees, and other immigration and border control issues, generated vigorous public debate on human rights. Government statements linked asylum-seekers with criminals, economic opportunists and "terrorists". Former Chief Justice Gerard Brennan commented: "The wretched isolation of the asylum-seekers in Woomera, in Nauru and in Manus Island, has left this country divided, many Australians accepting the necessity for inhuman treatment as the price to be paid for maintaining our immigration policies and our boundaries."

The Australian navy and coast watch continued operations off the coast to monitor and intercept vessels carrying asylum-seekers. A Senate inquiry found evidence, contrary to government claims, that in 2001 an overcrowded boat carrying Middle Eastern asylum-seekers had sunk inside waters patrolled by Australian military and coast watch forces, killing 353 people.

'Anti-terrorism' legislation

In May, parliament passed several new laws to define and outlaw acts of "terrorism". There was continuing controversy about another proposed law to give the Australian Security Intelligence Organisation (ASIO) powers to arrest and detain, without charge and legal representation, people suspected of involvement in "terrorist activities". Such powers could lead to violations of international human rights law.

International issues

In September, Australia's ratification of the Rome Statute of the International Criminal Court (ICC) entered into force. The Australian government had been chairing the "Like-Minded Group" of 67 states committed to the Court's establishment. There was a provision in the implementing legislation that the Attorney General must issue a certificate before a person can be surrendered to the ICC.

At the UN Economic and Social Council meeting in July,

Australia voted against the adoption of the draft Optional Protocol to the UN Convention against Torture. The Foreign Minister defended the decision on procedural grounds and stated that the government did not wish to see UN inspectors arrive unannounced at Australian prisons and detention centres, incorrectly interpreting the Protocol's provisions. In November, Australia abstained when the UN General Assembly adopted the Protocol.

Asylum-seekers and refugees

International and national criticism of the government's refugee and asylum policies continued, particularly Australia's so-called "Pacific Solution" and the policy of mandatory, non-reviewable detention of people arriving without travel documents. Scores of detainees were held for months in government-funded detention centres in Australia, Nauru and Papua New Guinea, after being recognized as refugees but pending security clearance. In August, ASIO reported that none of the approximately 6,000 asylum-seekers it had investigated was considered a security threat.

Rejected asylum-seekers in detention who asked to be returned to their home countries but could not obtain travel documents continued to be detained indefinitely. The Federal Court found in two cases that such continued detention was unlawful if there was no prospect of removal and ordered the detainees to be released. Two men, a Palestinian and an Iraqi, had been detained for eight and 23 months respectively after asking to be returned home. The Palestinian was eventually returned.

The government actively sought support for its policies from other countries and claimed that preventing asylum-seeker boats from landing on the Australian mainland was justified because it stopped the influx of boat people. The numbers of detainees declined on mainland Australia, leading to the suspension of remote detention facilities at Curtin and Woomera. The fate and status of many detainees refused entry to mainland Australia remained unclear.

In May, the UN Working Group on Arbitrary Detention (WGAD) and the Office of the UN High Commissioner for Human Rights (OHCHR) sent delegations to investigate conditions of detention and the legal regime governing the detention of asylum-seekers without trial or judicial oversight. In July, the OHCHR delegate described the detention regime as "offensive to human dignity" and reported "serious concern" about the human rights situation of people in immigration detention, particularly children and unaccompanied minors. In December, a WGAD report expressed similar concerns about "the psychological impact" of the detention regime, its "automatic and indiscriminate character, its potentially indefinite duration and the absence of juridical control of the legality of detention". The government rejected the findings of both reports.

In November, the national Human Rights and Equal Opportunity Commission (HREOC) found that Australia had breached its international human rights obligations by transferring six asylum-seekers from immigration detention to prisons, where they were arbitrarily detained without charge alongside convicted felons. One man had been held without

judicial oversight in prison and immigration detention since December 1997.

In December, the HREOC found that five asylum-seekers in Port Hedland detention centre had been arbitrarily detained for more than six days in isolation in dim or dark rooms before an immigration official became aware of their treatment. During the six days, they were allowed outdoors only twice for 10 to 15 minutes, and only one was given a change of clothes after five days. Despite reports by the official, the government took no action until alerted by AI Australia.

In November, AI received reports of a Colombian asylum-seeker who, after being rejected in Australia, went to Argentina and was then removed to Colombia, where he was reportedly killed by paramilitaries less than one month later.

☞ In a landmark ruling in April, the Federal Court upheld Naima Khawar's right to refugee status and ruled that the failure of Pakistani authorities to assist her when she went to them for protection from domestic violence amounted to a failure of the state to protect women from gender-based persecution.

☞ In November, a coroner's inquest was held into the deaths of Nurjan Husseini and Fatimeh Husseini who died when their boat sank after being intercepted by Australian navy and customs vessels off an Australian island in November 2001. Inquest findings were expected in 2003.

Indigenous people

The HREOC annual report on indigenous social justice published in June found that indigenous people made up 20 per cent of the prisoner population, despite government promises to reduce the imprisonment of indigenous people which caused disproportionately high rates of deaths in custody. This figure had risen from 14 per cent in 1991 and was 10 times their proportion of the general population. Indigenous juveniles represented about 42 per cent of juvenile detainees.

In September, the HREOC launched a report to mark the passing of five years since its national inquiry into the removal of indigenous children from their families under past government policies. *Restoring identity*, a report on reparations for the so-called "stolen generations", called for an all-encompassing tribunal process to provide a package of reparations measures to affected individuals and communities.

In July, a judicial inquiry in Western Australia found that lack of coordination between government agencies and inaction by indigenous organizations contributed to high rates of domestic violence and child abuse within indigenous communities. It found that, unless authorities and Aboriginal men addressed the issue, "the future for Aboriginal children will only lie in higher statistics of Aboriginal youth suicide or higher Aboriginal imprisonment rates". The inquiry report confirmed long-standing concerns of indigenous women and criticized police investigations into the death of 15-year-old Susan Taylor at an indigenous settlement in February 1999, which triggered the inquiry.

In October, a court in Alice Springs temporarily released an indigenous murder suspect, Kevin Webb, from pre-trial custody, specifically to allow the families of his victims to carry

out a customary punishment against him. He consented to the ceremony which resulted in him being speared in the leg 13 times and having his ankle broken. A police officer and a nurse were on stand-by. AI wrote to the Northern Territory Government seeking clarification on the legal basis for the court decision.

Investigation into police in Western Australia

In October, a Royal Commission investigating alleged criminal conduct within the Western Australia Police Service confirmed its intention to investigate the unresolved death in custody of Stephen Wardle, a non-indigenous 18-year-old youth who died in 1988 within hours of being placed in a police cell. In December a police officer who refused to give evidence in the inquest examining Stephen Wardle's death admitted fabricating evidence and perjury in an unrelated case.

AI country reports/visits

Report

- Australia-Pacific: Offending human dignity – the 'Pacific Solution' (AI Index: ASA 12/009/2002), published to mark the anniversary of the rescue of 438 shipwrecked asylum-seekers by a Norwegian freighter off the coast of Australia

Visit

In March, AI Secretary General Irene Khan visited Australia to mark International Women's Day. During her visit, she met senior representatives of the government, non-governmental organizations, the media, and refugee and indigenous organizations.

