

## JOINT STATEMENT ON AUSTRALIAN ASYLUM PROCESSING SUSPENSION: VIOLATIONS OF AUSTRALIA'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS THAT UNDERMINE CIVIL SOCIETY EFFORTS TO STRENGTHEN REFUGEE PROTECTIONS THROUGHOUT THE ASIA PACIFIC REGION

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We, the undersigned, condemn the Australian government's decision to suspend its processing of all applications for asylum from individuals from Sri Lanka and Afghanistan, for three and six months respectively.

The Suspension Policy is predicated on a profound misreading of the current situation in Sri Lanka and in Afghanistan. It plainly violates Australia's human rights obligations, and may inflict irreparable psychological harm upon Afghan and Sri Lankan asylum seekers – many of whom are likely to be refugees and survivors of torture and trauma.

The Suspension Policy undermines the efforts of our organisations and other civil society organisations in the Asia Pacific region to convince governments of the importance of ratifying the Refugee Convention and protecting the human rights of asylum seekers and refugees – as a matter of good international policy, and as a matter of law.

Despite formidable obstacles, we are making progress. We are deeply disappointed that instead of supporting and strengthening our efforts – which would allow countries which host the vast majority of refugees in the region, to share with Australia the ultimate responsibility for protecting refugees – the Australian government is sending a clear message that it does not respect the binding nature of its international human rights obligations towards asylum seekers and refugees. With this message coming from one of the few countries in our region that has ratified the Refugee Convention, we question the basis on which the Australia government expects its regional counterparts to take upon themselves increased obligations towards refugees.

### **The Suspension Policy**

On 9 April, 2010 the Australian government suspended processing of new asylum applications from Sri Lanka (for three months) and Afghanistan (for six months). During the suspension periods Afghan and Sri Lankan asylum seekers arriving by boat will be mandatorily detained. The Australian government announced on April 18 that up to 300 asylum seekers will be detained at an immigration facility at the Curtin Air Base, a remote desert facility in the far north of Western Australia. The facility is far from capital cities where psychosocial services for survivors of torture and trauma are available. At the end of the three and six month suspension periods the government will “review” the situation, but

will not commit to resuming processing at that time. Thus the suspension (and mandatory detention) may continue indefinitely.

The government has justified the Suspension Policy on the basis that it ensures that only those in “genuine need” would be granted protection, in light of “evolving circumstances” in Sri Lanka and Afghanistan and “hopes for further improvement and stabilisation in conditions.”<sup>[1]</sup> The effect of the suspension and “evolving” conditions is, according to the Australian government, that “in the future, more asylum claims from Sri Lanka and Afghanistan will be refused.”

## **Violations of Australia’s International Human Rights Obligations**

The Suspension Policy plainly violates Australia’s obligations under the Refugee Convention and other key human rights treaties in the following respects:

- 1. Non-discrimination.** In singling out Afghan and Sri Lankan nationals for asylum suspension and indefinite mandatory detention, the Suspension Policy violates Article 3 of the Refugee Convention, which prohibits discrimination on the basis of a refugee’s country of origin. It also violates Australia’s non-discrimination obligations under other key human rights treaties such as Article 26 of the International Covenant on Civil and Political Rights (ICCPR) because there is no objective and reasonable justification for the singling out of these nationalities.
- 2. Arbitrary detention.** In subjecting Afghan and Sri Lankan asylum seekers to mandatory detention for an indefinite period of at least three to six months, the Suspension Policy clearly violates the prohibition against arbitrary detention under Article 9 of the ICCPR. It is neither necessary nor proportionate because it is discriminatorily applied to particular nationalities in a blanket manner, without regard to individual circumstances, and is not subject to review. We note that this is a violation for which the Australian government has been strongly criticised on numerous occasions by the United Nations Human Rights Committee and other international and domestic bodies. We also fear that the detention conditions at harsh and remote locations such as Curtin may further violate Australia’s obligations under the ICCPR and potentially the Convention Against Torture.
- 3. Assessment of refugee claims on an individualised basis.** Australia has an obligation under the Refugee Convention to assess refugee claims on an individualised case-by-case basis, and to make those determinations up-front. It may not rely on routine UNHCR Country Guidelines (the revision of which it is purportedly awaiting) alone. Even if country conditions were improving or “evolving”, this does not mean that it will be safe for every individual to return to Sri Lanka or Afghanistan. To stall individual refugee processing based on a “hope” that country conditions might generally stabilise makes a mockery of the

entire refugee protection system, as well as fundamental due process protections to which asylum seekers are entitled under international law. We note that this move appears to be unprecedented elsewhere in the world.

4. **A lack of good faith.** The Suspension Policy is intended to serve as a deterrent against other Afghan and Sri Lankan asylum seekers coming to Australia seeking to engage Australia's protection obligations under the Refugee Convention.<sup>[2]</sup> Using the policy to circumvent Convention responsibilities in this manner undermines Australia's obligation to implement the Refugee Convention other human rights treaties in good faith.

As one of the few states within the Asia-Pacific region to have ratified the Refugee Convention and its Protocol, we urge the Australian government to act swiftly to realign its practices with its voluntarily assumed obligations, so as to demonstrate unequivocally that it is committed to upholding international human rights standards rather than undermining them.

*This statement was written by members of the Asia Pacific Refugee Rights Network (APRRN) and has been endorsed by the following organisations:*

	<b>Organisation</b>	<b>Country</b>
1.	Amnesty International	Australia
2.	Asylum Seeker Resource Centre	Australia
3.	Centre for Refugee Research, University of NSW	Australia
4.	Coalition for Asylum Seekers, Refugees and Detainees(CARAD)	Australia
5.	Refugee Council of Australia	Australia
6.	Nagorik Uddyog (Citizens Initiative)	Bangladesh
7.	Ovibashi Karmi Unnayan Program (OKUP)	Bangladesh
8.	Refugees Welfare Association	Cameroon
9.	WOPEC Cameroon	Cameroon
10.	The Egyptian Foundation for Refugee Rights	Egypt
11.	Greek Comittee of International and Democratic Solidarity	Greece

12.	Amnesty International	Hong Kong, S.A.R., China
13.	The Hong Kong Refugee Advice Centre Ltd.	Hong Kong , S.A.R., China
14.	Independent Lawyer	India
15.	Manitham	India
16.	OfERR	India
17.	Peoples' Vigilance Committee on Human Rights(PVCHR)	India
18.	SLIC	India
19.	The Other Media	India
20.	Human Rights Working Group Indonesia	Indonesia
21.	Imparsial	Indonesia
22.	Asylum Access	International
23.	Pakistan International Human Rights Org	International
24.	The Fahamu Refugee Programme, Fahamu Trust	International
25.	Health Equity Initiatives	Malaysia
26.	Malaysian Social Research Institute (MSRI)	Malaysia
27.	Persatuan Kesedaran Komuniti Selangor (EMPOWER)	Malaysia
28.	SUARAM	Malaysia
29.	Tenaganita	Malaysia
30.	The National Human Rights Society of Malaysia	Malaysia
31.	INHURED International	Nepal
32.	PPR Nepal	Nepal
33.	Amnesty International	Philippines
34.	Borneo Child Aid Society	Regional
35.	Christian Solidarity Worldwide - Southeast Asia	Regional
36.	Forum Asia	Regional
37.	Migrant Forum Asia	Regional

38.	The Arakan Project	Regional
39.	Lawyers for Human Rights	South Africa
40.	Korean Public Interest Lawyers Group GONGGAM	South Korea
41.	SANRIM	Sri Lanka
42.	Amnesty International	Taiwan
43.	People's Empowerment Foundation	Thailand
44.	USCRI	Thailand
45.	U.S.Committee for Refugees and Immigrants	USA

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[1] Ministers for Immigration and Citizenship, Foreign Affairs and Home Affairs, “Changes to Australia’s Immigration Procession System,” 9 April, 2010.

[2] Senator Evans, Minister for Immigration, described the policy as sending a “message” to individuals who may employ people smugglers to bring them to Australia that “the circumstances in Australia have changed and that increasingly persons from Sri Lanka and Afghanistan are being refused asylum.” See e.g. “Immigration clampdown: processing asylum seeker claims from Sri Lankans and Afghanis suspended”, *Sydne Morning Herald*, April 9, 2010 (<http://www.smh.com.au/national/immigration-clampdown-processing-asylum-seeker-claims-from-sri-lankans-and-afghanis-suspended-20100409-rwcd.html>).