

## DETAINEE CONDITIONS IN AUSTRALIA: 1996-2001

Onur ŞARAPLI\*

### ABSTRACT

*Refugee conditions in Australia have been a major concern of Australian society. There are many reasons why refugee conditions are not improved in the country. The practice of immigration and citizenship laws by the John Howard<sup>1</sup>Government since the federal election in 1996 won by his Liberal Party is under surveillance. In this study, the Australian Federal Government approach against asylum seekers is one of the issues that will be analyzed. Increasing reactions between social groups and international organizations against the policy makers will shape the direction of this study. Opinions of some authors on this issue, reasons for illegal migration, immigration facts in Australia, a comparison of Australian and Swedish refugee policies, child refugees and conditions of detention centres in 1990s are the parts of this research.*

**Keywords:** *Asylum Seekers in Australia, Refugee, Immigration, Detention Centre.*

### ÖZET

#### AVUSTRALYA'DA TUTUKLU MÜLTECİLERİN DURUMU: 1996-2001

*Avustralya'daki mültecilerin içinde buldukları ağır koşullar Avustralya toplumunun gündemindedir. Ülkede sığınma talebinde bulunan insanların içinde buldukları bu koşulların iyileştirilmemesinin sebepleri vardır. Başbakan John Howard'ın 1996 yılında kazanmış olduğu federal seçimlerden sonra göçmenlik ve vatandaşlık kanunlarının uygulamaları takip edilmektedir. Yapılan bu çalışmada, Avustralya Federal Hükümeti'nin sığınma talebinde bulunanlara karşı yaklaşımı da incelenmektedir. Bunun dışında, sosyal gruplar ve uluslararası organizasyonlar tarafından kanun yapanlara karşı yükselen tepkiler de bu çalışmanın yönünü belirlemektedir. Bu araştırmada, 1990'lı yıllarda bazı otoritelerin bu konu hakkındaki görüşleri, yasadışı göçmenliğin sebepleri, göçmenlik unsurları, Avustralya ve İsveç'in mülteci politikalarının karşılaştırılması, çocuk mülteciler ve gözaltı merkezlerindeki koşullar gibi konular yer almaktadır.*

**Anahtar Kelimeler:** *Avustralya'da Sığınmacılar, Mülteci, Göçmenlik, Gözaltı Merkezi.*

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\* Öğretim Görevlisi, İstanbul Yeni Yüzyıl Üniversitesi, İletişim Fakültesi  
([onur.sarapli@uni.sydney.edu.au](mailto:onur.sarapli@uni.sydney.edu.au))

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<sup>1</sup> John Howard, Prime Minister from 11.03.1996 to 03.12.2007

## Introduction

Globalizations, the implication of migration and refugee conditions formed Australia's agenda where citizenship is a final step of individuals' lives. Immigration laws have consistently been criticized since the 1990s, but especially in today's society. In the past, debate in the Western World showed an increasing temper of social and political groups against governments. Protests have been organized by activists in order to emphasize the increasing anger in society against the general attitudes of governments all around the world. Some reforms were regulated to decrease the amount of public reaction, but the lack of the practice of those policies became a critical point in the Australian society. Australia and Sweden are two nations developing their social and economic stabilities based on their own specific immigration and humanitarian immigration programs. Since the Australian Federal Government signed and adopted the human rights convention, the country has been and is still under the United Nations' surveillance. Even the local organizations have evidence that in previous years Australia did not obey the international law and breached its responsibilities against its detainees.

## Reasons for Illegal Migration

Many scientific data have been collected and studies have been done in previous years regarding the illegal migration that Australian immigration officials have long been facing by international organizations. James Jupp is the director of Centre for Immigration and Multicultural Studies in the Demographic and Social Research Institute at the Australian National University and he is the Executive Director of the Academy of the Social Science in Australia (From Australian National University website). He has published numerous texts on immigration and multicultural affairs. In one of his publications "*Exile or Refugee, the Settlement of Refugee, Humanitarian and Displaced Immigrants*", he generally makes an observation on the causes of refugee situations. According to Jupp (1994), there are four significant points:

1. "Post-Second World War resettlement of displaced persons unwilling to return to their homelands because these were under foreign occupation or unacceptable dictatorships arising from the post war power situation." (Jupp, 1994, p: 16)
2. "More recent escapes from totalitarian or dictatorial regimes." (Jupp, 1994, p: 16)
3. "Ethnic and religious minorities subject to persecution or discrimination by majority nationalist/religious regimes. These have included Middle Eastern Christians, Russians from China, Sri Lanka Tamils and Fiji Indians. It is arguable that many overseas Chinese, while not claiming refugee status, are also emigrating

under other programs because of real or perceived discrimination in some Asian countries.” (Jupp, 1994, p: 16)

4. “Victims of civil and international warfare. These constitute by far the bulk of the seventeen million current enumerated by the UN, most notably those fleeing Afghanistan and Ethiopia.” (Jupp, 1994, p: 16-17)

In contrast, every individual in the world has the right to seek protection from all sorts of persecution and this is not a privilege, but a right of an individual (Vision Australia, 2005). There are still many people living in bondage in the world (Fowler, J., Che, N. & Fowler, L., 2010, p: 1).

### **Immigration Facts in Australia**

There are some other facts closely related to Australia’s refugee policy. Frank Brennan (2002), the Associate Director of the Jesuit Social Justice Centre pleads that, Australia continues to annually receive between 70,000 and 80,000 new migrants from all around the world. The Howard Government located 12,000 places for those who want to come under the humanitarian visa category, but only 9960 visa applications were approved by the Australian Immigration Department (p: 11-12). According to Brennan (2002), some countries do not have migration programs but they offer protection to asylum seekers (p: 35). He continues his observation by reporting that the Australian Federal Government dropped the number of refugees by slashing its UNHCR (United Nations High Commissioner for Refugees) contribution from 14 billion dollars to 7 billion dollars per annum (p: 35).

### **Conditions in Detention Centres**

There is a report prepared by the Ombudsman. His aim is to investigate and to examine the situation of detainees held in State Correctional Facilities, the policies and procedures established by The Department of Immigration and Multicultural Affairs (DIMA) under the Migration Act 1958. What was discovered by the Ombudsman in detention centres was crucial, and recommendations were also made to improve the requirements of transfers of detainees from one place to another which has caused anger in the society. He expresses that:

“Although a transfer to prison is a serious decision and is meant to occur only as a last resort, evidence shows that when transfers of immigration detainees are made their welfare is not always monitored closely. In addition, detainees are not always given notice of the reasons for their transfer, nor is the counselling process consistently followed as required under DIMA policy. Despite the

recommendations made in this office's 1995 report, DIMA has still not reached clear agreements with the relevant State and Territory correctional authorities to ensure that appropriate lines of accountability, processes and standards of care are established." (Ombudsman, March 2001, p: 2)

In that report there are many other observations and recommendations; for example, even though minimal processing may generate complications, the interesting point is the real samples which show what kind of circumstances the detainees and asylum seekers are facing. The co-operation of the department and ACM (Australasian Correctional Management) should lead to the development of strategies for accurate programs which deal with detainees. The strategies, which include staff training, focus on stopping the existing conflicts, dealing with stressful detainees and handling tough behaviours (p: 7).

Whereas the same Ombudsman receives a complaint about the transfer of detainees to prisons. He indicates that people who have come to Australia as refugees or asylum seekers have experienced torture or trauma in their countries and require special care and basic needs; but ACM prison staff and the Department of Immigration and Multicultural Affairs at detention centres are not always aware of those points, whether or not the detainees have made claims of past trauma and imprisonment. Additionally, if claims were made, they are not necessarily considered by the staff (p: 18).

There was another recommendation by the Ombudsman to the Department of Immigration and Multicultural Affairs. In accordance with the Migration Act, immigrants who are diagnosed with mental health deficiencies cannot be reassigned to other prisons (p: 6). In contrast, The Department of Immigration and Multicultural Affairs still has not changed the process it follows; therefore, the Ombudsman again receives some other complaints from asylum seekers and detainees. The Ombudsman tells one of them:

"In April 2000, an Asylum seeker and a detainee, Mr. G, complained to my office that his friend, Mr. F, also a detainee held at the Perth IDC had 'lost his mind' after being detained for almost two years. Mr. F was, in fact, diagnosed with schizophrenia and had been admitted to a hospital on at least three occasions during that time. While in the IDC he was on a program of medication and close observation which however did not prevent him from attempting to set fire to himself. My office became involved when Mr. G complained that the smoke detectors failed to activate during this incident and he and another detainee were forced to attempt to put out the fire themselves before any ACM officers arrived.

Mr. G complained that his mental health had also deteriorated as a result of the time spent in detention and the uncertainty as he and Mr. F awaited the outcome of their request for Ministerial intervention.” (Ombudsman, March 2001, p: 34-35)

These evidences clearly demonstrate the critical conditions detainees must endure which are put in place by the government authorities. It also gives a clue about what future is awaiting them.

### **Children as Refugees**

While these problems continue to exist, another issue is raised: a child’s right to refuge. According to the United Nations High Commissioner for Refugees, there are more than 25 million children living under the conditions of refugee status in all over the world. Australia is obliged to give its best conditions while it deals with children who seek asylum (Vision Australia, 2005).

On the contrary, the Human Rights and Equal Opportunity Commission acknowledges that detention can harm children’s mental health, separate them from their parents and keep them from proper primary or secondary education. It also shows that 92 percent of children who seek asylum in Australia are genuine refugees and the Australian Government makes detention centres the only options for the children. On the other hand, the Australian Government as a signatory is obliged to put those refugee children in detention centres only as last resort (Vision Australia, 2005). In contrast, the Australian Government rejects this report and its obligations under the Convention on the Rights of the Child (Vision Australia, 2005).

### **Comparison of Australia and Sweden in Refugee Conditions**

Sweden has a much better and modern perspective in refugee issues. Grant Mitchell from Australian Fabian Group suggests that Sweden received nearly 16,000 asylum seekers in the year 2000. 80% of this population arrived in Sweden with fake passports or with no documentation at all (Mitchell, 2001). Mitchell continues to describe in his study that Sweden has built a functioning reception process that allows humane treatment of asylum seekers while they await a decision and continually addresses national security concerns as it removes failed refugee-claimants. He also observed that the Swedish Government has been successful in the quick integration of resettled refugees into the Swedish society (Mitchell, 2001).

Another point as to why the government has succeeded on the refugee issue

is that implementing a comprehensive and well-planned reception, detention, return and integration system is based on two points. The first one is clear government guidelines and stipulations on the enforcement of policy. The second one is how asylum seekers are to be treated. Mitchell continues his observation that the Swedish migration policy has been built on consultation between NGOs, academics, and departments in order to allow for an adequate legal and social framework. There was a study that helped to analyze the practice of Swedish Refugee Policy - flyktingpolitik- and the aspects of Swedish Law behind these policies (Mitchell, 2001). According to Mitchell, the migration and the asylum policy in Sweden differ from the Australian point of view. The objectives of Swedish migration and asylum policy are indicated as below:

1. "To enable migration to and from Sweden to be conducted in an organized manner." (Mitchell, 2001)
2. "To safeguard the right of asylum in Sweden and internationally." (Mitchell, 2001)
3. "To maintain regulated immigration, and
4. to enhance harmonization of refugee and migration policy in the EU." (Mitchell, 2001)

It is also expressed that all asylum seekers who arrive in Sweden without documentation are detained until their identification has been investigated. There is a specific approach by the Swedish Government which makes Sweden different from Australia or any other country. The government has stipulated that detention in Sweden shall only be employed if supervision is deemed inadequate. In practice, this means that asylum seekers may be signed into the detention centre and subsequently released into the reception centre after an initial assessment (Mitchell, 2001). According to Mitchell, there are three categories of detainees:

- 1) Identification detention, which allows aliens to be detained if their identity is unclear. (Mitchell, 2001)
- 2) Investigation detention, where the decision is made for a detainee to be released or not into the community. This happens if there are questionable aspects to the alien's identity and further investigation is needed or if there is a possibility of national security being at risk when detainees are released. The Migration Board's Asylum Bureau undertakes identity investigations with aid from the Foreign Affairs Department and the Police. (Mitchell, 2001)
- 3) The third category exists if the detainee is not eligible and needs to be deported. This is also for a maximum of 2 months, usually for the duration of the preparation of travel documents. (Mitchell, 2001)

Mitchell adds some other facts commonly known by detainees about the government regulations on detainee issues. He says:

“...all detainees are aware of their rights in detention and the length of time they can be held in detention. All detainees have a right under Swedish law to appeal their being held in detention. They can appeal each category that they are held on, firstly to the Local Court and then to the Alien Appeals Board. Asylum Seekers are kept in detention only for the period of time it takes to ascertain their identities, not for the duration of their asylum procedure. The average stay in a Swedish detention centre is 47 days. Once released they are placed in the Carl Lund Refugee Reception Centre.” (Mitchell, 2001)

During the time spent in detention centres, children are the ones who suffer more than any person under the same conditions. It is not only the physical conditions children must endure, but also some other raised issues such as health and psychological problems. Lack of education and the quality of nutrition are the vital points. Rights for children in Sweden are probably the most advanced ones in the world because no child under 18 years of age can be held in detention centres for more than 3 days; however, in case of an extraordinary situation, children can only be kept up to 6 days. In some other cases, if a child arrives in Sweden without his/her parent, then the child is taken to a place that is called supervised group home run. If the whole family comes to Sweden without any documents and visas then the child is placed in a family accommodation in a refugee reception centre. In case of an unclear existence where the threat to national security is unknown or where child refugees are not be able to identified by Swedish officials, then one parent of the child is held in a detention centre. This capture is basically very flexible and does not stop the child from seeing his/her parent during the detention or does not stop any phone calls between the family members at any time (Mitchell, 2001).

### **Some Suggestions About How to Improve Refugee Conditions in Australia**

Australian refugee policies have been suffering in their formulation; the Australian Federal Government has an opportunity to manipulate cases. The author of the text “*Refugee policy: is there a way out of this mess?*” Chris Sidoti (21 Feb, 2002) the National Spokesperson of the Human Rights Council of Australia, described some principles for good refugee policy in Racial Respect Seminar organized in Canberra on 21 February 2002. According to the author, Australia has obligations to regulate the entry of aliens into Australia which does not violate its domestic or international legal obligations. Australia is also obliged to improve refugee and asylum seekers’ rights and process their claims under relevant

international law. No refugee can be punished and these people need to be treated with respect. Another suggestion made by Sidoti is that no refugee or asylum seeker should be detained beyond the processing period unless subject to judicial review or on grounds of public security. Family reunion entitlements will cover family members such as spouse and children (Sidoti).

## **Conclusion**

In conclusion, refugee crisis and illegal immigration are the results of the unbalanced wealth system in our globalized world. Social, political, economic and even racial phenomenons confront us with these conflicts and even more people are involved in those problems every year. While focusing on better technology and science, we need to focus on how we can improve the current immigration and humanitarian programs with the co-operation of all other nations for the people who really deserve better living conditions.



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