



Human Rights Watch Statement

Item 6

Adoption of the Outcome of the Universal Periodic Review of Australia

June 8, 2011

Human Rights Watch welcomes the Australian government's support for the recommendation by Sweden to safeguard the rights of refugees and asylum seekers. However, we remain deeply concerned that while Australia claims to protect these rights, the government's current and prospective policies and practices may in fact run afoul of Australia's international obligations.

For example, Australia is currently pursuing an agreement with Malaysia under which 800 asylum applicants will be forcibly transferred from Australia to Malaysia in exchange for 4,000 recognized refugees from Malaysia. The agreement appears to lack necessary guarantees that asylum seekers forcibly transferred from Australia to Malaysia will be treated in accordance with Australia's obligations under international human rights and refugee law. Malaysia is not a party to the 1951 Refugee Convention and its 1967 Protocol, does not accept refugees except for resettlement to third countries, and has a poor track record of treatment of irregular migrants (including asylum seekers), including torture and ill-treatment for immigration violations and prolonged indefinite detention in inhuman and degrading conditions. Forcibly transferring asylum seekers to a place, such as Malaysia, where they may face torture and other ill-treatment would violate Australia's obligations under the Convention against Torture and other international treaties. We call on the Australian government to abandon such bilateral agreements.

Human Rights Watch also acknowledges that Australia has accepted in part several recommendations concerning the mandatory detention of asylum seekers, including Norway's recommendation that Australia only detain individuals when strictly necessary, and Brazil's recommendation to consider alternatives to detention of irregular migrants and asylum seekers. But Human Rights Watch regrets that it rejected the recommendation from Switzerland not to detain migrants other than in exceptional cases.

The Australian government claimed during the UPR interactive dialogue that it "is committed to treating asylum seekers humanely and fairly," and that immigration detention is used "only as a last resort and for the shortest practicable time." In rejecting the Swiss government's recommendation, the government claims that "mandatory detention is based on unauthorized arrival and not on individuals seeking asylum." However, the reality is that asylum seekers, including children who arrive informally, face mandatory and indefinite detention –they are detained as a matter of course

before other options have been exhausted. As of May 13, 2011, there were 6,730 people in immigration detention facilities in Australia, of which 6,079 are undergoing refugee status assessments.

The Australian government also accepted in part Brazil's recommendation to ensure that no children are held in immigration detention. But Australia's claim that it will not detain children is based on a policy under which children will not be detained in particular high-security facilities. More than 1,000 children are currently detained in other secure immigration detention facilities.

We urge the Australian government to end mandatory detention of all asylum seekers. Australia should enact legislation providing that asylum seekers are only detained when strictly necessary and as a last resort, and that children should never be routinely detained. We urge you to set time limits on immigration detention, provide for regular judicial review of a person's detention, and to ensure that all detainees have adequate access to legal counsel, interpreters, communication facilities, education, physical and mental health services, and religious support networks.