



Fact sheet 2

Refugees' human rights

The UN Refugee Convention

The Refugee Convention (the 1951 Convention Relating to the Status of Refugees) is an international treaty that sets out the definition of a refugee, the rights of refugees, the protections that governments should afford to asylum seekers in their country.

The Convention was drafted by the international community in the wake of the Second World War Two and represents the world's response to the large numbers of people fleeing post-war Europe. The Convention promotes the principle of 'non-refoulement' i.e. the principle that no individual who has valid fears about returning to their country of origin on the basis of persecution should be forced to go back.

The provisions of the Refugee Convention stipulate that no penalties will be imposed on refugees for their illegal entry or presence if they come directly from a territory where their life or freedom is under threat.

Australia signed the Refugee Convention in 1954, and the 1967 Protocol Relating to Refugees, in 1973.

Universal Declaration of Human Rights

The United Nations Universal Declaration of Human Rights was adopted by the United Nations General Assembly in 1948. The Declaration was written following the atrocities of the Second World War and represented an attempt by the international community to guarantee the fundamental rights of every human being everywhere. As the Declaration is a piece of international law, individual governments must pass their own laws to make sure the rights contained in the Declaration are upheld and respected.¹

¹ The Universal Declaration of Human Rights, UNHCR, <http://www.un.org/en/documents/udhr/history.shtml>

Other Conventions

Australia has also committed itself to a number of other international agreements which deal with situations of persecution. The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1989 Convention on the Rights of the Child (CRC).

The CAT states that no person should be returned to a country where there are grounds for believing they would be in danger of being tortured. The ICCPR is even more far-reaching, stressing that all individuals have a right to life and the right to protection of this right by law. Individuals also possess the right not to be subjected to torture, cruel, inhumane or degrading treatment or punishment, their right to live free of arbitrary arrest, their right to liberty and security except on grounds and procedures established by law.

Most significantly, in the context of asylum seeker claims, individuals have the right if they are detained to have their case heard and a decision made in a court of law without delay.

Is the Refugee Convention law in Australia?

Although there is a comprehensive international legal framework for the protection of the human rights of refugees, international law is not enforceable in Australian courts unless it has been incorporated into domestic law. Not only are there a number of aspects of Australia's domestic law that do not measure up to the commitments Australia has made internationally, but there is also an ongoing need to press for incorporation of international legal standards into the domestic legal framework. Amnesty International continues to work to bring about this essential change.

Presently, the Refugee Convention is incorporated only by definition of the term 'refugee' in the Migration Act 1958 and not by specifically implementing obligations of the convention. Rather than legislating to protect the rights of refugees and asylum seekers, the Australian Government has provided the Minister for Immigration, along with his department, with extensive discretionary powers – for which there is limited accountability.