



Note No. 67/2015

The Permanent Mission of Australia to the United Nations and other international organisations in Geneva presents its compliments to Office of the United Nations High Commissioner for Human Rights and the Human Rights Committee, and has the honour to refer to the joint urgent appeal from the Special Rapporteur on the human rights of migrants and the Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment dated 8 July 2014 (Ref: AUS 2/2014).

The Australian Permanent Mission has the honour to present the Australian Government's findings to the Human Rights Committee (the Committee) on the Special Procedures joint urgent appeal (Ref: AUS 2/2014).

The Australian Government's response has been prepared following completion of deliberations on the matter by the High Court of Australia.

The Australian Government (Australia) thanks the Committee for accepting our previous interim response submitted on 10 July 2014. Australia invites the Committee to now consider the admissibility, and if necessary, the merits of the communication.

The Permanent Mission of Australia avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights and the Human Rights Committee the assurances of its highest consideration.



Geneva
5 May 2015

1. Please provide any additional information and any comment you may have on the above-mentioned allegations related to the imminent handover of the two groups of asylum seekers and migrants to the Sri Lankan authorities and how this measure would be in accordance with the international standards mentioned above.

Since the last response by the Australian Government on 10 July 2014, the High Court of Australia handed down a decision in *CPCF v Minister for Immigration and Border Protection & the Commonwealth* (CPCF) on 28 January 2015.

CPCF was a Sri Lankan national of Tamil ethnicity, and was one of a group of 157 persons who were on board the Indian-flagged vessel bound for Australia from Pondicherry, India, which was intercepted by an Australian Customs and Border Protection Service vessel on or about 29 June 2014.

The plaintiff challenged the lawfulness of his detention under the *Maritime Powers Act 2013* (Cth) (MPA) by maritime officers as part of Operation Sovereign Borders. The majority of the Court found for the Commonwealth, dismissing the plaintiff's claims. In particular, the majority of the Court held that the MPA authorised a maritime officer to detain the plaintiff for the purpose of taking him from Australia's contiguous zone to a place outside Australia, being India.

Please find attached copies of:

1. The final judgment;
2. The Plaintiff's written submissions;
3. The Defendant's written submissions;
4. Written submissions prepared by Australian Human Rights Commission seeking leave to intervene;
5. Written submissions prepared by United Nations High Commissioner for Refugees seeking leave to appear as amicus curiae;
6. Chronology compiled by the Defendants;
7. Plaintiff's submissions in reply; and
8. Plaintiff's amended submissions in reply.

The members of the group of 41 persons were returned to Sri Lankan authorities on 6 July 2014. A media statement from the then Minister for Immigration and Border Protection released on 7 July 2014 is attached (attachment number 9) for your information.

The Australian Government maintains that its treatment of the two groups was in compliance with Australia's international obligations under relevant conventions.

2. *Please provide information on the whereabouts of the asylum seekers and migrants and the legal basis for their detention.*

As above, the group of 41 persons was returned to Sri Lankan authorities on 6 July 2014.

The group of 157 persons were transferred to Nauru, via the Cocos (Keeling) Islands and Curtin Immigration Detention Centre in Western Australia, after choosing to not meet with Indian consular officials at Curtin.

The legal basis for detention of these two groups at sea was the *Maritime Powers Act 2013*. The lawfulness of the Australian Government's interpretation of the relevant provisions of the Maritime Powers Act was confirmed by the High Court of Australia's decision in *CPCF v Minister for Immigration and Border Protection*, which examined the detention of a member of the group of 157 people.

The legal basis for the transfer of the second group to Nauru was Subdivision B, Division 8 of Part 2 of the Migration Act 1958, particularly section 198AD. This group is now subject to Nauruan law.

3. *Please provide information on whether access to legal representatives has been facilitated by the authorities. If not, please explain why.*

Where requested by individuals access to legal representatives was facilitated.

4. *Please indicate if screening has been undertaken for refugee status determination as well as to identify other protection needs including possible victims of trafficking, unaccompanied children, or persons with health issues.*

In relation to the two groups, family groups, single adults and unaccompanied minors were identified, and there were qualified medical personnel available to deal with any health issues which were identified.

Both groups were assessed to ensure compliance with Australia's international obligations under relevant conventions.

The members of the group of 41 persons returned to Sri Lankan authorities on 6 July 2014 were subject to an on-water assessment. This process included identifying any person who may need to be referred for further assessment of their claims.

The members of the group of 157 persons transferred to Nauru were subject to a pre-transfer screening process prior to the transfer to Nauru. This pre-transfer screening process has been designed to ensure that transfers to Nauru will not breach Australia's international obligations.

The Nauruan Government is now considering claims to refugee status made by members of the group of 157 persons.

5. *Please provide details, and where available the results, of any investigation, judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.*

As per the response to question 1, the High Court of Australia handed down the decision in *CPCF v Minister for Immigration and Border Protection* on 28 January 2015.

The Australian Government is not aware of any further Australian judicial or other inquiries in relation to these two groups.

6. *Please provide information on the risk assessment carried out in relation to the two groups of asylum seekers and migrants' situation, the decision to not provide information on their whereabouts and conditions and how this policy is compatible with the international standards mentioned above.*

The Australian Government maintains that the assessment carried out in relation to the two groups was in compliance with Australia's international obligations under relevant conventions.

The Australian Government provides periodic and routine advice to the public in relation to on-water operations. This balances the operational risk of providing real-time information with the interests of the Australian community in open and accountable government. Information controls are designed to limit the potential availability to people smugglers of information on changes to procedures or tactical activities that may evolve over time, or to allow people smugglers to broadcast the message that a successful people smuggling venture has arrived in Australia, whether true or not.