

7 February 2020

Mr. Felipe González Morales
UN Special Rapporteur on the Human Rights of Migrants

By Email: migrant@ohchr.org

Dear Special Rapporteur,

RACS Submission on the right to freedom of association of migrants in Australia

RACS appreciates the opportunity to provide submission and comment to the thematic report on the right to freedom of association of migrants. In particular, as a civil society organisation ('CSO') operating in Australia and working with people seeking asylum and refugees, RACS is in a position to speak from experience in this sector regarding the barriers facing vulnerable migrants in this area and the challenges faced by CSOs in this sector. This submission raises a number of the difficulties RACS, a dedicated community legal centre assisting asylum seekers and refugees, face including decreased consultation, removal of funding for legal assistance, difficulty accessing clients in detention, restrictions on asylum seekers' behaviour and difficulty accessing public information. Many of the actions taken by government can be seen in the context of the current stance towards CSOs assisting migrants and refugee and asylum seekers in particular.

Government Stance Towards CSOs such as RACS

RACS' experience over the past several years has been, broadly, a lack of concern by the Australian federal government with the views of CSOs on subjects relating to asylum seekers and refugees, and a desire to curtail consultation processes and/or exclude bodies such as RACS from the process. This shows a worrying lack of concern for the views of such community voices and groups who seek to advocate on behalf of vulnerable migrant populations. RACS further considers that this lack of consultation neatly dovetails with the increasingly punitive and harsh policy settings and stances directed at people seeking asylum in Australia, some of which are discussed below but which are manifold and significant in their impact. Indeed, beyond simply being ignored, RACS is concerned by the trend on behalf of many elected officials and public political figures to publicly demonise and attack community organisations and advocates working with people seeking asylum. As Australian public discourse in relation to refugees and people seeking asylum has become increasingly vexed and toxic in recent years, lawyers and refugee advocates have become increasing targets for vitriol. For instance, the then-Minister for Immigration's August 2017 comment that lawyers assisting asylum seekers are "unAustralian" transparently sought to delegitimise the voices and actions of such lawyers [including those at RACS] and limit the scope of their public speech.¹ Similar suppressive effects flow from

¹ Bianca Hall, 'Lawyers representing asylum seekers are 'un-Australian': Peter Dutton', (28 August 2017), The Sydney Morning Herald, <<https://www.smh.com.au/politics/federal/lawyers-representing-asylum-seekers-are-unaustralian-peter-dutton-20170828-gy5ci7.html>>

unfounded accusations, unaccompanied by evidence, that refugee advocates encourage asylum seekers to self-harm,² or references to critics as “crazy lefties” who are “dead to me”.³

Funding Models

The Australian model of provision of legal services to vulnerable persons has typically been centred on government funding, provided by the federal or state government directly to state Legal Aid commissions and/or to legal service providers including community legal centres (‘CLCs’) such as RACS. RACS, as with most other CLCs assisting people seeking asylum, had historically assisted asylum seekers with funding from the Immigration Advice and Assistance Scheme (IAAAS), which was used to provide advice and assistance to indigent, impoverished and vulnerable persons seeking asylum who were unable to afford or access legal assistance for the refugee status determination process. However, following the 2013 federal election, the federal government enacted broad funding cuts directed at this sector. These cuts, which came into effect from 2014, took place almost overnight and remain in effect, which removed funding for legal assistance for asylum seekers. This sudden and drastic change had a profound effect on the sector and placed a massive burden on those who sought to continue to provide services to asylum seekers unable to afford or access legal advice or assistance.

Another key fiscal pressure on RACS and other actors in the sector has been denial of access to funded interpreting and translating services for the purpose of providing legal advice. These services are free and available to access in a wide range of other public services. Australian visa application forms, statements, evidence, etc. are required to be completed in English; advice by Australian lawyers is typically delivered in English and must be interpreted to many clients. However, in recent years the above systematic cuts to the sector have resulted in withdrawal of funded interpreting and translation services, severely impeding RACS’ work and preventing clients and vulnerable migrants and communities from receiving legal advice and assistance in a language that they understand.

Difficulties Accessing Clients in Detention

RACS has also encountered significant difficulties in accessing and assisting clients who are held in immigration detention. Even clients who are detained on the Australian mainland – as opposed to regional processing centres in Nauru and Papua New Guinea, or offshore territories such as Christmas Island – face extraordinary and unnecessary barriers to accessing legal advice and assistance. Whereas asylum seekers in detention were routinely assigned lawyers under the IAAAS in the past, this practice no longer continues. This leaves asylum seekers, who may have been detained on arrival to Australia and who may speak no English, to find and generally fund their own legal assistance through the refugee status determination process. Visits, including from legal professionals, are subject to substantial administrative barriers to arrange and the process for approval is not transparent. In some cases entry is only allowed where asylum seekers have signed forms which appoint the legal representative to assist them, but the legal representative may have no means to have the form signed without first visiting their client. Calls to the detainee telephones in IDCs are not directed to specific individual detainees; the IDC switchboard will simply direct a call to the appropriate “block” of cells, for any detainee in the compound to pick up and [hopefully] physically hand to the desired person. At

² Ben Doherty and Helen Davidson, ‘Peter Dutton accuses refugee advocates of encouraging suicide on Nauru’, (3 May 2016), The Guardian, <<https://www.theguardian.com/australia-news/2016/may/03/peter-dutton-accuses-refugee-advocates-of-encouraging-suicide-on-nauru>>

³ Michael Koziol, ‘They’re dead to me’: Peter Dutton lashes out at media critics over white farmers’, (22 March 2018), The Sydney Morning Herald, <<https://www.smh.com.au/politics/federal/they-re-dead-to-me-peter-dutton-lashes-out-at-media-critics-over-white-farmers-20180322-p4z5m6.html>>

various points, and subject to legal challenges, the Australian government has attempted to impose rules preventing detainees from possessing mobile phones or other means of communication. The cumulative impact of these is to prevent vulnerable people in detention from receiving timely and adequate legal advice and being empowered to protect and pursue their rights under Australian law. Similar hurdles are faced by other persons in detention who wish to receive visits and contact from other external bodies such as family, friends and community groups.

Code of Behaviour

In 2014, additional restrictions were introduced for people seeking asylum obtain a Bridging Visa E - a type of visa required so that these people were not subject to mandatory immigration detention. This only applied to people seeking asylum who had arrived in Australia by boat. No other group of people were required to sign the code of behaviour (**the code**)⁴ to obtain a Bridging Visa E. The code stipulates several matters that simply reflect Australian law, such as requiring compliance with road rules, avoiding criminal conduct, etc.; the inclusion of which has the insulting and stigmatising implication that the people concerned would otherwise not follow these laws. However, the code goes beyond this, setting out a variety of vague requirements such as refraining from “disruptive activities”, or “co-operat[ing] with all reasonable requests” from the Department regarding the person’s status in Australia. Given the impact of not having a Bridging Visa, either by not signing the code or because of cancellation for breaching the code, stands the risk of indefinite immigration detention, these very broad and ill-defined terms have a significant chilling effect on the activities of those compelled to sign the code. RACS regularly encounters clients who are concerned and fearful that if they are to engage in community activities, peaceful protests, political organising or other [entirely lawful] actions in Australia their visa status may be jeopardised. We consider that the code of behaviour serves little purpose beyond the demonization of a vulnerable group of migrants, and severely inhibits the exercise of many of their rights to freedom of speech and association in Australia.

Freedom of Information Laws

Australian Freedom of Information Laws, such as that contained at the federal level in the *Freedom of Information Act 1982* (Cth), require that “FOI requests” be processed, decided and responded to by government agencies within 30 days. RACS’ experience has been that there is widespread [and unlawful] non-compliance with this timeframe by the Department of Home Affairs. The majority of FOI requests lodged by RACS take a period of several months for response and are often excessively redacted, including information provided by the client themselves. The unresponsiveness to FOI requests prevents RACS’ clients from accessing their own information, and often severely inhibits their ability to conduct visa applications and migration litigation [as well as RACS’ ability to assist them]. It further prevents civil society, including media, RACS and other CSOs, from accessing purportedly public government information and holding government agencies to account. Over the past few years, such response times from the Department of Home Affairs [and its predecessor agencies] have only deteriorated, and show little sign of improving in the foreseeable future.

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⁴ See Department of Immigration and Border Protection Form 1444i, available at: <https://immi.homeaffairs.gov.au/form-listing/forms/1444i.pdf>