

## WHO CARES ABOUT HUMAN RIGHTS?#

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The problem with human rights, the problem that I want to talk about, is that human rights traditionally have been more honoured in speech than in observance. They are spoken of as important but very widely ignored. The reason is obvious: the people who have the power to make sure that human rights matter are generally people whose own human rights are rarely challenged. On the other hand, the people whose human rights desperately need to be protected are the least able to do anything effective to secure them.

It is not a new problem. It has been a characteristic of human rights ever since human rights discourse emerged. You can trace it back to the second half of the 18<sup>th</sup> century. Emmanuel Kant – an impenetrable writer, but decisively right – derived the Categorical Imperative as a matter of pure reason; Tom Paine wrote of the Rights of Man, and was prosecuted for sedition; the leaders of the French Revolution declared in unmistakable action that Liberty, Equality and Fraternity were essential values.

But the clearest early statement of human rights principles is found in the preamble to the *United States Declaration of Independence*:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.<sup>1</sup>

Those are perhaps the finest and purest words ever written on the subject – just one sentence. And yet the *Dred Scott* case nearly 100 years later was a complete denial of the sentiments embodied in the Declaration of Independence.<sup>2</sup> In 1857, the United States Supreme Court held that the phrase ‘all men are created equal’ did *not* refer to African-American people.<sup>3</sup> (Incidentally, the result in *Dred Scott* was the product of an exercise in strict legalism – black-letter law of a kind which has occasionally found favour in the High Court of Australia.)

And in more recent memory, when the world was reeling in the aftermath of World War II and polishing the fine phrases of the *Universal Declaration of Human Rights*, at the same time the Americans were negotiating with the

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1 *Declaration of Independence* (US, 1776) [2].

2 *Dred Scott v Sandford*, 60 US (15 L Ed) 393 (1857).

3 *Ibid.*

Japanese doctors who had run the experimental laboratories at Harbin. In Unit 731 they had performed experiments as bad as anything done by Mengele in Auschwitz, including the vivisection of pregnant women without anaesthetic. Whilst the world's finest minds prepared the *Universal Declaration of Human Rights*, the United States agreed to give those doctors immunity, in exchange for the products of their research.

The contrast here between what is said about human rights and what is actually done where it matters could hardly be more striking. It happened just after the world had seen, in horror, the first footage from Belsen and Auschwitz. That these things could have been negotiated at the same time is striking, to say the least.

But in Australia, of course, we're different, aren't we?

A very important Australian, with whom I do not always necessarily agree, said this, just two years ago, on 20 November 2000:

The reason for our different approach to human rights has more to do with the Australian way of doing things. Our pledge is pragmatic, but it's also firmly rooted in an ideological commitment to liberal democratic ideals. I have no qualms in saying that one of our abiding values is that of a fair go for all.

Australians care about human rights because they believe strongly in a fair go. They support the underdog and they take particular exception to abuses of power. They see justice and human dignity as the self evident right of all people. They also prefer to cut through the rhetoric and do something useful.<sup>4</sup>

When Alexander Downer said those words I imagine that he meant them; but to say them now would probably result in his expulsion from the parliamentary Liberal Party. His words spoken then do not seem to echo, in any way at all, the sentiments of the current government of this country. And, I'm sad to say, they do not seem to reflect the sentiments of the majority of the public in Australia. The public has an excuse: we do not have any organised human rights education in Australia because up until now most ordinary people in Australia have thought that human rights are not an issue, because they are not under threat.

It is time to rethink.

Post-September 11, post-Bali, it is dangerous to stand up and say: 'Just a minute, these people are human beings whose rights deserve some attention'. It is much easier, much more popular, to lock them up, hound them away, or otherwise deal with them as a problem to be solved, rather than recognise them as damaged people to be helped.

Let us then consider, against the background of Alexander Downer's words, what we're doing in connection with refugees. There are many aspects of the subject that I would like to speak of but time doesn't permit. Let us just have a look at mandatory detention for a moment.

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4 Alexander Downer, 'Making a Real Difference to Human Rights' (Speech delivered at the Castan Centre for Human Rights Law, Melbourne, 20 November 2000).

The idea of compulsorily detaining innocent people indefinitely, without the possibility of bail even in the most deserving cases, is utterly in conflict with any respectable framework of human rights worthy of the name. To detain them in desert camps, where the conditions are so brutally harsh as to lead to the slow destruction of the mental and physical well-being of those people, is irreconcilable with any framework of human rights.

In the desert camps, which are run on behalf of our government by a private American prison operator ('ACM'), suicides are common; suicide attempts are common; incontinence amongst children and adolescents is common.

A year ago a friend of mine was in Woomera and saw a 13 year old Afghan girl walking around in the dust wearing a nappy, because she is incontinent from the stress of detention. What human rights values can justify such treatment of any human being as to produce that result?

In the desert camps, at least until recently, if a woman had her period she had to write out an application form for sanitary pads and hand it to the nurse. She would then be given one pack. If she needed more than that she had to write another form and explain why it was that she used more than one pack. I mentioned this fact, which I have on reliable authority, at a public meeting some while ago. For my trouble, I was publicly corrected by the Department of Immigration, Multicultural and Indigenous Affairs ('DIMIA'). They were good enough to send me a letter correcting that, and one or two other facts which they said I had wrong. They also thought it desirable to publish the same letter in the newspaper so that my error should be appropriately public.

I thought this was very helpful of them. So I wrote back and I thanked them for correcting me and asked them a couple of questions about when the system had changed and what figures they had in relation to these delicate issues – because my sources were good, and the only explanation I could think of was that my facts were out of date or were referable to another camp.

To my great surprise, the Department did not answer my letter. So I wrote again, reminding them of my earlier letter and asking if they would be pleased to reply. They contacted my secretary and said, 'Oh, could you send another copy of the letter' so we did that. I waited for a few more weeks and still they didn't answer. So I wrote again and I gave them until close of business last week to set me straight. I didn't hear from them. The Department is apparently unwilling to engage in any meaningful discussion about the subject.

Let me digress for a moment – an indulgence. I have on occasions said critical things about the Refugee Review Tribunal ('RRT'). I do not propose to discuss the Tribunal this evening because of the constraints of time. I was very interested to receive a large and impressive envelope in my Chambers about ten days ago, which was marked 'Confidential' and had the Victorian Bar Council's logo on the back. A confidential letter from one's professional body is apt to produce a minor tremor of anticipation.

The tremor increased somewhat when I opened the letter and saw that the letter was from the Bar Ethics Committee. Attached to the letter were three letters from the Principal Member of the RRT. And attached to each of those letters were transcripts and verbatim notes of things that I had said at public meetings about the Tribunal.

Not only had they obtained transcripts of things I'd said in the electronic media, they'd gone to the trouble of having a person come along to occasions like this and take detailed, verbatim notes of everything I had said about them – and about other things as well.

They used those transcripts as a foundation for laying an ethical complaint against me with the Bar Council. I'm glad to say that the letter from the Ethics Committee said, in substance, that the complaint was misconceived. My apprehension receded.

But it is an interesting phenomenon. I am merely a private citizen; I have been trying to draw attention to some of the manifest flaws in our treatment of refugees; but this is sufficiently interesting to the RRT that they send someone to take verbatim notes of my speeches and then report me to my professional body. The Department will contradict me in the press, but is not prepared to have a meaningful discussion with me on the matters involved. But that was a digression – nothing to do with human rights.

There is another feature of life in the desert camps which strikes me as shocking – truly shocking – in the 21<sup>st</sup> century in Australia. If you ask a child their name in the desert camp they will reply with a number. Can you think of any occasion in this country's history when children would identify themselves by number, rather than by name? Such is the culture to which they are exposed in the desert camps. It seems like a trifling thing, perhaps, but the implications are profoundly disturbing. And then there is the torment – the torment of life as a prisoner, innocent of any crime, not having had a trial, not accused of doing anything wrong, but locked up without even the luxury of knowing how long you are going to have to stay there. Here is part of a letter I got from a refugee:

I'm writing from Woomera. I do not know where to start. Should I start from life which had mainly been associated with cruelty and persecution or should I talk about living in a cage? I'm a thirty-year-old Iranian man. I came to Australia to seek refuge. I had a very difficult trip and on a few occasions I saw my own death. But finally I arrived in this country and I thought my hardship was over. I was wrong – it had just started. I have been in this cage for thirteen months. Why should all these women and children be in this cage? What have we done? Where should we seek justice? Who should we talk to and tell our stories? Aren't we human beings? I do not know what my crime is. Let me talk about the camp. It is very common to witness young adults and even children to commit suicide. We're all taking depression tablets; animals in Australia have more rights than we do. They are worth more than we are.

It is not just the physical conditions of the camps which produce letters like that. You have to understand something of the psychology of the guards at the camps to understand how desperate is the position of the people whose every activity is subject to the whim of those guards.

Let me tell you a story from my own experience so that I cannot be corrected by the Department. I visited Maribyrnong Detention Centre some while ago with my wife, Kate. We regularly go there to see various people and we both wanted to see the same two people. It happened that I was to appear in court for one of them the next day, although it was on a legal point and I was visiting socially.

When you visit a detention centre you have to write down your name, your address, the name of the people you want to see, give them your passport or your licence, and so on. You also have to identify the relationship between yourself and the person you want to visit. Kate wrote down the two names and identified herself as a 'friend'. I wrote the two names and identified myself as a 'barrister', which was accurate as to one of them at least. I suppose it was inaccurate as to the other, but it did not seem the occasion for pedantic precision: this was simply a social visit at 7.30pm.

After the usual fiddling around and processing the guard said, 'There's a problem with this, Julian'.

I said, 'Oh, is there Chris? What would that be?'

He said, 'Well, you've said that you're a barrister'.

'Yes, you already know that', I said.

He said, 'Yes, but there's a rule you see. Lawyers' visiting hours are between nine and five'.

I said, 'Oh come on Chris, it cannot mean that. It cannot mean that I'm not allowed to visit socially, in the normal social time?'

'Well, there's a rule'.

'Let's have a look at the rule because I'm sure it cannot mean that'.

He said, 'No you cannot see the rule'.

'Why not?'

'Because it's confidential'.

I said, 'Well look, you know, what will I do? I'm barrister for one and friend for the other. What do I do in that situation?'

'Well, you'd need two forms'.

'Okay, problem solved. May I have a second form please?'

He said 'No'.

'Why not?'

'There's a rule. Only one form'.

I asked him if he would allow me to change my description on the form. He wouldn't allow me to do that – there's a rule ...

So for the next two hours I sat out in the street whilst Kate spoke to the two people that I was hoping to visit as well. Now he might have imagined that I could make trouble over this – it was a petty thing and I might have wanted to take it further. As a matter of fact, I wasn't interested in taking it further, but he wasn't to know that. It does make you wonder what these people are prepared to do with the detainees who have absolutely no capacity to make trouble whatever.

This had a sad echo some months later. There was a family who arrived in this country from Iran. They were members of a religious minority who have been traditionally oppressed, much in the same way as the Jews were oppressed in Europe historically, and more floridly from the 1920s to the 1940s. And this

group was oppressed because they were regarded as unclean by the religious majority.

The family fled after a shocking episode in which one of their daughters suffered grievously and the authorities offered no help whatever. They arrived in Australia and ended up in a desert camp. There, over the next 14 months, the condition of the family deteriorated inexorably.

Mother and father, eleven year old daughter, seven year old daughter gradually getting worse and worse until the Child and Adolescent Mental Health Service became aware of the problem. They sent a psychologist to speak to the family and wrote an astounding report in which, amongst other things, they say of the eleven year old:

She refuses to engage in self-care activities such as brushing her teeth. She has problems with sleeping; tosses and turns at night; grinds her teeth; suffers from nightmares. She has been scratching herself constantly. She doesn't eat her breakfast and other meals and throws her food in the bin. She is preoccupied constantly with death, saying 'do not bury me here in the camp. Bury me back in Iran with grandmother and grandfather'.

She carried a cloth doll, the face of which she had coloured in blue pencil. When asked in the interview if she'd like to draw a picture, she drew a picture of a bird in a cage with tears falling and a padlock on the door. She said she was the bird.

After a number of pages to similar effect the Commission observed:

It is my professional opinion that to delay action on this matter will only result in further harm to this child and her family. The trauma and personal suffering already endured by them has been beyond the capacity of any human being.

The report urged that the family be transferred from the desert camp to a metropolitan camp where at least they would get proper clinical attention which the eleven year old desperately needed. No action was taken, and a month later the psychologist wrote another report trenchantly criticising ACM and DIMIA for keeping the family in the desert instead of somewhere where they could get something like appropriate help.

Eventually they relented and the family was brought across to one of the metropolitan camps. However, on a Sunday night at about 8.00pm, when the mother, father and sister were out of the room having their dinner, the eleven year old hanged herself. She did not die, and when they found her and had taken her down, she swallowed shampoo, and that didn't kill her. So she and her mother were taken to the emergency ward of the local hospital where she was put into intensive care straight away. The lawyer who had been looking after their refugee application heard about this and went to the hospital at about 8.30pm or 9.00pm on a Sunday. He went to the ACM guard who was there – guarding them in the intensive care unit for God's sake, as if they were about to make a run for it. The lawyer didn't need to introduce himself because he is well known at the Detention Centre. He asked to see them and was told: 'No you may not, because lawyers' visiting hours are nine to five'.

Another of the torments that the ACM and DIMIA people managed to inflict on detainees is this. As you have heard, Spare Rooms for Refugees set up a letter-writing program about a year ago.<sup>5</sup> The idea was to enable people in the community, who cared about human rights, to write letters to people in detention centres. It is not much, but it is something. It is at least a welcoming voice from outside instead of the glint of sunlight on razor wire. In order to get a letter to a detainee you have to spell their name correctly and you must have their ID number. If you write a letter to a detainee with the correct name and the correct number and that person has recently – even just that morning – been sent to another camp, the letter will be returned unopened, marked ‘return to sender, not known at this address’.

The letter writing campaign has become extremely successful. An interesting thing is that detainees are now being moved around from camp to camp for no apparent reason. This has two effects. The first is that those of them who have been receiving visits from members of the community stop receiving those visits because they suddenly disappear.

Secondly, those of them who have been receiving letters from members of the community, and that is nearly all of them now, no longer receive those letters because the letters are not passed on to them. And those of them, many hundreds so far who have been moved to the new detention camp in Port Augusta, have all been given new ID numbers.

I cannot think of an innocent reason for doing that. Changing their ID numbers has no apparent purpose at all except to make it difficult for people to continue corresponding with these innocents who are being held.

I was going to say it is amongst the more despicable bits of conduct of the Department, but perhaps I should reserve that for something else.

I spent the first week of November in Perth doing an Inquest into the deaths of two women who had drowned when the *Sumber Lestari* caught fire and sank in the waters off Ashmore Island. It was carrying 162 refugees. One of the women who drowned, Fatima, was 20 years old. She had no surname. She was married to a man called Sayyed Hussein. From the day of the drowning until the present, Sayyed Hussein has been held in detention on Christmas Island. The other woman was 55 years old, Nurjan Hussein – no relative of Sayyed. She was travelling with members of her family including her son, Mussa Hussein, who has been held in Nauru since he was rescued after the boat sank.

After considerable agitation from various groups who are interested in these things, DIMIA gave permission to bring Sayyed and Mussa across to Fremantle so that they could attend the Inquest into the deaths of their relatives. A small concession you might think, but hard won. I was briefed to act for the members of the family. The matter went on for the whole week, and the last day of it was Friday, 8 November which happened to be the 12 month anniversary of the day on which the two women drowned.

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5 See Spare Rooms for Refugees <<http://spareroomsforrefugees.com/>> at 20 November 2003.

These two men had sat patiently in the dock – note that, in the dock – of the Fremantle Court. They had sat patiently there for the whole week listening to evidence given about the deaths of their wife and mother respectively. They had given evidence at the request of the Commonwealth about the circumstances of those deaths. It must have been a harrowing and traumatic experience for them, reliving the memories of the day on which their leaky craft caught fire and sank.

To mark the 12 month anniversary of the deaths, a support group had organised a small memorial service to be held in the park immediately adjacent to the Fremantle Court. The support group got permission from the Court, they got permission from ACM, they got permission from the police, they got permission from the Department, that these two men should be allowed to step out of their cells and into the park just metres away, under guard, and attend the memorial ceremony for the deaths of their loved ones. Fifteen minutes before the ceremony was due to begin, Mr Ruddock withdrew permission for them to attend. His excuse for it, apparently, was a concern that they might be photographed, and that that could cause trouble for them in Afghanistan.

The difficulty with that excuse is that the Department has already rejected their claims for refugee status, which raises a question: what sort of trouble might they expect in Afghanistan merely for being photographed at a memorial service for their own relatives? I have to say that was one of the most heartless and despicable acts I've seen committed by a Minister of the Crown in recent years. The two men were deeply hurt by it.

At the end of the evidence, when the Inquest was winding up, the Coroner asked them if they would like to say anything as members of the family. Sayeed spoke. He spoke quietly and with dignity and finished by saying that he was very grateful to the people in Australia for being kind to him during the Inquest and he hoped that their evidence hadn't upset anyone. Such dignity and grace, after such a contemptible piece of cruelty, said a great deal about him, and a great deal about the Minister.

It does strike me as odd in these circumstances that the Minister continues to wear a badge for Amnesty International. I suspect that they would not approve of his conduct on that occasion. I know that, more generally, they disapprove strongly of the treatment of asylum seekers in this country.

Can I turn then to the Pacific Solution? The Pacific Solution is another extraordinary denial of human rights. It is unfathomable to me why it is that this country is prepared to go along with it. I can only imagine that it is because most people do not understand exactly what is wrong with the Pacific Solution. The main problem, of course, is that article 5 of *Nauru's Constitution* contains a guarantee against detention, except in specified circumstances.<sup>6</sup> The exceptions are clear. The most obvious is that you can be detained when you have been convicted, after a lawful trial, for an offence known to the law, and the only other exception that comes near it is that you may be detained if you are attempting to enter the country unlawfully, or if you are being held for extradition.

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6 *Constitution of Nauru*, art 5(1).



Now there can be no question that the detainees there have been held for extradition, because there is no suggestion that any of them committed any offence by trying to come to Australia and seek help or, for that matter, by being put on Nauru. Nor can it be said that they are trying to enter unlawfully: they entered pursuant to an agreement between the Government of Nauru and the Government of Australia.

The fact remains, however, that they are detained there and the Department, it seems, is attempting to maintain a charade that they are not detained on Nauru at all – they are free to leave, they are free to wander about and they can leave Nauru any time they want. Not true at all. Let me remind you of a couple of letters I have received from a detainee in Nauru.

August 2002, Nauru:

The camp is like very, very bad prison. It is very small and hot. There is no water to take a shower or to wash our clothes. No sweet water to drink, most of the time we wash ourselves in the rain which is very interesting and also amazing, there are not enough bathrooms here. Food is not good here. Rice is what we have most of the times; we do not get to eat fruit either, however occasionally we find an apple in our food. We cannot leave the camp and are prisoners here. Life is very difficult and my only hope is to receive your letters. I thank you my friends for your letters.

The fact is that these people are locked up. They are locked up in defiance of article 5 of *Nauru's Constitution*. That *Constitution* also guarantees access to legal help for those people who are detained under one of the exceptions.<sup>7</sup> These people have repeatedly asked for access to lawyers and they have every time been denied access to lawyers. A group of us wanted to go to Nauru and give them voluntary legal help. We have been denied visas.

The reason for that of course is that DIMIA is calling the shots at the Migration Office in Nauru. How that comes about, I cannot say, although I suspect that \$500 million has got a bit to do with it.

It is not only lawyers who have trouble getting there from Australia. Almost no-one can get there from Australia unless they are working for the Government. I can say that with a degree of confidence because Kate managed to get onto Nauru in June. She had been refused a visa when she applied from Australia. She got herself there with a BBC journalist by the simple expedient of going first to Kiribati with an onward flight to Fiji and a stop over in Nauru. But aeroplane timetables are such that when the Kiribati plane lands, there is a three day delay before the Fiji plane arrives. They'd made a booking at the Hotel Oden; they had their passports; they arrived from Kiribati. They said: 'We're here. Here are our passports; here are our onward tickets; here are our bookings for the hotel. May we come in?' And the Nauru Immigration Office said, 'Certainly'. And then they went in. Anyone who's spent time in the Pacific Islands will understand how these things happen.

Obviously, the Nauruan officials hadn't been warned of the possibility that Australians might creep in from somewhere other than Brisbane. So, they were there. They went to the camp. They lent their cameras to the people in the camp with whom they'd been corresponding; they got lots of photographs, lots of

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7 *Constitution of Nauru*, art 5(2).

letters, lots of facts. Kate also got assaulted by the head of the IOM, Mr Cy Winter, and was arrested by members of the Australian Protective Service ('APS'), working on Nauru as seconded police.

There was an interesting aftermath to this. The press weren't really very interested. The press in Australia were not very interested in this story and it took Kate a bit of running around to get any newspaper interested at all. The documentary which Sarah made, which has been shown across Europe on BBC 2, is also of no particular interest to the Australian media, it seems. It is a very good documentary, but it doesn't fit in with the programming plans of any Australian television station.

But the really interesting point is this. There was a two page spread in Melbourne's *Sunday Herald Sun* – which is a sort of newspaper, and a lot of people read it. After the two-page spread in the *Sunday Herald Sun* talking about what had happened in Nauru, a member of DIMIA wrote a letter to the Editor of the *Sunday Herald Sun*, the *Sunday Times* and *The Age* purporting to set straight various facts contained in the article including contradicting the fact that Kate had been assaulted by Cy Winter, and contradicting the fact that they'd been arrested by members of the APS – pretty startling contradictions, given that Kate and Sarah spoke from first hand experience, and the Department weren't there. Anyway, what's fascinating about the letter – and you can still see it on the Department's website – the caption to the letter says: 'Unauthorised journalist entry to Nauru'.<sup>8</sup> Now, reflect on that for a minute. This is the Australian Department of Immigration, characterising their entry into Nauru, as 'unauthorised'. Well what's it got to do with them, and in what sense was it unauthorised? I suggest that the only explanation is that the Department is running Nauru's immigration policy.

So much is bad enough – it is expensive and it is unlawful, we have trashed their Constitution in the name of our sovereignty ... these things happen, apparently. But the conditions there are also shocking. They are probably worse than the desert camps and I think it is fair to say Mr Ruddock has acknowledged as much, although he waxes and wanes on these things.

If we are to talk about human rights, listen to what some of these people say. This is an Afghan man in Nauru, whose letter identifies him as a person who was once a merchant in Kabul. He fled the Taliban. He was in business in a reasonable way:

When your parcel arrived, I've become very sad again and told myself, look at what has become of me, once I use to give away my clothes, now I was given their clothes. Life has spanned around for me, it has made me to hate myself.

This one was written in Dari. We had it translated.

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8 Stewart Foster, *Letters to the Editor: Unauthorised Journalist Entry to Nauru* (2002) DIMIA, <[http://www.dimia.gov.au/letters/letters02/age\\_0407.htm](http://www.dimia.gov.au/letters/letters02/age_0407.htm)> at 10 October 2003.

If ever I go back home I will be in immediate danger of being killed. I also have to say that staying in this camp is worse than being dead. I really wish I was dead. I'm begging you to let me know if there is any way we could get our refugee status. If you can help us you will saving the life of two human beings. I'm not a type of person who sponges on others. I have my own business and I'll be doing the same if I get out of here. If you spend any money for us, regarding our refugee activities please be assured that I will refund your money. Right now, your kindness and humanitarian feeling is worth more than anything else for me. I thank you for your kindness. PS: [and the sting is in the PS] I apologise for not being able to write in English, I was too embarrassed to ask someone to write this letter for me.

What a sad reflection of the way decent people have been brought low: held captive on a desert island they have never heard of; in conditions they've never imagined; by a country that they plainly do not understand.

And unfortunately it gets worse because, although winter is approaching in Afghanistan, the Afghans on Nauru are being forced back. They are being forced by a combination of things. First it was a bribe – \$2000 cash in hand and off you go. Then it was a gradual tightening of their conditions – reducing their water supply, reducing their food supply, to the point now that they are all suffering from skin diseases which apparently are a sign of malnutrition.

This letter came just two days ago.

You have written your letter asking 'Why you return back because Afghanistan is winter now?' You right, but we are obliged to. The Australian Government make oblige us to return back, we do not have enough food or water. We are in a very bad situation in the camp.

He left for Afghanistan on the next plane out.

This person wrote – and this perhaps tells more of the story than just the fact that they are being forced out:

As I wrote before, the situation is very hard here, so many people got mental problem, especially after [asylum application] result announcement.

Unfortunately, the Australian authority has a very bad manner; they think that we are slave and they are slave owners. We do not have any freedom; we are in jail, but we do not know our fault and sin. Jail is for those people who make crime and break the law. We are just refugee. My wife, son, lived with my parent when I left Afghanistan, but now I do not know anything about them. I'm really worried about their life, food, clothes, shelter and safety and the cold winter is coming. In winter time the weather is very cold there, and snow is falling. I read in the magazine which you sent me about Prince Harry, Diana's son, that he has \$90 million and I'm sure he doesn't know how to spend, but unfortunately there are a lot of people like me they do not know how to prevent starving. Your letter make me calm and give me hope. Please do not forget me, I'm in need of clothes and shoes size 7. After one month I return home because of my wife and son who I love. I decide to die there beside my family.

Anyone with an ounce of decency, anyone with an ounce of feeling about human rights, would not allow a person be forced into that position and would have at least some regard to the idea that this is a human being whose suffering is beyond anything most of us can even imagine.

The results he speaks of – the results of asylum applications – are notified to these people by the Sovereign Republic of Nauru on DIMIA letterhead. It is a

very curious thing, this deep involvement of the Australia Department of Immigration in the affairs of Nauru. It is as if we have gained a State.

What can we do about it? One of the great problems with human rights in Australia at the moment is not the small numbers of those who are engaged by the subject, it is the large numbers who are silent about it.

Silence is an interesting thing. I thought of it the other week on Remembrance Day. On 11 November each year, most, if not all, of us observe two minutes' silence, and the purpose of that silence is to remember. To remember people who died a long time ago, people none of us ever knew. To remember why they died and maybe even to remember that we hold the prize for which they died and that we owe them some obligation to preserve it. And on 11 September this year I suspect a large number of us privately observed a moment's silence to remember, and to wonder.

But the silence that surrounds human rights is not about remembering – it is not about wondering or imagining. It is rather about forgetting. It is about ignoring. It is about denying the fact that this country, with all the great possibilities it had at the time of Federation, is behaving in a way that shames us. And the silence is comforting because it helps us forget, or ignore, what is going on.

This year, on 11 September, Emmanuel Ortiz published a poem. He presented it at a public gathering, and apparently had been asked to observe a moment's silence before he began. It is a fine poem. It is too long to read in its entirety, but I think you will understand why I choose to read it. It is called:

### A Moment of Silence<sup>9</sup>

Before I start this poem, I'd like to ask you to join me  
 In a moment of silence  
 In honor of those who died in the World Trade Center and the  
 Pentagon last September 11th.  
 I would also like to ask you  
 To offer up a moment of silence  
 For all of those who have been harassed, imprisoned,  
 disappeared, tortured, raped, or killed in retaliation for those strikes,  
 For the victims in both Afghanistan and the US

And if I could just add one more thing ...  
 A full day of silence  
 For the tens of thousands of Palestinians who have died at the  
 hands of US-backed Israeli  
 forces over decades of occupation.  
 Six months of silence for the million and-a-half Iraqi people,  
 mostly children, who have died of  
 malnourishment or starvation as a result of an 11 year US  
 embargo against the country.

Before I begin this poem,  
 Two months of silence for the Blacks under Apartheid in South Africa,

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9 The following extracts of the poem, *A Moment of Silence*, have been reproduced with the kind permission of the poet, Emmanuel Ortiz.

Where homeland security made them aliens in their own country.  
 Nine months of silence for the dead in Hiroshima and Nagasaki,  
 Where death rained down and peeled back every layer of  
 concrete, steel, earth and skin  
 And the survivors went on as if alive.  
 A year of silence for the millions of dead in Vietnam – a people,  
 not a war – for those who  
 know a thing or two about the scent of burning fuel, their  
 relatives' bones buried in it, their babies born of it.  
 A year of silence for the dead in Cambodia and Laos, victims of  
 a secret war ... sssshhhhh ...  
 Say nothing ... we do not want them to learn that they are dead.  
 Two months of silence for the decades of dead in Colombia,  
 Whose names, like the corpses they once represented, have  
 piled up and slipped off our tongues.

...

So you want a moment of silence?  
 And we are all left speechless  
 Our tongues snatched from our mouths  
 Our eyes stapled shut  
 A moment of silence  
 And the poets have all been laid to rest  
 The drums disintegrating into dust.

...

And still you want a moment of silence for your dead?  
 We could give you lifetimes of empty:  
 The unmarked graves  
 The lost languages  
 The uprooted trees and histories  
 The dead stares on the faces of nameless children  
 Before I start this poem we could be silent forever  
 Or just long enough to hunger,  
 For the dust to bury us  
 And you would still ask us  
 For more of our silence.

...

You want a moment of silence  
 Then take it NOW,  
 Before this poem begins.  
 Here, in the echo of my voice,  
 In the pause between goosesteps of the second hand,  
 In the space between bodies in embrace,  
 Here is your silence.  
 Take it.  
 But take it all ... Do not cut in line.  
 Let your silence begin at the beginning of crime. But we,  
 Tonight we will keep right on singing ... For our dead.

Australia has fallen into a great and ominous silence, a silence of forgetting. You, who care about human rights, must help break that complacent silence, and resolve that you will keep on singing for all those whose human rights need protection.

In that silence, listen to the words of a refugee, writing in Port Hedland in February 2002. Let it mark our national shame:

I want to thank you for writing a letter. It is the first letter I have. I need to write someone outside because I do not have anyone outside I need to write some letter because I forget everything in these two years in detention. I am very happy this time because I see some good Australians support us.

Please Catherine, we need freedom like every human. I have two years and I do not hear anything about my family in my country. Dear Catherine, I am very happy to write for you because it is the first time I write one letter.

Please do not forget us – we are humans.

Let me finish with a brief stanza from W H Auden, who wrote:

Acts of injustice done  
Between the setting and rising sun  
In history lie like bones,  
Each one.<sup>10</sup>

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10 W H Auden, *The Assent of F6* (1936).