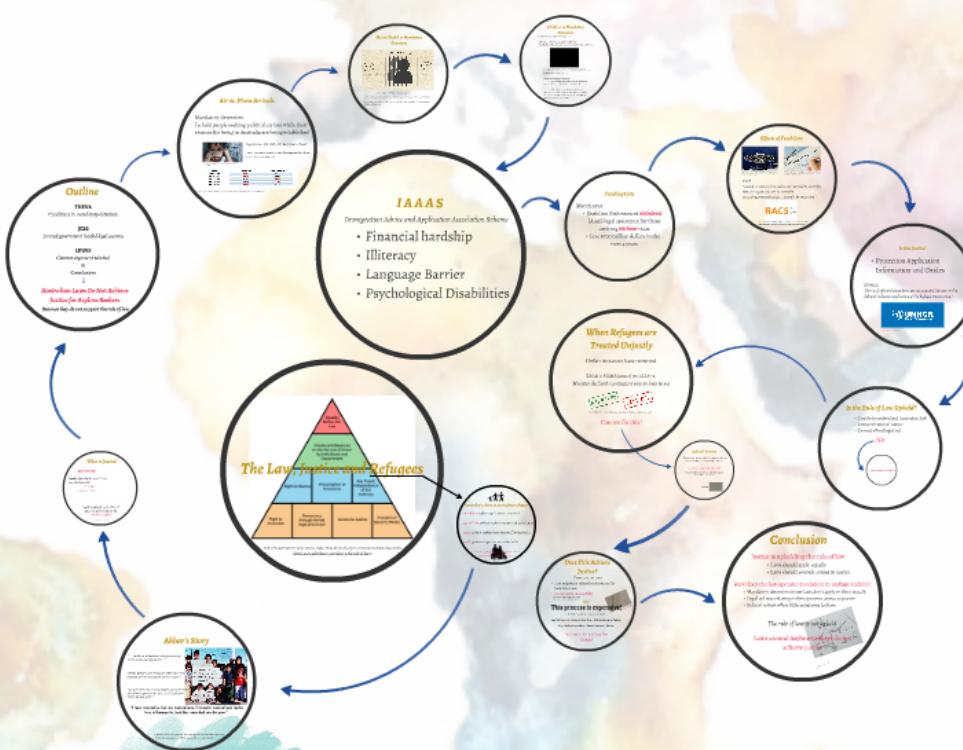
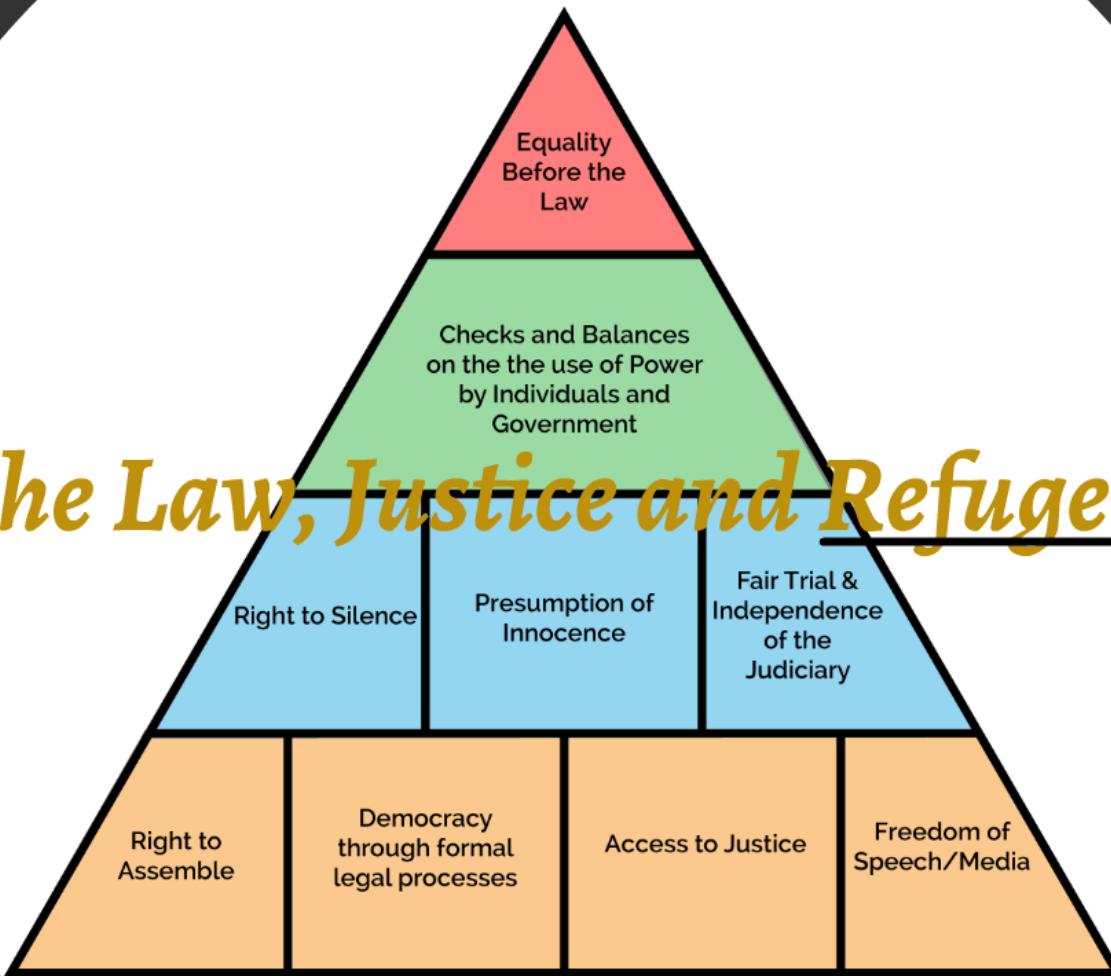


Achieving Justice





The Law, Justice and Refugees

Rule of Law Institute of Australia, Rule of Law Pyramid (April 2017) Law Institute of Australia
<http://www.ruleoflaw.org.au/what-is-the-rule-of-law/>

Australia's s
 4.9 million asylu
 2.34 million asyl
 16,117 asylum ap
 2,377 given refu

Refugee Council of Au
 was
<http://www.refugeecouncil.org.au>



Australia's share in protecting refugees

4.9 million asylum applications received

2.34 million asylum seekers recognised as refugees

16,117 asylum applications received by Australia

2,377 given refugee status in Australia



Refugee Council of Australia, *UNHCR Global Trends 2015 - How Australia compares with the world* (20 June 2016) Refugee Council of Australia
<http://www.refugeecouncil.org.au/getfacts/statistics/unhcr2015/>

Akbar's Story

“... unable to substantiate that your fear of persecution is well founded...”

“fellow Afghans went mad from oppressive heat, isolation and uncertainty about their status.”

“we were denied access to lawyers, we were never told of our rights and we were held illegally on Nauru for two years.”



“I hate Australia, but not Australians. I thought Australians had a love of humanity, but they smashed my dreams.”

R Skelton, Akbar's Story (27 May 2003) Refugee Action Committee Canberra
<https://refugeeaction.org/information/refugee-stories/akbar/>

What is Justice?

RULE OF LAW

"equality before the law even by those who administered it"

A.V. Dicey

Andrew Sykes 'The 'Rule of Law' As an Australian Constitutionalist Promise' 2002 9 Murdoch University Electronic Journal of Law 1.



"ready access to the courts of law for those who seek remedy or relief"

Sir Ninian Stephen

Sir Ninian Stephen, 'The Rule of Law' (2003) 22(2) Dialogue (Academy of the Social Sciences in Australia) 94-5.

Outline

THEVA

Conditions in mandatory detention

JESS

Limited government funded legal systems

LEWIS

Counter argument rebuttal

&

Conclusion



***Australian Laws Do Not Achieve
Justice for Asylum Seekers***

Because they do not support the rule of law

Air vs. Plane Arrivals

Mandatory detention:
To hold people seeking political asylum while their reasons for being in Australia are being established



Alex B, Stop the Mandatory Detention of Children in Australia (N/A) The Petition Site

Migration Act (Cth) 1958 s 177 (definition of 'boat').

"boat" means a vessel of any description, but does not include an aircraft

Year	Air Arrivals	Boat Arrivals
2009-2010	5981	4597
2010-2011	6335	5166
2011-2012	7063	7373
2012-2013	8480	18365
2013-2014	9646	9072

Janet Phillips, 'Asylum seekers and refugees: what are the facts?' (Research Paper No 35, Parliamentary Library, Parliament of Australia, 2015).



Mental Health in Mandatory Detention



Elizabeth Andel, Mandatory detention: An investment in the decline of mental health (10 October 2016) The Source News
<<https://thesourcenews.com/2016/10/10/mandatory-detention-an-investment-in-the-decline-of-mental-health/>>

Detention for a period longer than 6 months had a "significant negative impact on mental health"

Commonwealth Ombudsman, Parliament of Australia, *Suicide and Self-harm in the Immigration Detention Network* (2013)



Children in Mandatory Detention

Convention on the Rights of the Child art 37

- *detention of a child must be a measure of last resort*
- *any detention of a child must be for the shortest appropriate period of time*



Mary Word, *Children Should Not be Locked Up in Detention* (27 May 2015) Loreto Normanhurst Edublogs
<<http://edublogs.loretonth.nsw.edu.au/themaryword/2015/05/27/children-should-not-be-locked-up-in-detention/>>

Migration Act 1958 (Cth) s 4(a)(a).

Detention of minors a last resort

(1) The Parliament affirms as a principle that a minor shall only be detained as a measure of last resort.

(2) For the purposes of subsection (1), the reference to a minor being detained does not include a reference to a minor residing at a place in accordance with a residence determination.



Arrivals
597
166
373
3365
072

IAAAS

Immigration Advice and Application Association Scheme

- Financial hardship
- Illiteracy
- Language Barrier
- Psychological Disabilities



Funding Cuts

March 2014:

- Coalition Government **withdrew** IAAAS legal assistance for those arriving **without** visas
- Save \$100 million dollars in the next 4 years

Effects of Fund Cuts



Patrick Wright, More than 135,000 refugees, migrants arrived in Europe by boat in first half of 2015: UNHCR (July 2015) <<http://www.abc.net.au/news/2015-07-03/more-than-135000-refugees-arrived-in-europe-by-boat-2015-unhcr/6593290>>



Vietnam Discovery Travel JSC, No Vietnam Visa Required for Australian Citizens to Phu Quoc Island (February 2016) <<https://visa-vietnam.com.au/vietnam-visa-required-australian-citizens-phu-quoc-island/>>

RACS:

"Around 30,000 asylum seekers who arrived in Australia after 30 August 2012 are in Australia are waiting for notification ... to apply for protection."

RACS REFUGEE
ADVICE &
CASEWORK
SERVICE

The Not-For-Profit Foundation, Refugee Advice and Casework Service (2013) <<http://www.nfpfoundation.org.au/organisation/refugee-advice-and-casework-service>>

Is this Justice?

- Protection Application
Information and Guides

UNHCR:

"Fair and efficient procedures are an essential element in the full and inclusive application of the Refugee Convention."



UNHCR Logo, UNHCR <<http://www.unhcr.org/images/landlogosm1.jpg>>

Is the Rule of Law Upheld?

- Unable to understand Australian Law
- Lose professional advice
- Cannot afford legal aid

No

LIMITING THEIR ACCESS TO JUSTICE

When Refugees are Treated Unjustly

Unfair instances have occurred

*SBAU v MIMA(2002) 70 ALD 72.
Minister declined a protection visa on bias terms*



TayebMEZAHIDA, stamp approve rubber pass vector, Pixabay <<https://pixabay.com/en/stamp-approve-rubber-pass-vector-2114882/>>

Can we fix this?

Judicial Review

The power to review a decision made under law

- E.g. reviewing the bias denial of a visa

Designed to support the rule of law

*Decision makers are not above the law, asylum seekers
should have access to justice*



Gevalt, rules board circle font went, Pixabay <<https://pixabay.com/en/rules-board-circle-font-went-3753452/>>

Does This Achieve Justice?

From 2014 to 2015

- 3324 migration related applications for judicial review
- 125 set aside successfully

Migration Review Tribunal & Refugee Review Tribunal,
Australian Government, Annual Report 2014 - 2015 (2015)

But

This process is expensive!

Lawyer = \$300 - \$800 an hour

Asylum seekers cannot afford this - Limits Access to Justice

Legal Aid not available - Limits Access to Justice

No Justice, Rule of Law Not
Upheld



Conclusion

Justice is upholding the rule of law

- Laws should apply equally
- Laws should provide access to justice

How does the law operate in relation to asylum seekers?

- Mandatory detention center laws don't apply to them equally
- Legal aid cuts relating to them prevent access to justice
- Judicial review offers little assistance to them

The rule of law is not upheld

Laws around Asylum Seekers do not
achieve justice

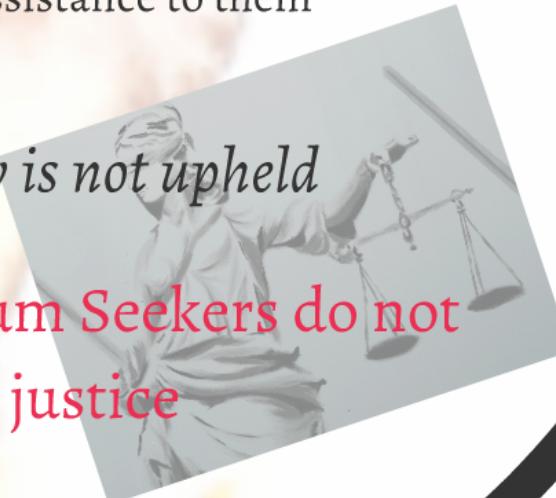


Photo: ©iStock.com/Janet Morris