

AMNESTY INTERNATIONAL

Public Statement

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Australia: One step forward – two steps back Amnesty International calls for an immediate halt to proposed legislation to punish asylum seekers arriving by boat

Amnesty International is calling on the Australian Government to immediately halt proposed changes to its Migration Act. The changes were announced on 13 April by the Minister for Immigration, Senator Amanda Vanstone, and are expected to go before parliament in May. According to information available, Amnesty International believes that the effect of the proposed amendments will be to penalise all asylum seekers who arrive in Australia by boat by taking them to remote off shore detention centres for processing. This would be in breach of the 1951 UN Refugee Convention, as well as a denial of their basic human rights under international human rights law.

Australia potentially in breach of its international obligations

Amnesty International considers that the involuntary transfer of persons to another country for asylum processing is inherently unlawful and the risk of human rights abuses in the course of the transfer and following the transfer is high.

Australia's commitments under the 1951 UN Refugee Convention include that it must not penalise asylum-seekers based on their method of arrival. The use of offshore processing for boat arrivals does not meet Australia's international obligations as transferring asylum seekers to detention centres in remote, offshore locations constitutes a form of punishment.

The proposed changes deny asylum-seekers arriving by boat both legal assistance and the right to an independent appeals process. Australia already has a well established refugee status determination system and all asylum seekers, regardless of their mode of arrival, must be entitled to access this system and must be treated equally and without discrimination. Australia's commitments under human rights law are engaged as soon as a person seeking asylum enters its territory or it exercises jurisdiction over such persons.

The Australian Government's treatment of asylum-seekers, including those who may be eventually rejected for asylum, has been a matter of grave concern. Past experience has shown that individuals have been held in what can only be characterised as arbitrary and potentially indefinite detention, or at least subjected to unlawful restrictions on their freedom of movement. The psychological impact of indefinite detention is irrefutable and prolonged detention in such conditions may amount to cruel, inhuman or degrading treatment or punishment.

In 2005 Australia introduced a number of important and necessary reforms to its detention policy which included the release of children from immigration detention centres. Now Amnesty International is

concerned that, despite overwhelming evidence of the human suffering caused in the past by Australia's mandatory detention regime, these significant gains will be lost.

A poor example to the region and the world

Amnesty International believes that the proposed legislative changes represent a short-sighted approach to stemming the flow of asylum-seekers, without addressing the human rights abuses which cause them to flee their home country. By signalling that human rights can be secondary to national interests, Australia would provide a green light to its neighbours to similarly disregard human rights when it suits them. Ultimately this may result in growing numbers of people fleeing their homelands due to human rights violations or moving on from places of first asylum to other countries. Australia's proposed legislative changes make a farce of its participation in international efforts aimed at persuading other countries to respect the needs and rights of asylum seekers.

In a press briefing on 18 April, the United Nations High Commissioner for Refugees (UNHCR) also expressed concern that persons who should fall under the jurisdiction of Australian law and have their claims processed in Australia, will be taken offshore for assessment of their claims. The agency indicated that would set 'an unfortunate precedent' for Australia to deflect elsewhere its responsibilities to asylum-seekers and refugees, particularly given that Australia has a fully functioning and credible asylum system and is not facing anything approximating a mass influx of asylum seekers.

This is not the first time Australia has evaded its international obligations

In August 2001, the Norwegian freighter *MV Tampa* rescued more than 430 people from a dilapidated Indonesian fishing boat in distress off Australia's Christmas Island in the Indian Ocean. The Australian authorities responded by refusing their disembarkation on Australian land territory, in spite of the fact that the captain of the *Tampa* had indicated that some were in serious medical distress. Most of them were Afghan asylum seekers. Their widely-reported ordeal led to subsequent changes in Australian refugee policy characterised by a serious disregard for human dignity.

These and further asylum seekers were subsequently transferred to two small Pacific Islands of Nauru and Manus Island (a territory of Papua New Guinea) for off shore processing, after Australia offered these countries bilateral aid. This approach became known as "the Pacific Solution".

Other boat arrivals to or near Australian territory were also later diverted to these islands. A majority of the 1547 asylum-seekers transferred for off-shore processing were eventually granted refugee status by both the Australian government and UNHCR (who predominantly processed those from the *MV Tampa*). The majority now live in Australia with smaller numbers in other safe countries. However, five years on, two Iraqis who have been granted refugee status by the UNHCR (after being recognised by the Australian authorities) still remain in detention on Nauru.

Amnesty International raised concern that the *Tampa* incident set a negative precedent and might lead other governments to evade their obligations under international refugee and human rights law in a similar manner. This is indeed what has occurred. In 2003, the United Kingdom government developed a proposal to send asylum seekers arriving in the UK to transit processing centres in other countries in states bordering, but outside, the European Union (EU). The EU also considered adopting a similar plan of action. Neither of these proposals was ever implemented, due to serious questions as to their legitimacy under international law.

More recently, the negative trend has continued with Italy and Libya signing agreements for the construction of three facilities in Libya, apparently for the purposes of processing asylum-seekers and migrants who attempt to reach Italy by boat, although the exact purpose for which these facilities will be used has not been disclosed by the Italian government.

These proposals and measures have had the effect of diminishing the value of the institution of asylum and the rights of asylum seekers and refugees. Such proposals are not justified by growing numbers of

asylum-seekers: UNHCR states in its report on the *State of the World's Refugees 2006* that levels of asylum-seekers entering industrialised countries has diminished significantly in recent years. In the case of Australia, the number has fallen from around 4,000 in 2000-2001 to only 54 in 2005-2006. In 2004-2005, there was not a single asylum seeker who arrived without authorisation by boat.

Amnesty International continues to oppose any form of off-shore and extraterritorial processing and considers it in stark breach of fundamental human rights and refugee law obligations.