



Refugee Council
of Australia

RESPONSES TO QUESTION ON NOTICE

As requested by the Senate Legal and Constitution Affairs Committee, we make the following responses to the four questions regarding the inquiry into Australia's agreement with Malaysia regarding asylum seekers:

1. *I refer to clause 5.2 of the Council's submission in which it states that "it has little confidence in the assurances of the Malaysian Government that it will comply with non-refoulment principles, in particular given the recent deportation of a group of ethnic Uighurs to China in August 2011.*

Upon what basis do you have these concerns given that the government has stated on many occasions that the Agreement precludes the possibility of non-refoulment?

Response:

Those who have been defending Malaysia as a country with an improving record in refugee rights have used the argument that it respects the international legal principle of non-refoulement. The forced deportation of 11 Chinese citizens of Uighir ethnicity on August 18 undermines this claim and leaves serious questions about Malaysia's preparedness to respect norms of international law in the protection of vulnerable people. Members of the Asia Pacific Refugee Rights Network raised their concerns about this action, questioning why Malaysia denied UNHCR access to the 11 Uighir people before deporting them.

See <http://refugeerightsasiapacific.org/2011/08/25/forced-return-of-11-uighurs/>

The agreement between Australia and Malaysia is not legally binding and, similar to the principle of non-refoulement, there are no consequences for Malaysia if it is breached. If this principle can easily be breached when, one assumes, Malaysia had pressure applied to it by another government, why would the agreement with Australia carry more weight in the same circumstances?

2. *In your submission you state that neither the Agreement nor the Operational Guidelines stipulate a course of action should either party fail to upon the specified standards, nor do they outline avenues for seeking recourse if transferees are subject to treatment which violates the arrangement. What are the implications of this?*

Response:

The implications are that Australia has no action that it can take if Malaysia breaches its agreement. Depending on the circumstances, it is highly likely that UNHCR would be in a similar situation, with no course of action available to it other than a formal complaint to the Government of Malaysia.

3. *I note your Recommendation 11 in your submission which states that RCOA recommends that the Australian Government should not proceed with the transfer of asylum seekers to Malaysia. Is this still your recommendation despite the*

Government's proposed amendments to the Immigration act? If so why? If not why not?

Response:

We remain opposed to the transfer of asylum seekers to Malaysia. We see nothing in the proposed amendments to the Migration Act which address the fundamental concerns we have raised in the submission.

4. *I refer to Recommendation 6 in which you recommend that if the Australian Government proceeds with the transfer of asylum seekers in Malaysia it should: (read out the recommendation)..... Why does the Council require such clarifications when the Government has consistently informed us that they are satisfied with the Agreement?*

Response:

The pre-transfer procedures, the post-transfer support arrangements and the responses to breaches of the agreement are critical to the protection of the asylum seekers transferred under the agreement. The Australian Government has given insufficient detail on these key points to be able reassure people examining the agreement that asylum seekers' needs will be properly considered and their rights protected.

We have proposed that the two key committees overseeing the agreement be expanded to include people who are independent of the two Governments and the two inter-governmental organisations which are involved. We believe that asylum seekers and refugees with concerns about their treatment must be able to raise them with independent committee members with the capacity to influence the operation of the agreement. This approach of using independent representatives in decision-making processes, particularly in arrangements involving highly vulnerable people, is widely used in Australia and is the sort of good practice which would enhance the protection of those subject to the agreement. We can see no good reason why the governments of Australia and Malaysia would oppose it.

Paul Power
CEO
Refugee Council of Australia
27 September 2011