

Senate Legal and Constitutional References Committee

Inquiry into the Administration and Operation of the Migration Act 1958

Response of United Nations High Commissioner for Refugees to Questions Taken on Notice

1. Question from Senator FIERRAVANTI-WELLS.

Hansard Page No.	Senator	Information/Material to be Provided
42-3	FW	<p>Senator FIERRAVANTI-WELLS—Have you in the past made comments or raised concerns about detention under previous governments in Australia? Or is it just recently?</p> <p>Mr Wright—We have made previous submissions. These are a matter of record and they are listed in the footnote. I think the last one was in 2002.</p> <p>Senator FIERRAVANTI-WELLS—So, notwithstanding that we had a detention policy before this government came to power, you have not deemed fit to raise issues about your concerns about detention policy?</p> <p>Mr Wright—We have raised them. We have raised them in the past and we have raised them again in this submission.</p> <p>Senator FIERRAVANTI-WELLS—But you have just said to me that the footnote talks about 2002.</p> <p>Mr Wright—That is right. That is the last time we raised a submission on detention.</p> <p>Senator FIERRAVANTI-WELLS—That was the last time, but it is not the only time?</p> <p>Mr Wright—That is right. It is also a question of when we are asked to do so.</p> <p>Senator FIERRAVANTI-WELLS—Could you provide to this committee previous papers or concerns that you have raised, going back to the early eighties or when the period of detention was first—</p> <p>Mr Wright—We will certainly do that research.</p>

Answer: UNHCR does not hold complete records of all submissions and representations made to government dating back to the 1980's. However, it is clear from records held that the UNHCR Regional Office in Canberra began expressing concerns in relation to detention policy in Australia not later than 1993, when UNHCR made a submission on the topic to the Joint Standing Committee on Migration. The concerns raised at that time were reiterated in UNHCR's 24 June 1994 submission to the Constitutional Affairs Committee in relation to the *Migration Legislation Amendment Act (No. 2) 1994*.

2. Questions from Senator NETTLE.

47-8	Nettle	<p>Senator NETTLE—Can you tell us the status of the asylum seekers who were pushed back from Australia under Operation Relax and are now living in Indonesia in IOM camps, particularly those who have relatives in Australia? If you want to take it on notice, that is okay.</p> <p>Mr Wright—I would prefer to take that on notice. It is outside my personal office area of responsibility. It comes under the responsibility of our regional office in Jakarta. I can tell you that they are there. I can tell you that it is a continued area of concern for UNHCR.</p> <p>Senator NETTLE—I will put it on notice and give it to the secretariat. (See below.)</p>
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2.1 *What is the status of the asylum seekers pushed back under Operation Relax from Australia and now living in Indonesia, often in IOM camps? In particular, what is the status of those with relatives living in Australia?*

Most of the asylum seekers turned back from Australia were intercepted by the Indonesian authorities. Under the special arrangements between Australia, Indonesia and IOM, the asylum seekers were initially taken care of by IOM, which provided them with accommodation, food and medical assistance. Those who wished to apply for refugee status were given the opportunity to contact UNHCR for refugee status determination (RSD) processing. UNHCR processed their application according to its mandate. In this context UNHCR registered 1619 cases/2500 persons.

As a result of processing by UNHCR:

(a) Those who meet the refugee criteria have been recognised as refugees and UNHCR is actively seeking durable solutions through resettlement to third countries. UNHCR provides financial support for them during their temporary stay in Indonesia pending their departure to resettlement countries. There were 393 cases/826 persons recognised as refugees under UNHCR's mandate. The current situation is that 365 cases/766 persons have been resettled to third countries while 28 cases/60 persons still remain in Indonesia awaiting resettlement.

(b) Those considered not to qualify as refugees are having their accommodation, meals and medical needs being taken care by IOM. They are accommodated in hotels and not in camps. They enjoy freedom of movement and are monitored by the Indonesian authorities. Currently, 306 persons are being taken care of by IOM.

Among the rejected cases are people who have come from Iraq and certain areas of Afghanistan where the security situation is such that people from there are considered by UNHCR to be in need of a complementary form international protection. These people are accorded temporary protection status. For such persons, UNHCR requests the Indonesian authorities to protect them from deportation and to treat them in accordance with internationally recognised human rights standards. Currently, 85 cases/125 persons are under temporary protection.

2.2 *Can you describe the relationship between the Australian Government, UNHCR and IOM for the processing of asylum seekers in Indonesia?*

There is no specific relationship between UNHCR and the Australian Government or IOM in relation to the general processing of asylum seekers in Indonesia. As mentioned in the answer of question number 1, UNHCR carries out its mandate in undertaking RSD for asylum seekers who wish to apply for refugee status. These may be asylum seekers intercepted by the Indonesian authorities, meaning that they are under IOM assistance, but may also be asylum seekers who have arrived spontaneously to Indonesia.

For foreigners who have been intercepted by the Indonesian authorities, there is an arrangement between the Government of Australia (DIMIA), IOM and the Government of Indonesia. The Indonesian authorities contact the IOM for material assistance. IOM, with support from the Australian Government, provides accommodation, meals and medical assistance for these asylum seekers while they are awaiting their RSD decision and durable solution. This 'relationship' only takes place in the case of the intercepted asylum seekers. UNHCR is contacted and requested to undertake RSD processing under its mandate but, as noted above, this is not undertaken pursuant to any special 'relationship' between UNHCR and the Australian Government or IOM.

With regards to RSD, it should be noted that Indonesia has not ratified the 1951 Convention Relating to the Status of Refugees and/ or its 1967 Protocol, nor is Indonesia a party to either the 1954 or 1961 Statelessness Conventions. At present there is no specific domestic law to deal with refugees and asylum seekers in Indonesia. Consequently, asylum seekers in Indonesia are processed by UNHCR.

For new asylum seekers, UNHCR will continue to undertake refugee status determination. For refugees, UNHCR will continue to provide financial support for them during their temporary stay in Indonesia, while actively seeking durable solutions, essentially through third country resettlement. Foreigners detained under the immigration law are allowed to contact UNHCR or any other humanitarian organisations. Asylum seekers without proper travel document are normally detained only until determination of status. Asylum seekers and refugees are provided with UNHCR attestations, which help prevent them from having problems under the immigration law with Indonesian authorities. However, if a person is detained prior to approaching UNHCR for asylum, his or her detention will be prolonged during the Refugee Status Determination process; if recognised, the person will be released upon request from UNHCR. (Further information about the protection situation in Indonesia, including an assessment of whether asylum seekers and refugees have effective protection there, may be found at <http://www.unhcr.org.au/pdfs/EFFECT.pdf>.)

In the context of seeking durable solutions for refugees in Indonesia UNHCR has submitted refugees' cases for resettlement to several countries, including Australia which is one of the traditional resettlement countries for refugees in Indonesia. It should also be noted that IOM facilitates the departure arrangements of refugees either to resettlement countries or for repatriation.

2.3 *How many UNHCR recognised refugees has Australia accepted from camps in Indonesia since 2001?*

From September 2001 to July 2005, a total of 86 cases / 261 persons from Indonesia have been accepted by Australia for resettlement. (It should be noted that there are no camps in Indonesia. Asylum seekers, refugees, and those under temporary protection normally enjoy freedom of movement.)

UNHCR Regional Office Canberra
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