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Hon Senator Amanda Vanstone

Minister for Immigration & Multicultural Affairs
Parliament House, Canberra, 2600
BY FAX: 02 6273 4144

RE: Remaining People on Nauru

Dear Minister,

Since my last visit to Nauru I have been continuing to work on behalf of my clients who were unsuccessful at their 2004 re-interviews. As the files were released under FOI, I had the opportunity to analyse the overall process much more carefully and identify the processing problems which have plagued these applicants.

I am enclosing examples of cases of concern which we have submitted to your Department via Mr John Okely for your attention and consideration.

I have identified the following three broad categories within the remaining case load on Nauru:

1. FLAWED DECISIONS: Applicants whom I consider to be refugees who have cases with obvious flaws in the decision making process and therefore the decisions themselves are unsound.

2. HUMANITARIAN CASES: Those applicants who are in need consideration for visas to Australia for humanitarian reasons, (the first and second categories overlap in a number of cases – especially within the Iraqi caseload)

3. COMPLEMENTARY PROTECTION: A third category of applicants (Iraqis identified by the UNHCR) who are simply unable to be returned to Iraq and therefore face indefinite detention on Nauru.

I am aware of the fact that the UNHCR has recommended that the Iraqi asylum seekers on Nauru should be given "Complementary Protection" and that they have similarly identified Afghanis from defined regions and categories.

I submit, however, that **the majority of those remaining on Nauru should have been successful in their original refugee claims** and therefore they deserve a more permanent form of protection than the nebulous notion of "Complementary Protection."

My careful reading of the DIMIA files, as they have been released, has revealed a significant number of examples of what I would term "flaws in the decision making process."

EXAMPLES OF IDENTIFIABLE FLAWED PROCESSING:

1. A primary decision maker who misrepresented the statements made at the Refugee Determination Interview. That decision maker had placed her notes of the interview on file, and her own notes contradict the negative assertions made in her decision about the applicant's knowledge of his area.
2. Review case officers who took the flawed primary decisions at face value without reading the file thoroughly and therefore were not alerted to misrepresentations in the decision record.
3. Written decisions in which the decision of more than one applicant has been merged together, with both names appearing in different parts of the decisions.
4. Written decisions that have virtually no difference in wording despite the fact that the cases are very different.
5. Written decisions that contain almost no personal detail about the applicants.
6. Decisions in which the rejection has been based on an entirely wrong finding about nationality, and then later the nationality has been affirmed as Afghani but without any reassessment in the light of the new information. Such cases should be immediately reopened.
7. Decisions where the finding has been faulty because the applicant's home area has been listed as different places in different parts of the decision. This has obviously occurred because of cutting and pasting text about country information from one decision to another. However, the whole decision is undermined when an applicant who has never made a claim against a certain home province is declared to "no longer be in danger" if he returns to a place he has never visited, let alone lived in!
8. Decisions that "have a bet both ways" about nationality. Such decisions leave unchallenged the previous faulty findings about nationality but, *"for the purposes of the assessment"*, test the claim against Afghanistan then assert that the home area of the applicant is now safe enough to return. This is both dishonest and an abuse of process.
9. Decisions which expose a serious lack of understanding and knowledge of Afghan political groups. One decision maker denied the existence of a party, where a simple internet check, or even a check of the DIMIA database, would have affirmed the applicant's description of his political party and its affiliations.
10. Decisions that use Country of Origin information in ways which illustrate a superficial understanding of the situation on the ground in Afghanistan in particular and an inability to analyse the information available to the case officers.
11. Decisions where the case officer inexplicably decides that an applicant would now be safe in a Province where it is generally considered by other decision makers that someone of a particular ethnicity from a particular province would automatically fit the profile of continuing to need protection.
12. Decisions about the safety situation in some areas, that neglect to factor in the small distances between settlements along the border of districts or provinces where armed insurgents or other perpetrators are operating with a virtual free rein.
13. The total ignoring of documentation carried by the applicants that gives rise to serious concerns for people's safety if they are returned. This is especially serious when the authenticity of the documents has been confirmed by the

Afghan Embassy or other agencies. The case of Mr Amin Jan Amin, recently granted a TPV to enter Australia, is a glaring example, but unfortunately not an isolated case, given that at least two people remain on Nauru without serious consideration being given to their documentation and therefore their protection claims. I copied these documents when in Nauru and have made them available to the DIMIA.

14. Decisions that wrongfully relegate issues which should have supported the refugee claim, to the level of a general safety concern.
15. More than a dozen examples of large quantities of material which I submitted to DIMIA **not** being placed on the files of each applicant.
16. Serious inequities/discrepancies between the decisions being handed down for my Afghan clients from the onshore caseload and those being assessed on Nauru.

In addition, since the reopening of the cases in 2004, the security situation in some areas has worsened and the dangers facing some applicants, under the Convention has in fact increased. Therefore, **many of the rejected cases now have a stronger case than they had in mid-2004,** over and above all the barriers to robust decision-making which I have listed above.

Minister, it is my interest that these cases be resolved expeditiously. It is not in anyone's interests for the case officers to have to go through a public post-mortem of the flaws in the decision-making processes undertaken on Nauru from 2001 onwards.

However, there have been flaws and as such those remaining are Nauru have not necessarily had a fair assessment of their claims.

Accompanying as examples of my concerns are submissions in relation to:

> ….[EIGHT CASES LISTED INCLUDING FAMILIES – names deleted for this Submission to the Senate] …

We would like all the Nauru Afghan, Iraqi and Iranian cases re-examined and we believe this can be done by simply reopening the cases in the light of the new information I have provided. It would not necessitate you doing anything further other than supporting your Department in their reassessment.

Thank you very much for your consideration.

Yours sincerely,

MARION LE, OAM
24/03/2005