

REFUGEE ACTION COLLECTIVE GIPPSLAND

SUBMISSION TO THE SENATE'S ENQUIRY INTO THE SO CALLED "CHILDREN OVERBOARD" INCIDENT AND THE "PACIFIC SOLUTION"

11 March, 2002

Introduction

Refugee Action Collective Gippsland is a group of people, based in the town of Churchill, Gippsland in rural Victoria. We are opposed to the government's policy on refugees and asylum seekers and the way that policy is implemented. Although we are well aware of the "Children Overboard" incident and all the damage it has done to the government's reputation, much of it self inflicted, all of it well deserved, we do not wish to address it in this submission.

We are only going to comment on the Pacific Solution because we believe that while the "Children Overboard" incident is a mere distraction from the fundamental flaws of the overall refugee policy, the "Pacific Solution" goes to the heart of Australia's international relations. Through this policy we are doing damage to ourselves, to our reputation and to our neighbours.

Australian Governments, since 1993, have implemented a policy of so called border protection that relies heavily on the idea that by treating people seeking asylum in a harsh way will deter others from attempting to enter Australia as refugees. Yet seeking asylum or even assisting those who seek asylum pursuant to the 1951 UN Refugee Convention are not illegal acts. Even people smuggling, much derided by governments is not necessarily a sinful activity in this context, unless it is made illegal by statute. Not all jurisdictions where asylum seekers are assisted in this way define the activity as an offence.

Asylum seekers in Australia are locked up, pending determination of their fate by bureaucratic process, not always subject to judicial review.(1) Some have been in detention for years with no resolution of their cases. Many are women, minors and people who suffer disabling conditions, such as depression. Some have attempted to commit suicide, a few have succeeded in killing themselves. The circumstances in which these people are held certainly violate their human rights and contravene international law.(2)

The Pacific Solution

The practice of diverting refugees from our shores, where they are legally seeking asylum to countries that are not at all or only partially committed to the 1951 Convention is also depriving them access to the protection of international law.(3)

To have excised Australian territory from the Migration Zone(4) is a legislative device of doubtful moral efficacy, even if it is a legal exercise of the powers of the Commonwealth.

All these measures are at one with the general attitude displayed by government ministers toward refugees who are called "illegals", "violators of our sovereignty", "queue jumpers", "child abusers", "suspected terrorists", "kinds of people not welcome in Australia", "blackmailers", "people behaving inappropriately" and "people seeking a mere lifestyle change". The policy of keeping them away from our shores reflects this attitude and encourages their demonisation as a threat to Australia.

Putting distance between them and the Australian mainland is said to be border protection. It also has the effect of isolating them from the reach of advocacy groups, lawyers and the scrutiny of the conditions of their detention by the media. For example, easier access to mainland detention centres by journalists have shamed the government to make some concessions in the form of rudimentary education for some children at Woomera and an experiment in releasing some women and children into the community while the men are held in detention.

The laws of Nauru and Papua New Guinea do not give the refugees the same level of protection and rights as they would have in Australia; for example, the right of refugee children to education. By taking them to these places, the Australian government is acting not unlike the people smugglers we condemn. We are moving people without caring about their fate so long as we perceive an advantage gained by ourselves. They are made to be someone else's problem.

Australia's Reputation

We are a country that accept some humanitarian obligations, yet the government is damaging Australia's reputation by its refugee policy in general and the Pacific Solution in particular. It promotes the cause of free trade, welcomes the free flow of investment capital and the benefits of the new interactive technologies in communications. Globalisation is held up as desirable and a benefit in many contexts. The Australian economy, at the time of writing is booming, currently growth of GNP is in excess of 4% per annum. Gaining these benefits should also bring the obligation that Australia acts as a good international citizen. We have the capacity and our UN membership obliges us to do so. In spite of assertions to the contrary by members of the government, we believe that the Pacific Solution damages Australia's reputation, it:

- Looks to our neighbours, particularly in Muslim countries as racist, reminiscent of the White Australia policy.(5)
- Seems mean and tricky to countries with much larger intakes of asylum seekers that we divert a relatively small number of refugees to other shores whom we could easily process in Australia.
- Harms our economy by offending potential investors and trading partners who find such policies odious.(6)
- Discourages students and tourists from coming here, because to many, the way we turn away refugees indicates our attitude to outsiders.
- Probably breaches international law, may be piracy on the high seas or even people smuggling.
- Detaining asylum seekers is illegal under the 1951 UN Convention, a practice Australia now exports to neighbours, some of whom are given aid to implement "Good Governance" programs.
- Transparency and accountability are stressed in these programs while Australia contradicts these exhortations by its own behaviour inside some Pacific countries.(7)
- The Nauru Constitution states that " No person shall be deprived of personal liberty", except as authorised by the laws of Nauru. Seeking asylum in Australia does not seem to be an offence known to the laws of Nauru. The same constitution also guarantees access to legal representatives of the detainees own choice. Given that the detention centres are run by a private company, not subject to public scrutiny, one can hardly describe the situation as being transparent.
- Conducting the processing of asylum seekers by Australian immigration officials in foreign jurisdictions deprive detainees of the protection afforded them by Australian and international law. Neither Papua New Guinea nor Nauru offer the required assistance of independent immigration agents, access by visitors, access to telephones and other means of communications, special arrangements for minors the disabled, traumatised and the sick.(8)
- Government policy takes advantage of some of our most vulnerable, poorest neighbours by offering them rent money for detaining refugees on our behalf.

The Cost

Even though the government tries to hide the cost of this policy in the immigration, foreign affairs, defense and foreign aid budgets, it is clearly unsustainable. The Nauru deal alone has cost over \$50 million. The total cost may exceed \$400 million. As other countries see the fate of these detainees as Australia's responsibility and are not accepting them and because some, like the Iraqis who cannot be sent home are to be detained indefinitely, the eventual cost to the Australian taxpayer is both considerable

and open ended. It would be cheaper to accept these asylum seekers for processing in Australia. The money saved could fruitfully be spent on more humane treatment of all refugees.

The Australian Defence Forces

The traumas and problems the Pacific Solution has posed for the ADF are evident from all the media reports surrounding the "Children Overboard" incident. While our soldiers and sailors cope as professionals with their tasks, it is clear that most of them hate to be involved with desperate, often traumatised men, women and children in what in essence is a rescue and deportation operation. It is difficult to maintain good morale and to step up recruitment in these circumstances, as we must, given current demands in other contexts.

Recommendations

In light of the foregoing the Refugee Action Collective urges the Senate to recommend to the Australian Government to:-

1. Abandon the so-called Pacific Solution, an ill-conceived ad hoc arrangement that creates more problems than it solves.
2. Cease the practice of persecuting asylum seekers as a means of deterring other refugees.
3. Realise and accept that in comparison to other countries, there is no refugee crisis in Australia and to use the leadership and educational resources of the government to show the public that it has nothing to fear.
4. Act in accordance with UN Conventions, UNCHR advice and international law in all its dealings with asylum seekers.
5. Support Pacific countries to sign and fully commit to the 1951 UN Convention on Refugees and the 1967 Protocol and other human rights obligations under international law.
6. Give untied aid to such countries so that they can fulfil their humanitarian obligations in proportion to their capacity.
7. Maintain existing aid programs unconnected to the Pacific Solution but increase Aus-aid to the level of 0.7 % GDP to developing countries, including the Pacific nations. This additional aid is to be particularly targetted on countries that carry a disproportionate refugee load.
8. Such aid is to enable, as practicable, recipient countries to fulfil their obligations to refugees and asylum seekers.
9. In the special cases of Bougainville, Solomon Islands, West Papua and East Timor to assist with meeting the needs of internally displaced persons and refugees.

10. Cease mandatory detention altogether, save a short period, allowing for health and security checks. After one week, The Department of Immigration, Multicultural and Indigenous Affairs, DIMIA, should only hold asylum seekers in detention after it satisfied a Federal Magistrate of the necessity to do so. After three weeks in detention all detainees are to be released into the Australian community subject only to reporting obligations as determined by the Magistrate.
11. End the compulsory detention of children, it is their parents who are to determine if they should remain with them during their time in detention. Similarly, all unaccompanied minors are to be released into some kind of community care.
12. Be aware of the special safety, health and cultural needs of women refugees and to take all necessary steps to provide for them. Any negotiations with refugees are to include representatives of their women.
13. Provide equivalent standard of education that Australian children receive to all refugee children up to school leaving age.
14. Fund adequately English language training, employment assistance and trauma counselling for all refugees.
15. Abolish Temporary Protection Visas so that refugees, once their papers have been processed can gain resettlement rights at present denied to them.
16. Develop policies that unite Australians on the issue of refugees rather than divide them as at present. To lower the temperature of the current bitter debates, appoint an independent Royal Commission with the widest possible terms of reference to report and to make recommendations to the government on refugee issues.
17. Double the humanitarian intake to 24,000 per annum so that all genuine refugees reaching our shores can be processed and accommodated on the Australian mainland, subject only to our capacity and to security and health checks.

Notes

- (1) Since new laws introduced in September 2001.
- (2) The 1951 UN Convention, 1967 Protocols and 1990 UN Convention on Children's Rights.
- (3) The 1951 UN Convention.
- (4) The September 2001 legislation.
- (5) Comments by Quantan Mohamed, Indonesian journalist and editor on Radio National, 2 Oct, 2001.
- (6) Recently, the Chief Executive of Toyota, on a visit to Australia commented on our restrictive immigration policy making his company reluctant to invest here.

(7) *Adrift In the Pacific*, Oxfam CAA, Feb, 2002, p 6.

(8) *ibid*, p 16.