

The Secretary,
Senate Select Committee on a Certain Maritime Incident,
Room S1.57, Parliament House,
Canberra, ACT 2600

SUBMISSION TO THE SENATE SELECT COMMITTEE ON A CERTAIN MARITIME INCIDENT

Introduction

Oxfam Community Aid Abroad welcomes the opportunity to make a submission to the Senate Select Committee on a Certain Maritime Incident. Our submission addresses the following terms of reference

(c) in respect of the agreements between the Australian Government and the Governments of Nauru and Papua New Guinea regarding the detention within those countries of persons intercepted while travelling to Australia, publicly known as the 'Pacific Solution':

- (i) the nature of negotiations leading to those agreements,*
- (ii) the nature of the agreements reached,*
- (iii) the operation of those arrangements, and*
- (iv) the current and projected cost of those arrangements.*

1.1 Specifically this submission focusses on the establishment of detention centres in Nauru and on Manus Island in Papua New Guinea, for the processing of asylum seekers who tried to enter Australia in late 2001. It also places the so-called "Pacific solution" in the context of Australia's development assistance program in the region.

1.2 Oxfam Community Aid Abroad, (OCAA), is an independent, secular Australian organisation working in over 30 countries and in Indigenous Australia. Our vision is of a world in which people control their lives, their basic rights are respected and their environment is sustained. We use both our overseas projects and our advocacy programmes. In the Pacific OCAA works in Papua New Guinea, Bougainville, Solomon Islands, Vanuatu and Fiji. OCAA was merged with Freedom from Hunger in 1992 and is the Australian member of Oxfam International, as well as a member of the Australian Council for Overseas Aid (ACFOA)

Adrift in the Pacific.

2.1 In February 2002, OCAA published *Adrift in the Pacific – The Implications of Australia's Refugee Solution*. A copy of the report is attached for consideration by the Senate Committee. Rather than repeat the detailed information in the report, we will highlight key issues of concern in this submission.

2.2 As detailed in *Adrift in the Pacific*, OCAA believes that the "Pacific solution" is no solution to the issues raised by the *Tampa* crisis, or more generally to the operation of people smugglers or increased numbers of asylum seekers. It is important that

Australia develop new policy on asylum seekers in the Pacific region including the following humane and sustainable alternatives.

- a) An end to mandatory detention of asylum seekers in Pacific countries;
- b) Support for Pacific nations to sign and ratify the *1951 Convention on the Status of Refugees*, the *1967 Protocol* and other relevant human rights instruments, and to fully meet the relevant obligations;
- c) Increased support to address the situation of refugees and internally displaced people in the Pacific islands in West Papua, Bougainville, Solomon Islands and other countries;
- d) An increase in Australian development assistance to meet the UN target of 0.7 per cent of GDP, with special programs targeted at peace-building in areas of conflict, assistance to countries hosting millions of refugees (such as Pakistan and Iran) and long-term sustainable development programs;
- e) Detention of asylum seekers only for short periods to allow health, security and identity checks, followed by release into the community, with adequate funding for services such as English language training, employment assistance and trauma counselling; and
- f) Review of resettlement policies, with Australia to increase the numbers of refugees accepted each year.

2.3 The establishment of offshore detention centres in neighbouring Pacific countries is a major shift in policy for Australia. The establishment of the detention camps in Nauru and Papua New Guinea in 2001 has been accompanied by pledges of special financial assistance to the host nations. The promise of \$30 million to Nauru is a major shift in policy for the Australian government, as the amount is greater than all funds provided to Nauru between 1993-2001 by the Australian Agency for International Development (AusAID). This policy shift raises serious questions about the on going priorities of Australia's Development Assistance programme and the impact on relations with Pacific countries.

2.4 In media interviews, the Prime Minister and members of his government have criticised the "*Adrift in the Pacific*" report, and denied that the Pacific solution will impact on the development assistance program in the region. Chris Gallus, Parliamentary Secretary to the Foreign Minister, has stated that AusAID's development assistance program is "totally separate" from the program to establish detention camps for asylum seekers in the Pacific islands.¹

Ongoing issues of concern

3.1 There are however still a number of questions raised in our report which have not been fully answered, and policy issues – on development assistance programs, on refugee policy and on humanitarian issues – that need further clarification. In its development programs in the Pacific, the Australian government stresses the importance of poverty reduction, good governance, transparency and sustainability. OCAA broadly supports these policy directions but we are concerned that these principles have not been evident in the introduction and implementation of the asylum seeker policy in the Pacific. We believe that the Senate Select Committee provides the opportunity to further discuss this

fundamental change to the development assistance program and the humanitarian implications of such a change.

Duration of the arrangements

4.1 OCAA believes that the Senate inquiry should clarify the duration of the mandate for the detention camps in Manus and Nauru, and seek an explanation concerning:

- the timeline for the closure of the camps;
- a timeline for the resettlement of those asylum seekers granted refugee status;
- a clear statement of what will happen to these asylum seekers whose application for refugee status is not successful;
- and a timeline for their departure from Manus and Nauru.

4.2 As detailed in “*Adrift in the Pacific*”, the host countries were initially promised that the establishment of the detention centres was a temporary measure and the asylum seekers would only be held there for six months.

4.3 The initial Memoranda of Understanding (MOU) between Australia, Papua New Guinea and Nauru stated that all persons entering under this arrangement will have left after six months “or as short a time as is reasonably necessary.”

4.4 Interviewed in January 2002, Immigration Minister Phillip Ruddock stated that Australia has no plans to ask Nauru to keep asylum seekers beyond May 2002. Mr Ruddock stated that there was no need to ask Nauru for an extension on the agreement.²

4.5 At the same time, Nauru’s President Rene Harris stated: “We would prefer that they stick to the agreement because it’s all agreed to – the land which would give it to them, we ask the landowners of Nauru that we use the land up until May. So we’d prefer that it ends in May because that is how we decided with our people.”³

4.6 However following Minister Ruddock’s visit to Nauru in February 2002, the acting President of Nauru Remy Namaduk announced that Nauru was considering a request for an extension of the time that asylum seekers would remain in the country. He stated that the Nauru government understood processing could take time and Nauru would consider continuing its assistance further into the year as necessary.⁴ No formal details have been issued about this proposed extension and the timeline for removing the asylum seekers from Nauru.

4.7 The Australian government has successfully lobbied to extend the MOU for Manus Island, Papua New Guinea until October 2002, to avoid a crisis that would fall in the middle of an election campaign for the June 2002 Papua New Guinea national elections

4.8 There are serious questions about what will happen next for more than 1,500 people in detention on Manus and Nauru, given that there are conflicting messages about the future of those assessed as refugees, as well as those who do not gain refugee status.

4.9 The Australian government has proposed that the asylum-seekers will be sent to third countries after processing. As at January 2002, no countries except Ireland and New Zealand have publicly pledged to take the refugees for resettlement (and Ireland has only publicly offered to take 50 of the more than 1,500 people being processed in Nauru and Papua New Guinea). There will be difficulty meeting the May 2002 deadline for all asylum seekers to leave Nauru, especially as there are many refugees already waiting for resettlement in other countries.

4.10 As predicted in *Adrift in the Pacific*, delays in the processing of the asylum seekers and delayed determination of their final destination are raising some concern in the region. Speaking at the CHOGM meeting in Coolum in March 2002, Noel Levi, Secretary General of the Pacific Islands Forum Secretariat, says the United Nations High Commissioner for Refugees has not notified anyone in the region of which third countries will take those found to be genuine refugees. Mr. Levi expressed concern that the burden being placed on small island states may cause political and social problems if the issue drags on. He stated:

“The political fabric of many of our countries is pretty fragile if you allow these people to stay longer, under the convention, the appropriate convention, the state is obligated to give them services and the services would not be in proportion to what they give to its own people. And then you are likely to create a situation where the people become restless and complain that as taxpayers, they're not being looked after by their governments.”⁵

4.11 This problem is already evident in Nauru. In a radio interview on 13 March 2002, Nauruan Member of Parliament Anthony Audoa stated that the presence of the detention centres in Nauru is causing “division and resentment” at a time of ongoing economic problems for the country. He added:

“The Nauruan people to this date as we speak are continuing to have their electricity cut off, water is not there. For the last four weeks, I myself as a Member of Parliament have not received any allowance, and the people who are staying at Topside – the refugees – are getting a good deal. In fact they're living better than the Nauruans themselves”.⁶

Cost of the detention of asylum seekers in the Pacific

5.1 The duration of the detention camps will obviously impact on the cost of the program. According to some media reports, these costs are part of a larger budget approved by Cabinet in September 2001 for the ‘Pacific Solution’ of between \$400 and \$500 million. This sum of money, according to UNICEF, represents the equivalent to the total amount of funding required each year to provide Australia’s fair share of meeting all basic social services for the poor globally. OCAA welcomes the financial commitment of the Australian government to addressing the global and regional refugee crisis, but has concerns that the present allocation of those funds reflects domestic political priorities rather than addressing the underlying causes of refugee and asylum seeker issues.

5.2 The Australian aid program was reviewed five years ago by the Simons Committee to focus on the one clear objective of poverty reduction. Whilst we support this objective, OCAA is concerned about the lack of coherence between the government's stated aid program objectives and the current policy of diverting asylum seekers to the Pacific. Processing asylum seekers in the Pacific does not encourage good governance practices, will not promote regional political stability and undermines Australia's commitment to sustainable poverty reduction in the Pacific.

5.3 In a radio interview on 5 February 2002, Chris Gallus, Parliamentary Secretary to the Foreign Minister stated that AusAID's development assistance program was totally separate from the program to establish detention camps for asylum seekers in the Pacific islands:

“The two are totally separate. Certainly, the latter [the asylum seekers program] does not impact on the aid program whatsoever.” She added: “I can assure you that whatever is needed, is not coming out of the aid budget... We are committed to the Pacific and our aid program there [in the Pacific] is an important one to us. And in no ways will it be affected this year or any other year.”⁷

5.4 OCAA welcomes the government's assurance that overseas development assistance programs will not be affected this financial year or in the future, by the processing of asylum seekers in detention camps in the Pacific islands.

5.5 However, we believe that it is important for the Senate enquiry to fully document and clarify the role of AusAID in the asylum seekers program. The current role of AusAID as outlined below, raises the prospect of development assistance being used as a carrot to encourage acceptance of a secretive and unsustainable policy. Given that Nauru is facing serious economic difficulties with shortages of fuel and water in recent months, the detention of over 1,100 asylum seekers (some 10% of the country's total population) is clearly inappropriate. In the same vein, spending tens of millions of dollars on the detention centre in Manus is not the most effective use of humanitarian resources, at a time when there are 6,000 refugees and border crossers in camps along Papua New Guinea's border with West Papua.

5.6 In September 2001, Senator Robert Hill told Parliament that assistance promised to Nauru was being managed by AusAID: “This aid, which has already started, is managed and administered by the Australian government's own aid agency AusAID. AusAID is responsible for procuring and delivering all goods and services purchased as part of the aid package to Nauru.”⁸ AusAID is responsible for the issuing and management of tenders for the \$20 million of assistance pledged to Nauru by then Defence Minister Peter Reith in September 2001, in compensation for hosting the detention camps. AusAID staff are also involved in the management of aid programs in education, health and training worth a further \$10 million pledged by Foreign Minister Downer during his December 2001 visit to Nauru. At the very least this appears inconsistent with comments made by Parliamentary Secretary Gallus referred to under 5.3 above.

5.7 The Senate inquiry provides an opportunity to seek answers to questions about the cost and management of the asylum seekers program in the islands, allowing

transparency in the delivery of Australia's development assistance program to the region. OCAA suggests that the Senate Select Committee specifically seeks answers to the following questions:

- If the asylum seekers are kept in the Pacific beyond the 6-12 months initially agreed to, will there be ongoing pledges of financial support to host countries, similar to the \$30 million already promised to Nauru?
- Will these funds be "totally separate" from the aid program, as Ms. Gallus has stated, or integrated into the annual development assistance budget managed by AusAID?
- If the establishment and maintenance of camps in the Pacific are fully funded from outside AusAID's budget for Papua New Guinea and the Pacific islands, and extra funds are provided to AusAID for the \$30 million pledged to Nauru, will these amounts be counted towards Australia's development assistance program, as measured by the OECD's Development Assistance Committee (DAC)?
- As some of the development assistance programs provided to Nauru will extend beyond this financial year, will funding for Nauru continue at an increased level in 2002-3 and beyond, or will the country simply benefit from a one-off windfall, with no sustainability of programs?
- Will one-off payments for Nauru (e.g. payment of hospital bills in Australia) divert funds from AusAID's long-term development priorities such as primary health care and preventative health education?

Australia's International Human Rights Obligations

Undermining the *1951 Refugee Convention* by exporting mandatory detention

6.1 OCAA believes that it is important to recognise that asylum seekers arriving in Australia are a reflection of the international human rights situation that requires a whole of region response rather than the negotiation of bilateral arrangements between Australia and individual Pacific States. To this extent OCAA welcomes the recent regional people smuggling summit in Indonesia. We note however that the communique properly acknowledged the refugee human rights issues and the so called push factors in source countries in the penultimate paragraph. People smuggling cannot be effectively addressed in isolation of these factors.

6.2 While the government's in principle commitment to support capacity building in neighbouring Pacific Island countries to address the problem of asylum seekers and internally displaced people is welcomed, OCAA believes the so-called Pacific solution is an ad hoc approach that does not address the need to encourage Pacific States to either sign or implement their obligations under the *Refugees Convention*.

6.3 OCAA believes that Australia should not process applications for asylum seekers in overseas countries. It should certainly not do so in countries that have not signed the *1951 Convention on the Status of Refugees*. Nauru is not a signatory to the Convention and has no expertise in processing applications for asylum. While Papua

New Guinea has signed the 1951 *Refugee Convention*, it has placed significant reservations on it.

6.4 In the capacity building context, it is significant that most developed countries do not have mandatory detention for asylum seekers, (using a mix of short-term initial detention and release into the community while applications are processed). UNHCR guidelines state: “The detention of asylum-seekers is, in the view of UNHCR, inherently undesirable.” A policy of mandatory detention is inappropriate in Australia, and it should certainly not be exported to the region.

6.5 With security and other tasks sub-contracted to private corporations, there are concerns over accountability and transparency – a key issue in Australian governance programs in the Pacific islands. Most of the processing of refugee applications is being done in the Pacific by Australian immigration officials, but not under Australian law. Asylum seekers are disadvantaged, as neither Nauru nor Papua New Guinea have the full range of welfare and legal assistance required for asylum seekers.

6.6 OCAA believes the confused issue of sovereignty is preventing Australian independent monitors such as the Human Rights and Equal Opportunity Commission from conducting proper inquiries into conditions in the camps. This combined with prevention of proper media scrutiny, raises questions regarding transparency.

Has the refugee policy damaged Australia’s standing in the Pacific?

7.1 While government leaders from Nauru and Papua New Guinea have supported Australia’s refugee policy in the Pacific, there has also been extensive regional criticism of the Australian policy – from Prime Ministers and Presidents, the Pacific Islands Forum Secretariat, church leaders and non-government organisations. The criticism has been sharp, with Australia accused of being “big brother”, of “human trafficking,” of “dumping” people in the Pacific, of breaching the “dignity” of small island states, (see Appendix Two of *Adrift in the Pacific* for extensive quotes). There is substantive evidence to suggest that the policy has contributed to political instability, with the sacking of the Papua New Guinea Foreign Minister and the suspension of senior Nauruan public servants who criticised the policy.

7.2 The focus by the Australian government on the so-called “Pacific solution” is seen as overshadowing other key priorities in the region. The Australian government is actively promoting accountability, transparency and sustainability as key principles for governance in the Pacific, so the lack of sustainability in the current program has sparked widespread anger. At a time when other Australian policies (e.g. on climate change) are stretching relations with Pacific countries, the refugee crisis has further damaged Australia’s image in the region.

Why was there no regional co-ordination?

8.1 A major focus for Australia’s development assistance program in the Pacific region is the strengthening of regional multilateral agencies. Through AusAID’s Pacific regional program, the Australian government gives strong financial and political support to regional inter-governmental organisations, such as the Secretariat of the Pacific Community (SPC) and the Pacific Islands Forum Secretariat. Yet the

placement of the asylum seekers in the Pacific in late 2001 was conducted in an ad hoc way, involving limited co-ordination and planning with key regional institutions.

8.2 The Australian government has recognised that tangible progress on the intertwined issues of people smuggling, unauthorised migration and refugees can only be achieved through international co-operation. The capacity to assist asylum seekers and process their claims should be developed in a planned and orderly manner, but hundreds of millions of dollars are being spent by Australia for a relatively small number of refugees, without long term planning or co-ordination.

8.3 There should be regional consultation on refugee policy. Regional capacity to address the global refugee crisis should be developed in a systematic and planned manner, in full consultation with Pacific governments, relevant non-government, community and church organisations, and regional bodies such as the Pacific Islands Forum Secretariat. Pacific societies are willing to contribute what they can to address the global refugee issue. However they would like to do this in a considered way, and not as part of a policy driven by domestic political considerations in Australia.

OCAA would welcome the opportunity to appear before the Committee to discuss further any matters raised in this submission.

Yours Sincerely

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¹ See for example the interview with Ms. Chris Gallus on *Pacific Beat* program, Radio Australia, 5 February 2002.

² "Nauru deal finite" ABC Radio Australia News, 14 January 2002

³ "Nauru deal finite" ABC Radio Australia News, 14 January 2002

⁴ "Nauru considers keeping asylum seekers beyond May", ABC Radio Australia News, 6 February 2002

⁵ ABC Radio Australia News, 1 March 2002.

⁶ Interview on *Pacific Beat* program, Radio Australia, 13 March 2002

⁷ Interview on *Pacific Beat* program, Radio Australia, 5 February 2002.

⁸ 'Nauru' Senator Robert Hill, Reply to question by Senator Bourne, *Senate Hansard*, 24 September 2001.