



AUSTRALIAN COUNCIL FOR OVERSEAS AID

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Brenton Holmes
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

Dear Mr Holmes

The Australian Council for Overseas Aid (ACFOA) welcomes the opportunity to make a submission to the Select Committee on A Certain Maritime Incident on its inquiry into both the "children thrown overboard" claims by the Government during the election campaign, and the wider issue of the Government's "Pacific Solution" in paying Pacific countries to take asylum seekers intercepted in Australian waters.

ACFOA will only be addressing the latter issue in this submission, addressing criterion c):

(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.*

Introduction

The Australian Council for Overseas Aid (ACFOA) is the peak body for over 90 NGOs in the field of international development. The common purpose of ACFOA member agencies is to promote sustainable human development so that all people can fulfill their needs, enjoy a full range of human rights and live in dignity.



ACFOA member agencies enjoy the support of a wide and substantial cross-section of the Australian community. Their work is made possible by the financial, moral and practical support of Australians who care deeply about the issues that this inquiry is addressing.

We commend to your attention submissions from our members, including Oxfam Community Aid Abroad, the Refugee Council of Australia, the National Council of Churches in Australia and Amnesty International.

In brief, ACFOA believes that the agreements with Nauru and PNG were unsatisfactory for the following reasons:

- It is not appropriate to use the aid program to provide inducements that meet short-term political objectives in Australia. Australia's obligations should be carried out in the spirit of the Refugee Convention. It is appropriate for development assistance to be directed towards a long-term strategy to address the problem of refugee movements at source and in transit countries.
- Negotiations were carried out in the context of the relative economic vulnerability of the Pacific states, especially Nauru. This undermines the confidence in the motivation of the Australian Government by Pacific Island states when this vulnerability is exploited to address a domestic political issue.
- There are serious humanitarian concerns arising out of the operation of the agreement, such as trauma symptoms in detainees, and the effect of the camps on local communities..

1. Response to Terms of Reference the nature of negotiations leading to those agreements

1.1 The aid program was reviewed five years ago to focus on the one clear objective of poverty reduction, principally motivated by humanitarian compassion and characterised by a whole-of-government approach.¹ ACFOA 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, may have deleterious impacts on fragile Pacific communities and undermines Australia's commitment to sustainable and participatory development in the Pacific. The message that is sent to the Pacific is that aid will be tied to the domestic political issue of the day in Australia.

1.2 Dr John Pace went to Nauru on a monitoring visit for ACFOA member Amnesty International in early November 2001. He concludes that the Memorandum of Understanding with Nauru is not intended to promote sustainable development. He writes of the initial agreement between Australia and Nauru:

“this agreement is not, as it is held up to be, of a humanitarian nature. If anything, it is an agreement done in great haste, and after persuasion of the Nauru authorities by holding out financial and material reward. It is

¹ *One Clear Objective: Poverty Reduction through Sustainable Development*. Report of the Committee of Review April 1997.

clear that the international and regional geo-political implications of this arrangement were not thought through, or if they were, the medium and long-term implications for the island States were not a priority. Least of all was there any heed to the welfare of the asylum seekers and the inherent and underlying principles of the Refugee Convention which seeks to extend protection to those who do not have it – not to mention the solemn obligation of States Parties to international conventions to honour their treaty obligations in good faith.”²

1.3 ACFOA is concerned over the lack of policy consistency between the goals advocated in AusAID’s Draft Pacific Regional Strategy relating to its poverty reduction policy and the practice of placing asylum seekers in Pacific nations to deal with Australia’s immigration concerns. ACFOA contends that such initiatives are not driven by the priorities of an aid program focused on poverty reduction. The policy seriously undermines the credibility of Australia’s good governance programs especially given the poor state of governance in nations like Nauru.

1.4 The practice of paying financial incentives to Papua New Guinea and the Republic of Nauru to detain the Tampa asylum seekers and those who have followed has caused major problems for Australia’s relations with the Pacific and led to perceptions that Australia is treating Pacific nations as client states.

1.5 These actions have serious implications for Australia’s aid program. A joint statement by the Pacific Conference of Churches, the Pacific Islands Association of Non Government Organisations and other Pacific bodies, stated: “We are concerned that accepting the Australian aid deals will make the Pacific Island Governments part of a process that solicits money/profits out of trade in human trafficking, in this case asylum seekers.”

1.6 Noel Levi, Secretary General of the Pacific Island Forum, which represents 15 South Pacific countries, stated that Australia was creating a ‘market’ in refugees that was “evolving rapidly without the necessary legal and policy framework.”

1.7 The Canberra Times reported on 22 March 2002 that a Catholic Bishop from PNG’s Kavieng diocese, which includes Manus Island, stated that the Pacific Solution is “immoral” and suggested Australia “was holding the very sharp aid assistance sword over our heads.”³

1.8 ACFOA was also very concerned by the Australian government’s approach to East Timor to accept refugees during the Tampa “crisis” period. Such an approach was inappropriate given the fragility of the East Timorese state pre-independence.

2. Response to Terms of Reference

(i) the nature of the agreements reached,

² REPORT OF MISSION TO THE REPUBLIC OF NAURU John Pace for Amnesty International Secretariat in London (photocopy) 8 to 13 November 2001

³ “Labor attacked for pushing through immigration law” By Kirsten Lawson. *The Canberra Times* Friday 22 March 2002

2.1 ACFOA believes that it is important to recognise the phenomenon of asylum seekers arriving in Australia as an international human rights issue that requires a coordinated regional and international response, rather than pushing people back to countries of first arrival or diverting them to the Pacific. In theory, the Australian Government recognises the root causes of refugee flows as human rights violations such as endemic poverty, conflict, political persecution, corruption and repression.

2.2 ACFOA strongly supports Government measures that tackle problems at their source, and which seek to address the underlying causes of asylum seekers and the problems of people smuggling, such as governance and conflict resolution programs.

2.3 The official aid program has a vital role to play. It can contribute to reducing refugee flows through such initiatives such as the provision of essential humanitarian aid, long-term basic social services, and by promoting human rights, good governance and more equitable economic development in countries in which refugee flows originate. To divert aid funds from these objectives would be inefficient and self-defeating.

2.4 ACFOA would argue strongly that it is not an “either/or” situation between on-shore and offshore measures. Australia can and should improve its support of UNHCR and development assistance to countries of first asylum. Australia can support a coordinated international response to prevent the creation of refugees. Australia can and should increase its offshore program and encourage other countries to do the same.

2.5 A special effort towards increased and effective overseas development assistance (ODA), and strengthening human rights, governance and conflict resolution in the world’s poorest countries is the only long-term solution to people-smuggling. Improving the conditions of refugee camps in host nations and making return to countries of origin viable in human rights terms is the best way to avoid the current level of desperation for scarce resettlement places and forced movements to other countries.

3. Response to Terms of Reference

(ii) the operation of those arrangements,

3.1 Humanitarian concerns and issues of who holds the duty of care to asylum-seekers surround the conditions in camps in the Pacific just as they do here in Australia. Dr John Pace reported that the asylum-seekers in Nauru have clearly been traumatised by events, some of which Australian immigration policy is wholly responsible for:

1. “The asylum seekers are traumatised by the events and many show clear signs of vulnerability. It is often difficult to interview them. It could be discussed whether it is appropriate to perform RSD (refugee status determination) in such situations, when the symptoms of Post Traumatic Stress Disorder (PTSD) are evident and seriously affect the eligibility process.
2. The asylum seekers have gone through several months of being exposed to stress, some of them have left Afghanistan one year ago. Many of them had

had several unsuccessful attempts to reach Australia by boat before being rescued by the Tampa. After that, the insecurity regarding admission to Australia, the arrival in a detention camp, the start of the air bombardments in Afghanistan and lately, the news about a boat that sank with 300 refugees on board have left serious marks in they physical and psychological well-being.”⁴

3.2 The Pacific Solution has created extremely complex legal issues surrounding sovereignty, territoriality, jurisdiction, liability of private sector contractors and the Nauru Constitution. Any incident which takes place in Nauru or Manus, such as the death of an asylum-seeker through negligence, for example, would almost certainly be fraught with controversy, mainly due to the lack of regard to the rule of law when the agreement was entered into. There may also be unforeseen consequences for local communities hosting the camps. Recently a PNG Bishop cited a rise in population on Manus Island that has increased drug use and prostitution.⁵

4. Response to Terms of Reference

(iii) the current and projected cost of those arrangements.

4.1 ACFOA is very concerned about the current and potential future impact on the aid program of the cost of inducing the governments of Nauru and PNG to agree to receiving asylum seekers and the cost of implementing the arrangements reached. While additional funds may have been added to the aid program in the current financial year to cover the immediate cost of the inducement packages there is still great uncertainty and no reliable information on how the broader costs of the "Pacific Solution" may impact on the aid budget in the current and future financial years.

4.2 There are two main ways the costs of the Pacific Solution may have a negative impact on the aid program in future years, particularly in the next financial year. Firstly, if no funds are added to the aid program in future years, over and above the funds required to keep the aid program at the same real level of expenditure after taking account of inflation, then any additional or recurrent costs associated with programs included in the "Pacific Solution" inducement packages will need to be taken from other projects within the current aid program.

4.3 Secondly, if any of the "Pacific Solution" costs of transporting, accommodating and processing asylum seekers, incurred by the ADF or other government departments, is sought to be defined by the government as Official Development Assistance (ODA) eligible and included in the aid budget under the category of "Other ODA", the effect will be to reduce the funds available to current AusAID programs focused on poverty reduction.

4.4 In addition, the aid program may also be impacted through the extra demands made on AusAID resources and personnel in having to redirect priorities at short notice, to the tendering, contract management and ongoing administration of the programs included in the inducement packages to Nauru and PNG.

⁴ REPORT OF MISSION TO THE REPUBLIC OF NAURU John Pace for Amnesty International Secretariat in London (photocopy) 8 to 13 November 2001

⁵ "Labor attacked for pushing through immigration law" By Kirsten Lawson. *The Canberra Times* Friday 22 March 2002

4.5 ACFOA believes that progress made in focussing the aid program on effective and sustainable poverty reduction programs must not be undermined by the inappropriate and costly use of aid as inducement packages to meet short term political objectives in Australia associated with the so called "Pacific Solution". Aid funds must be protected for sole use to implement the stated government objective of reducing poverty through sustainable development. More aid funds are desperately needed to address situations which give rise to refugee movements in other countries. ACFOA is opposed to the policy of the costly diversion of the asylum seekers to the Pacific and believes that the current and future costs associated with this policy must be wholly met from outside the limited resources of the aid budget.

Conclusion

ACFOA recommends that the Senate Committee seek full information on the current and likely future impact of the cost of the "Pacific Solution" on AusAID programs. ACFOA also recommends that the Senate Committee ascertain the extent to which the cost of the "Pacific Solution" is detracting from the core poverty reduction objective of the Australian aid program.

ACFOA would welcome the opportunity to discuss with the Committee any of the matters raised in this submission.

Graham Tupper
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Australian Council for Overseas Aid