

## **JRS Position Paper on proposals for amendments to the migration act May 2006**

On the 13<sup>th</sup> April, the Prime Minister, Mr Howard, announced changes to Australia's way of processing people who arrive in Australia by boat in order to claim asylum. These changes involve shifting all such claimants to detention centres in Nauru or Papua New Guinea (Manus Island) for processing of their claims. If successful, the claimants would then become eligible for resettlement in a third country.

In making these changes, Mr Howard declared that Australia would continue to fulfil its international obligations towards asylum seekers and refugees under various treaties and protocols. One may reasonably expect from these comments that all asylum seekers approaching our shores will be treated with dignity and fairness.

JRS Australia recognises the Australian government's desire to facilitate reform in the international system of protection for refugees and asylum seekers but believes that, in this case, the proposals have little likelihood of achieving their stated aims and rather are likely to put the human rights of asylum claimants unnecessarily at risk. We also believe that the proposals will likely place Australia outside the international protection framework, in effect placing it in breach, if not of the letter then certainly of the spirit, of the 1951 Convention for the Status of Refugees.

JRS Australia believes that the international protection system rests on a number of core principles, departure from any one of which constitutes a serious threat to the integrity of the system.

Firstly, it is a fundamental principle that asylum claimants arriving undocumented in a country are legally and morally entitled to claim asylum in that country and to have the claim processed according to the laws of that country. They are also entitled to live with dignity during the time that their claims are being processed. Forcing asylum claimants to off shore processing centres places them outside Australia's legal jurisdiction thus rendering them without right of appeal. At the same time their care and the processing of their claims will be less open to scrutiny as it is less clear who is responsible for their care and processing.

JRS Australia's experience is that it is essential that claimants begin to rebuild their lives as soon as possible and that they be enabled to make connections with likely host communities even whilst their claims are being processed. Ignorance of these measures results inevitably in a rapid loss of psychological and physical health, which may become irredeemable over time.

Such forced removal to a third country is, in our assessment, in potential breach of Article 31 of the 1951 Convention for the Status of Refugees. In the absence of clear information regarding how the claims are to be processed it is tantamount to punishing asylum seekers because of the manner in which they arrived on Australian soil, likewise in breach of the Convention.

The second fundamental principle involves the cooperation of contracting states in responding to irregular people movements. JRS Australia believes that the proposed amendments unrealistically shift the burden of responsibility to other states in a manner that is unlikely to be embraced by those states. The experience of the caseload previously detained on Nauru suggests that claimants will be detained far longer than is necessary, and that in most cases Australia will itself be forced to accept such refugees. Such protracted detention risks “warehousing” with all the documented deleterious effects that produces. It is likely that Australia will have to eventually bear an increased cost of health care and social dysfunction that is the result of such a scenario.

These changes create a precedent, indeed a world first, in which a wealthy state with an existing working system of asylum protection and under no threat of “mass influx” unilaterally decides to deflect its responsibility for processing asylum claims “elsewhere”. Ironically, the very existence of our offshore humanitarian program, which Minister Vanstone rightly describes as most generous and effective, relies upon the operation of an effective international system of refugee processing and protection. The changes put this system gravely at risk.

The third and most serious principle is that of *non refoulement*, the proscription of return of the asylum seeker to the situation of persecution from which he or she is fleeing. Lack of public scrutiny of offshore facilities and processing combines with the effect of increased naval patrols in northern waters to create a much higher risk of *non refoulement*, which in turn represents the most serious violation of human rights. JRS Australia believes that the government’s proposals do not safeguard this possibility to a satisfactory degree.

No country chooses asylum seekers arriving on their shores. What we can choose is the manner in which we respond. Senator Vanstone asserts that asylum seekers cannot be allowed to dictate where and by whom their claims will be heard. A far better alternative is to work with the international community in reforming the system of protection and burden sharing. Australia has yet to embrace many advances and reforms already enacted in other parts of the world. We fail to see how locking people up where they are unseen and unheard will advance the welfare and cause of refugees and asylum seekers, nor contribute to international cooperation in this area.