



Inquiry into the provisions of the Migration
Amendment (Designated Unauthorised
Arrivals) Bill 2006

Submission from Oxfam Australia

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Background: Oxfam Australia

Oxfam Australia is an Australian, independent, not-for-profit, secular, community-based aid and development organisation. We carry out long-term development and humanitarian relief efforts in conjunction with a global confederation which allow us to work in more than 100 countries. We are recognised as a global leader in humanitarian response. Our work assisting refugees and internally displaced peoples in areas of conflict provides us with insights of the specific home environments of many who seek refuge in Australia and a detailed understanding of the devastating experience that conflict and civil unrest has upon people. It is with this direct experience of working with people who have suffered human rights violations that have forced them to become internally displaced or seek refuge, that we register our strong opposition of the intention and effect of the proposed Migration Amendment (Designated Unauthorised Arrivals) Bill 2006.

Oxfam Australia is in full support of the submission of the Refugee Council of Australia, the various concerns made public by the United Nations High Commissioner for Refugees and the Human Rights and Equal Opportunity Commission (HREOC).

Oxfam Australia shares the common anxiety felt amongst Australians working towards a strengthening of human rights standards that this bill will undermine Australia's obligations as a signatory to the Refugee Conventions and establish off-shore detention as a precedent for refugee determination to be followed by other countries.

Countries of refuge are absolutely paramount to the functioning of the global human rights system. For a rich country with a strong human rights regime to defer the responsibility of providing refuge is to assist in establishing global norms of indifference, intolerance and inequality.

Oxfam Australia's concerns are as follows:

1. Bad Public Policy

We believe the implementation of the Pacific Solution in the years 2001-5 was poor public policy. It placed victims, many of whom were fleeing either Saddam Hussein's regime or the Taliban in Afghanistan, in detention for a period of years. The intentional denial of liberty through detention is a punitive act. Despite this, people held in off-shore detention centres were never charged with any crime nor sentenced. Thus the detention was arbitrary – as was found by the UN Special Rapporteur on Arbitrary Detention in regards to detention centres on the Australian mainland.

The majority of the people were subsequently recognised as refugees and brought to Australia. Detention simply prolonged their suffering, magnified and enlarged the effects of trauma and denied them access to services and support from their communities living in Australia and community based service agencies. This policy has been proven to have harmful outcomes for refugees and undermines their capacity to effectively and positively integrate into Australian society.

Recommendation

- The bill should be opposed as it is poor public policy which fails to respect human rights and further traumatises people who are fleeing persecution.

2. Exacerbation of mental ill health

Even for those not recognised as refugees, the mental health damage caused by long term detention is unquestionable. Last year health professionals advised that 25 of the last 27 failed asylum seekers be brought to Australia because of serious mental health concerns. These people had been incarcerated on Nauru for four years or more before being brought to Australia. Recently the Australian Government has negotiated costly out of court settlements with the family of Shayan Badrie who suffered detention at Woomera and Villawood Immigration Detention Centres. There has been widespread awareness of the mistreatment of Cornelia Rau in detention, as well as many other cases documented by mental health specialists. Given these cases and the preceding settlement in the case of Shayan Badrie, it is foreseeable that the Commonwealth will be subject to future claims against it for aggravating mental ill health. The Commonwealth will be in a weak position to deny paying damages given the proven connection between mental damage and detention.

Recommendation

- The bill should be opposed in light of the evidence and research into the mental health impacts of detention and off-shore detention. Additionally the committee should seek the private testimonies of those who have suffered through mandatory detention and off-shore detention. The negative health impacts are too well known for this issue to be ignored in consideration of this bill.

3. Distortion of the Australian Aid Program

Oxfam Australia is concerned about the erosion of public accountability that the Bill implies on two levels. Firstly, the previous Pacific Solution used funds aimed at the elimination of poverty to facilitate the acceptance of this bill in neighbouring countries. In 2002, research conducted by Oxfam Australia revealed that Nauru was pledged a further \$30 million above a budgeted \$3.4 million from the Australian Agency for International Aid (AusAID) for taking asylum seekers. We commented at the time:

'[T]he pledge of \$30 million to Nauru is a major shift in policy for the Australian government – the amount is greater than all AusAID funds provided to Nauru between 1993-2001. It is also more than 18 per cent of the total AusAID budget for the Pacific Islands (excluding Papua New Guinea), which is budgeted at \$164.6 million in 2001-02.

Secondly, Australia's policy of detaining asylum seekers off-shore in poor neighbouring countries such as Papua New Guinea and Nauru is extremely expensive. In 2002-2003 offshore detention was budgeted to cost \$240 million (Brennan, approximately \$195,000 per asylum seeker per year). The primary objective of the Australian Aid program is poverty alleviation, as recently

emphasised in the Minister for Foreign Affairs White Paper. The detention of human beings in neighbouring countries distorts our relationship with neighbouring countries which should be focussed on poverty alleviation and the attainment of fundamental human rights. It is possible that detention of refugees in off-shore detention centres will affect bilateral aid negotiations with Pacific countries. Refugees could, in essence, become bargaining tools where they are detained on the land of countries that are not full signatories to the *1951 Refugee Conventions* and skew the priorities of the Australian aid program away from poverty alleviation.¹

Recommendations

- The bill should be rejected as it undermines the intent and purpose of our bilateral aid program which is poverty alleviation.

4. Public accountability and access to services

Oxfam Australia believes there has been no accountability to the Australian people on the use of off-shore detention. By design and effect, off-shore detention is not subject to scrutiny by bodies such as the Commonwealth Ombudsman and the Human Rights and Equal Opportunity Commission or even the Auditor General, yet the detention facilities were paid for by Australian taxpayer's dollars. What other public policy involving such large sums of public money, which has been seen to cause and prolong human misery avoids accountability to the Australian people?

Furthermore, off-shore detention has resulted in the limitation of welfare and legal services offered by Australian community based organisations and non-government organisations. In the Australian community, not for profit agencies play a key role in service provision and support. The provision of these services have been shown to play a significant role in reducing the effects of trauma and building lasting relationships that refugees are able to lean on for support post-detention.

Recommendation

- The Migration Amendment Bill is rejected on account of the limitations such a policy places on public scrutiny and therefore, accountability as well as the undue limitations it places on access to services for refugees and asylum seekers.

5. Lack of availability of off-shore processing by DIMA and UNHCR

It is an unfortunate reality that in areas of the world where civil unrest, conflict and/or humanitarian crises are present, Australian DIMA officers or UNHCR determination officers are often not present. There are often no channels by which refugees can seek appropriate visas and become 'authorised'. Oxfam

¹ In the case of the Migration Amendment Bill, the Australian government is proposing sending asylum seekers to Nauru and Papua New Guinea. Although Australia will conduct refugee determination in the case of diverted asylum seekers, the fact remains that Nauru is not a signatory to the *1951 Refugee Convention* and although Papua New Guinea signed in 1986, it did with significant reservations. "The Government of Papua New Guinea in accordance with article 42 paragraph 1 of the Convention makes a reservation with respect to the provisions contained in articles 17 (1), 21, 22 (1), 26, 31, 32 and 34 of the Convention and *does not accept the obligations stipulated in these articles.*"¹

Australia believes that one barrier to refugee determination is that UNHCR is inadequately funded to carry out this task on the scale required in the regions of the world where it is most needed such as West Papua, Darfur, DRC and Northern Uganda.

There is no recognition of this fact in the Migration Amendment Bill and, as such, the Bill leaves only three options for refugees – persecution in their home country, ‘unauthorised’ entry into Australia leading to a state of indefinite limbo in an off-shore detention centre, or fleeing to an alternative country (that may or may not uphold the refugee conventions).

Recommendation

- Greater funding is required for UNHCR and further expansion of DIMA determination in countries where refugees and internally displaced people are in need of asylum. The monies earmarked for the Pacific Solution would be far better used to fund these activities.

ENDS.