



The Equal Rights Trust

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6 August 2013

The Hon Kevin Rudd MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Re: ERT Condemns Retrogressive and Inhumane Refugee Policy Announcement of Australia

Dear Hon Prime Minister Rudd,

On 19 July 2013, Australia announced that asylum seekers who arrive by boat will never be settled in the country. Instead, as a result of a 'Regional Settlement Arrangement' they would be sent to Papua New Guinea (PNG) for assessment, where those determined to be refugees would be settled. A similar agreement was signed with Nauru on 3 August 2013. The Equal Rights Trust (ERT) condemns and urges Australia to revoke this retrogressive and inhumane policy of forcibly removing asylum seekers to third countries without determining their status and in breach of the principle of *non-refoulement* and other obligations under international law.

This new policy is the most recent in a long line of increasingly discriminatory and restrictive policies and attitudes towards migrants and asylum seekers, which have severely undermined Australia's international reputation as a country which respects, protects and fulfils the human rights of all persons. Australia's obligation to comply with the minimum international standards set out in the UN Charter and international human rights and refugee treaties is heightened by the fact that Australia has an added duty to lead by example, both as the first nation in the Asia-Pacific region to have ratified the 1951 Refugee Convention and as a member of the UN Security Council.

The right to seek asylum is a universal human right and one of the basic tenets upon which the international community operates. States have an obligation to identify refugees who have arrived in their territories fleeing persecution, and to grant them protection or in the very least, to desist from forcibly removing them in violation of the principle of *non-refoulement*. States must further implement their obligations under refugee and human rights law without discrimination. International law does not allow for the outsourcing of state obligations to other states, the same way that individuals cannot outsource responsibility for their acts and omissions under domestic law. By announcing that no new boat arrivals will be accepted, Australia is failing to uphold its obligation to determine refugee status and acting in a discriminatory, inhumane and unlawful manner. Unlike the majority of those who arrive by air, the vast majority of boat people escaping violence and persecution in conflict ridden societies have no option but to flee by boat. Penalising those who have no other route to escape persecution is discriminatory and unacceptable under international law.

ERT is also concerned that under the new policy, those arbitrarily denied the right to seek asylum in Australia will be sent to PNG or Nauru for assessment and settlement. Neither country has the resources or commitment to assess, protect and support refugees in an effective and sustainable manner. The extreme poverty levels in PNG; the lack of infrastructure in both countries; the appalling conditions of detention and treatment of detainees in the Manus Island (PNG) and Nauru detention facilities (including recent reports of sexual and physical abuse of detainees in Manus Island and the failure to provide adequate alternative accommodation to detainees in Nauru following the burning down of the detention facility during a protest); and the very real danger of LGBTI refugees being further persecuted in PNG, make both PNG and Nauru wholly inappropriate countries to compel refugees to live in. The human rights of those sent to either country under this policy (including the right to be free from torture, cruel, inhuman or degrading treatment or punishment, the right to liberty and security of the person, the right to life and the rights of due process and fair trial) will be at heightened risk. As Australia has entered into these agreements in full awareness of the real risks of irreparable harm faced by asylum seekers and refugees in PNG and Nauru, this policy contravenes Australia's obligation of *non-refoulement* under the 1951 Refugee Convention, the International Covenant on Civil and Political Rights and the Convention Against Torture.

The irresponsible and misleading manner in which Australia has announced and justified this new policy is also a matter of grave concern. The deliberate conflation of those in the people smuggling trade and those fleeing persecution, and the criminalisation and penalisation of the latter in the guise of dealing with the former, is deeply damaging to the international refugee protection regime. The assertion that 'genuine' asylum seekers have recourse to other processes to escape persecution is a dangerous misrepresentation of the harsh realities faced by the most vulnerable. The repeated reference by Australian Immigration Minister Burke to the 'prison' and 'prison population' of Nauru at a recent press conference is an example of the institutionalised prejudice against and criminalisation of asylum seekers in the highest echelons of government. Such rhetoric is likely to have significant negative repercussions both within Australia and internationally, further normalising the criminalisation of the right to seek asylum. The assertion by Australia that this policy is 'compassionate' has no credibility. The lack of any empirical evidence to back the claim that this policy will result in fewer 'genuine' asylum seekers embarking on long and dangerous boat journeys indicates that there is a gulf between the real and stated motivations behind the policy. As indicated by President Waqa of Nauru, the policy is aimed at combating 'irregular migration', and not protecting asylum seekers or treating them with compassion.

Finally, ERT remains concerned that the Australian Opposition has proposed an equally repressive policy response with regard to the treatment of asylum seekers. The political consensus across the party divide seems to be one of deterrence and punishment, not protection and the upholding of minimum standards established by international law. Australia as a nation has benefitted immensely from migration from all parts of the world, but today has chosen to turn its back on the most vulnerable of migrants in their hour of need. This increasingly entrenched policy position of Australia will undermine any efforts towards realising a human rights protection based regional response to both irregular migration and refugees.

In light of the above, ERT joins a host of other actors in condemning the Regional Settlement Arrangement, and urges the Australian government to revoke this retrogressive and inhumane policy. ERT also calls on the Australian government to reassess its wider law and policy framework governing asylum, statelessness and irregular migration, in order to make it compliant with Australia's international obligations.

Yours sincerely,



Dimitrina Petrova