



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: MM: ssh: 1301878

2 March 2010

Senator Chris Evans
Minister for Immigration and Citizenship
Parliament House
CANBERRA ACT 2600

Dear Minister,

Re: Treatment of Asylum Seekers on Australian Vessels and Transfer of Asylum Seekers to Third Countries

The Human Rights Committee of the Law Society of New South Wales has observed with continuing concern the situation of people claiming refugee status.

This concern on the part of the Committee has been increased by the re-emergence in public debate on this issue of rhetoric that promotes fear and discrimination against persons claiming refugee status in Australian custody. That rhetoric in the time of the previous Government was instrumental in leading to international statements that Australia was not upholding its human rights obligations with regard to refugees.¹

The Committee notes the principle that human rights have especial applicability to individuals who are despised or disapproved of by the majority of the population. The Committee also notes that human rights are applicable regardless of the nationality of those persons whose human rights a State has the obligation to uphold².

The Committee respectfully draws the Minister's attention to Article 31 of the 1951 *Convention Relating to the Status of Refugees*³ which prohibits signatories to that Convention from imposing penalties on refugees for their illegal entry into a country if their life or freedom was threatened provided that they can show good cause for such illegal entry or presence. The Committee also draws the Minister's attention to Article 32 of the same Convention which prohibits State parties

¹ For example the UN High Commissioner for Refugees was widely reported to have commented with regard to the Tampa incident in 2001 that Australia had resorted to "the Law of the Jungle" in its handling of this matter (see UNHCR *Refugees* Vol 125 No 4 at 7). Similarly, Human Rights First (formally the Lawyers Committee on Human Rights) remarked in 2002 that Australia's policy of detaining asylum seekers was contrary to international law and the UN Human Rights Committee found several times that Australia was in violation of its human rights obligations with regard to its detention of refugees (eg Human Rights Committee Concluding Observations: Australia A/55/40 24/7/2000).

² Article 2, Universal Declaration of Human Rights, 1948 *Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.*

³ *Convention Relating to the Status of Refugees*, signed 28 July 1951, entered into force 22 April 1954, 189 UNTS 137.

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from expelling refugees from their territory save on the grounds of national security or public order and in pursuance of a decision reached according to due process of law.

Given that the original object and purpose of this Convention was to ensure that the then common situation of refugees fleeing Nazi persecution and war being turned away at national borders when they sought protection was not repeated in similar situations in the future, the Committee believes that Australia's obligations under this Convention should be interpreted liberally and in accordance with the instrument's beneficial international purpose. In this regard, the Committee refers to Article 18 of the Vienna Convention on the Law of Treaties which states that a State is to refrain from acts which would defeat the object and purpose of the treaty.⁴

The Committee also refers to the general human rights owing to persons fleeing persecution and seeking asylum in another country. Among those rights are the rights to freedom from torture and cruel, inhuman and degrading treatment and from being expelled to a country where there are substantial grounds for believing that a person may be subject to torture,⁵ freedom from arbitrary deprivation of liberty⁶ and freedom from discrimination on the grounds of their national origin or refugee status.⁷

In the light of the above, the Committee respectfully asks the Minister and the Government to:

1. ensure consideration of all of the Government's international human rights obligations and international obligations regarding those seeking asylum and within Australian custody, especially when such asylum seekers are required to disembark an Australian vessel to a third country where there may be grounds for believing that their rights as refugees or their human rights may be violated; and to
2. refrain from any policy or practice of transferring persons who arrive on Australia's frontiers or vessels and seek asylum in Australia to third countries to be processed and/or resettled.

The Committee would welcome any information you can provide on how Australia currently ensures compliance with its international human rights obligations regarding refugees and asylum seekers.

The Committee thanks you for your time and looks forward to receiving your comments.

Yours sincerely,


Mary Macken
President

⁴ *The Vienna Convention on the Law of Treaties*, signed 23 May 1969, entered into force 27 January 1980, 1155 UNTS 331.

⁵ Articles 1, 2 and 16 of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment*, adopted 10 Dec. 1984, entered into force 28 June 1987, GA Res. 39/46, 44 UN GAOR, Supp (No. 49), UN Doc. A/44/49, at 166 (1989).

⁶ Article 9 of the *International Covenant on Civil and Political Rights*, adopted 16 Jan. 1966, entered into force 23 Mar. 1976, 999 UNTS 171.

⁷ Article 26 of the *International Covenant on Civil and Political Rights*, adopted 16 Jan. 1966, entered into force 23 Mar. 1976, 999 UNTS 171.