

# 'Wake up Australia'

## The New World Order: The Human Dimension

### Asylum seekers

..... let me say just a few things about the way we are approaching the current problems posed by asylum seekers arriving here by boat.

The first thing to say is this. People seeking refugee asylum are not illegal migrants. In making their applications for refugee status, they are doing something expressly permitted by Australian and international law. No one suggests that we should have open borders. There must be controls on movements of people in and out of countries not their own. But the current problems have been caused by many events in many countries, not all of their own making, and are not within the power of any one country to regulate. While the world finds a way to deal with the problem - and there are certainly ways we can reduce and minimise the problem for ourselves - we should not resort to false and racist labels to heighten the rhetoric and gain a political advantage.

Second. To denigrate people escaping persecution, torture, terror or starvation because they are Muslim or non-White or unkempt-looking is pure prejudice and intolerance. To label them as actual or potential terrorists, because some of them are from Afghanistan, as some of our politicians and others have recently done, demonstrates breathtaking arrogance, displays appalling ignorance, and plays shameful and unashamed politics. These people have **rejected** or **been rejected by** their leaders. That is why they are here. Australians told public opinions polls in 1947 to the tune of no less than 80% that we should reject the Jewish survivors of the Nazi Holocaust. The poll respondents were never asked where precisely these tragic victims of unspeakable barbarity were supposed to go and why we could and should not contribute to alleviating their plight. Indeed, a boat called the St Louis which had sailed from Bremerhaven with 600 escapees from Hitler's death squads was turned back by the British authorities in mandated Palestine in 1942 for much the same reasons we are now using to turn these boats away. Every one of the 600 was gassed at Auschwitz. Australians also voted 60% against accepting Vietnamese and Cambodian refugees from countries we had actually helped to wreck. When will we learn?

Third. To turn them away because they arrive without papers is cruel. If you are fleeing your own government because it is persecuting you or will not protect you from the persecution of others in your homeland, obtaining papers from them is a nonsense, and Australia has no office to apply to for authorisation in most of the countries concerned. When you can and do apply, you wait for 2, 3 or more years for permission to come. How do you survive lack of food and water and gangs of killers and rapists while all that is going on?

And as for blaming the captain of the Tampa for "invading Australia's sovereignty" - as if the King of Norway was about to declare war on Australia, let alone with an oil tanker, instead of lauding him as a hero, I cannot find the appropriate words of condemnation.

Fourth. There is no such thing as a queue of refugees. Refugees escape persecution and possibly death or starvation for themselves and their children. They do not fix or regulate the times or places for their terror. It is true that a boat person granted asylum may temporarily displace someone else wanting to come here. But this is partly because Australia has in recent years substantially reduced the numbers of refugees it is willing to accept. We have come down from 25,000 to around 10,000 in a period when the number of refugees and displaced people in the world has grown substantially and our population has increased by almost 3 million, not to mention our national wealth and levels of personal consumption. It is also partly because we have linked the onshore and offshore refugee programs so that once the yearly quota of refugees has been reached, the processing of overseas asylum seekers stops, notwithstanding the fact that we have often actually processed and taken in less than the allocated quota, presumably because too great an allowance has been made for boat people and other informal arrivals. We have thus created the situation that even if there were a queue for asylum seekers to join, none of them could be sure that their applications will even be considered when they reach the head of the Queue. Human beings facing personal horrors ought not to be the plaything of bureaucratic procedures.

Like other similar countries, we have a binding legal obligation to all refugees, not just some. Who is to say that people arriving on our doorstep by informal means are less likely to have suffered, or be likely to suffer, persecution than those living under someone's protection overseas whom the bureaucrats have chosen after years of procrastination and delay which showed no recognition of any urgency in their cases.

And fifthly, we are now the only developed country in the world which practises indiscriminate indeterminate incommunicado detention of asylum seekers. Alone of all countries in the world, including Canada, the United States and the nations of Europe and Scandinavia, we have indiscriminately detained all of them – the elderly, the children, the sick and the pregnant – at a cost by the way of around \$50,000 per person per year – when the Catholic Archbishop of Perth was offering free accommodation for all of them in Catholic homes while the review process ground on.

In any civilised country, freedom from arbitrary detention is a fundamental human right derived from the common law, yet successive Australian governments have detained for long periods of time – up to 5 years and more – asylum seekers who have arrived in this country, having fled terror, persecution, hunger and other human rights violations too horrible to dictate, in their homelands. Most detention centres in this country suffer overcrowding, a lack of natural light and recreational facilities, and have completely inadequate sanitary conditions. As our own Human Rights Commission has found, they are more like overnight police lock-ups than places suitable for the lengthy detention of people who have committed no crime. And of course they are mostly sited thousands of miles from civilisation!

I could hardly believe my ears when I heard the Minister describe them as something like Australians' homes. Some 482 children under the age of 18 have been facing this very horror. Thirty or so of them have been facing it alone. Some have spent, and more will spend, the years from age 0-5, or 3-8, or 6-11 in compulsory detention without having committed a single offence. Both the United Nations Human Rights Committee, and our own Human Rights and Equal Opportunity Commission, have condemned the Australian legislation as breaching fundamental human rights. So have many outspoken Australians.

Unfortunately, such criticism has been brushed aside as bleeding heart stuff not worthy of serious consideration. I do not agree that inhumanity can be accepted with impunity. We simply

must protest this fundamental violation of decent conduct. And if you don't mind my saying so, church organisations and religious leaders should be at the forefront of the struggle! I recently read a debate between Reverend Tim Costello and Father Frank Brennan, two fine and courageous Australians, on the difficulties facing church leaders in this connection. I say merely that whatever the problems, if the churches and church people cannot and do not take or join the lead, the morality of our nation and our people is for the high jump. We certainly cannot leave it to the politicians who, too often have a problem finding a single moral principle between them all.

Most of the developed world, including Australia, has for 50 years unequivocally declared a commitment to provide protection to people seeking asylum as refugees and to ensure that they are treated in accordance with internationally agreed principles and human rights standards. Some of our own foreign military ventures, notably in Vietnam and Cambodia - which we entered not for their peoples but, as we were told, to protect ourselves - have actually created refugees. Yet we have detained them too.

Guidelines issued by the United Nations High Commissioner for Refugees (UNHCR) state that detention should be avoided. Only in exceptional circumstances is a state entitled to temporarily detain an asylum-seeker and detention should never be automatic, prolonged or imposed as a penalty or as a deterrent to others. It should certainly not be indiscriminate. And if you are only a child following your parents' ill-fated lead, how can detention possibly be just?

From recent political propaganda in this country, you would think that Australia had been swamped by boat people. It may interest you to know that in the last 12 years, less than 20,000 boat people have arrived on Australia's shores without visas, not the tens of thousands a year the preachers of doom and racial prejudice would have us believe. And we have given refugee status or entry on other humanitarian grounds to more than 4000 of the 20,000 - meaning that we have held and paid for all these people in detention for up to 5 and 6 years without charge, trial or bail, and eventually found at least 25% of them innocent of even the technical offence of arriving in our country without appropriate documentation. There would be a furore if this statistic applied to people detained on criminal charges. And we have continued to detain many thousands more because there is nowhere safe to deport them to which only goes to prove that they also were probably refugees as well.

Moreover, contrary to the scare campaign and playing to people's fears that we are being invaded by boatloads of gangsters from the Middle East, it should be recorded that of the recent arrivals of Afghans and others from Iran, Pakistan and elsewhere in the region, more than 90% have been granted refugee status by the department itself or by the Refugee Review Tribunal. So much for the so-called invasion by criminal elements! So much for the absurd publicly-funded and government-authorised publicity videos that characterise Australia as the land of snakes, sharks, man-eating crocodiles and killer spiders! One is on my mantelpiece at home. I make my children watch it! It is amazing how our Olympic visitors escaped unscathed! How do we ourselves survive? If we had a land border with a country of oppression, our problem would be thousands of times worse. Our protection is our geography, not draconian laws or advertising slogans.

And make no mistake. The millions of dollars a day - at least 20 million dollars a week it is costing us, first, to have the Navy permanently stationed off the north-west coast providing public transport facilities around the Pacific, and then to pay, some would say to bribe, Nauru and Papua New Guinea to take them, will not save us from a single refugee. For at least 85% or 90% will be back here after processing, and of course after the election - the same number that

would have been admitted if we had taken them onshore in the first place, at much less cost. And after Nauru and Papua New Guinea are full, we will do the same in Kiribati and other tiny Pacific nations until they are full and even our own Christmas Island, which we have just legally cut adrift from our national unity of treatment. I wonder what would be happening if the boat people were white farmers from Zimbabwe or Afrikaners from South Africa with their appalling human rights credentials. Well, I don't wonder really. We all know perfectly well.

Is this madness or just politics? It is certainly not compassionate or in accordance with our voluntarily undertaken legal obligations.

I have been in some of the Pakistani camps these people have come from. I was in camps in Bosnia and Kosovo during the wars there. They are as bad as can be imagined and worse than most could ever conceive. During the recent court case brought by the Tampa people, the Federal Court heard evidence that some of these people had had to watch while their parents were murdered and their wives raped. I mean - who is kidding whom? If I were there, I would accept a trip in a bath, let alone a leaky river boat, to anywhere at whatever cost, even an island of bird droppings like Nauru or one in chaos like Papua New Guinea or one about to disappear under water like Kiribas, to save my children from death due to gang warfare or starvation brought about by inadequate food and insufficient clean water! And by the way, the camps do not have television sets. If they did, Australian leaders would not be on them. Let us forget this nonsense about "sending a message". The boat people are desperate, not intellectual balancers of risk.

Let me also remind you that contrary to what we have all been hearing in recent times, Australia is not a target. Many more asylum seekers without papers are going to the UK and European countries, Pakistan, Indonesia, and many other places than are coming here. There have been tens if not hundreds of thousands of people from the former Yugoslavs in Germany, Austria, Switzerland, the UK and the Nordic countries, none of whose peoples do to their asylum seekers what we do to those who try their luck here. They include Canada whose Prime Minister has just announced to his Parliament that despite the difficulties his country is facing - with far greater numbers than here – his government will permit every one of them to make an application for refugee status in accordance with the same laws as apply here. Let us get a hold of ourselves and actually live up to our much-trumpeted decency!

My questions are simply these: What have people fleeing persecution and the risk of injury, torture or death done to deserve all this unconscionable treatment? If there are some cheats amongst the people seeking asylum in Australia, what crime have the rest committed to warrant the Australian Parliament and its members from the two major political groupings taking leave of their senses? What are the crimes of the children and the elderly? The nicest answer is the opinion polls, which on this subject like all such important humanitarian matters, leaders should lead not follow. The worst answer I leave to you.

**The Honourable Justice Marcus Einfeld AO QC PhD**

*Justice of the Supreme Courts of New South Wales, Western Australia, and the Australian Capital Territory and Eastern Caribbean Supreme Court*

*Former Judge of the Federal Court of Australia*

*Officer in the Order of Australia*

*AUSTCARE's Ambassador for Refugees*

*UNICEF's Ambassador for Children*

*National Vice President, International Commission of Jurists (Australian Section)*

*Foundation President, Australian Human Rights and Equal*

*Opportunity Commission and Australian Paralympic Federation*