

# Australia's refugee policy



**Uniya**

JESUIT SOCIAL JUSTICE CENTRE

Handout

## BASIC FACTS

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### Who is a refugee?

#### *Refugees:*

- are people who have fled their country and cannot or are not willing to return to their country because of a well-founded fear of being persecuted due to their race, religion, nationality, membership of a particular social group, or political opinion (as defined under Article 1, *Convention relating to the Status of Refugees 1951*)

#### *Asylum seekers:*

- are people who have fled their country and are seeking legal and physical protection (asylum) as a refugee in another country

#### *Migrants:*

- are people who make a *voluntary, planned choice* to leave their country to make a new life in new country and *can* return home if they choose to do so

### Seeking asylum is a human right

To be able to seek asylum from persecution is a *human right* that applies equally to every person in this world. It is recognised as a human right in the *1948 Universal Declaration of Human Rights* (article 14.1): “Everyone has the right to seek and to enjoy asylum from persecution in other countries.”

### International obligations

Australia is one of the 136 countries that have signed both the United Nations 1951 *Convention Relating to the Status of Refugees* and the 1967 *Protocol Relating to Refugees*, international agreements guaranteeing protection of refugees in fear of persecution. While ever Australia remains a signatory to these instruments, it is bound by their provisions. Among other things, Australia agreed that:

- It will not penalise refugees for entering the country “illegally” (art.31, of the *Convention*)
- It will not expel or return (refouler) refugees in any manner to any country where they would be threatened with persecution (art.33, of the *Convention*)
- It will give the same human rights to refugees that it gives to its citizens and non-residents, such as rights to work, education, housing, welfare, freedom of movement.

### Boat arrivals in Australia

Australia is very generous when it comes to those refugees they invite to Australia. They support refugee programs in other countries and provide generous assistance to invited refugees. However, Australia is hostile towards unauthorised arrivals, especially boat people.

Boat arrivals in Australia came in fairly well defined phases:

- *Late 1970s to early 1980s* – Boats came mostly from Vietnam and Cambodia in the aftermath of war.

- *Late 1980s to early 1990s* – Boats came mostly from China following the Tiananmen Square massacre, and also Cambodia, following the withdrawal of the Vietnamese occupation.
- *Late 1990s to early 2000s* – Boats came mostly from Iraq and Afghanistan, many fleeing from oppressive dictatorships and human rights violations.

### **An “invasion”?**

Boat people represents only a small fraction of people staying in Australia unlawfully. Most “illegal immigrants” are in fact people who enter Australia legally and overstayed their tourist, student or other short-term visas.

- At the peak of boat arrivals in 1999-2000, 4175 people arrived without authority on 75 boats. In 2000-2001, 4137 people arrived without authority on 54 boats.
- From 1989-2002 the total boat people arriving on our shores was 13,617 (including Australian birth).
- According to the Government’s own figures, 90% of those in the third wave of boat people (late 1990s to early 2000s) and held in detention were proved to be refugees.

### **Australia’s current refugee policy**

#### *The Tampa affair*

- In August 2001 over 430 asylum seekers rescued from sea by the Norwegian vessel “MV Tampa” were refused permission to enter and seek asylum in Australia.
- In Australia a court case was mounted in an attempt to allow the asylum seekers to exercise their right to seek protection in Australia (winning first instance, failed 2-1 on appeal).
- As this was going on, the Australian government negotiated the “Pacific Solution”, sending these and subsequent asylum seekers to New Zealand, Nauru and Papua New Guinea for processing.

There are a number of features that characterise the current refugee regime in Australia:

#### *Border protection and the “Pacific Solution”*

- Preventing boats carrying asylum seekers from landing on Australian soil
- Declaring territories external to mainland Australia to be outside Australia’s “migration zone” to prevent asylum seekers who land on those islands applying for an Australian visa
- Paying other countries to process the refugee claims of asylum seekers who would otherwise come to Australia

#### *Mandatory detention and screening*

- Mandatory detention of unauthorised arrivals including women and children
- Restricting the information given to them about their legal rights
- Interpreting the refugee definition narrowly

#### *Temporary Protection Visas (TPVs)*

- Reducing the quality of protection (no rights to family reunion, English language training, and limited social benefits)
- No rights to permanent protection if refugee spent more than 7 days in another country on their way to Australia (7 day rule)

### **Uniya’s work**

- Education through publications, seminars, visits
- Solidarity work through detention visits and legal advice
- Advocacy through meetings with the Minister of Immigration, lobbying
- Networking with refugee advocacy or support groups