

## **Article for Amnesty International re West Papuan refugees and recent asylum law changes**

The optimism that many Australians felt following significant reforms to asylum/refugee policy in 2005 has been cruelly dashed by the government's wretched response to Indonesia's displeasure at the granting of protection visas to 42 West Papuans in March.

It is important to note that Australian officials determined that the West Papuans had fled persecution and were at risk of persecution if they were returned to Indonesia, only after considering detailed evidence about their individual circumstances and about the human rights situation in West Papua.

For a number of years, sources including the US State Department, Human Rights Watch, Yale Law School and Amnesty International have reported the occurrence of serious human rights violations including harassment, detention without charge, torture, rape and extra-judicial killing of people perceived to be politically opposed to the Indonesian government and/or of indigenous Papuan ethnicity. According to such sources, the Indonesian military and security forces have a long history of brutal mistreatment of indigenous Papuans carried out with virtual impunity. This has involved imprisonment for a number of years for simply raising the Morning Star Flag, which is considered an important expression and symbol of support for the pro-independence movement.

The Indonesian government has strongly denied that its officials perpetrate or permit widespread human rights violations. But its denials lack credibility because the government will not permit UN and non-government human rights monitors or the media to visit Papua to assess what is happening in the province. The UN Special Rapporteur on torture, an independent expert charged with investigating reports of torture, has been seeking an invitation to officially visit Indonesia since 1993, without success. Earlier this year, UN special envoy on the prevention of genocide, Juan Mendez, expressed concern that the Indonesian government was preventing human rights observers from monitoring the situation in Papua amid 'worrying' reports of abuses.

There is no doubt that our government is very concerned at the possible damage to a very important relationship with our neighbour, but the measures the government has agreed upon in an attempt to appease Indonesia are unfair and inhumane.

A government committed to the protection of vulnerable people seeking safety would have told the Indonesian government that while Australia recognised and regretted Indonesia's unhappiness, to have behaved otherwise would have betrayed our core values and international human rights obligations.

Instead, the Australian government retrieved from the files a proposal considered too draconian to be introduced only a few years ago.

If parliament enacts legislation the government announced it plans to introduce within weeks, unauthorised asylum seekers who arrive on the mainland will be transferred to

some far-flung island such as Nauru and their claims will be determined under a process far inferior to that available in Australia, with no independent review of decisions, no external scrutiny of processes, policies and procedures and no proper accountability. If asylum seekers are found to be refugees, the Australian government will do no more than attempt to find a 'third country' to take them. And if no other country will take them – a highly probable situation – they may be left in limbo indefinitely, never able to rebuild their lives. Nauru (if it agrees) will continue its role as an island of exile for hapless victims of international politics. And as we know all too well from previous long-term detainees on Nauru, uncertainty and despair will crush the strongest spirits and seriously damage minds and bodies.

And the government has yet to clarify serious concerns about another element of its response, the strengthening of surveillance to prevent West Papuan asylum seekers from reaching Australia. Has our navy been instructed to intercept and force asylum seekers to return to Indonesian territorial waters? If so, this could be a flagrant violation of the international legal obligation not to expel (refoul) people to places where they face a real risk of serious human rights violations. Minister Ellison was questioned about this possibility during a recent radio interview and repeatedly refused to provide assurances that Australian officials would be instructed not to coerce people seeking our protection to go back to the regimes which they claim endanger them.

The task of stopping the government from implementing its plans is formidable. But at least in one respect the context is more favourable than it has been for more than a decade. Since the introduction of mandatory detention in 1992, public opinion generally supported harsh asylum/refugee policies. Today, there is considerable sympathy for the recently arrived West Papuan refugees and strong, widespread opposition to radically changing our law to mollify a foreign government unhappy that we've done the right thing.

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**REFUGEE & IMMIGRATION LEGAL CENTRE**