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The generous country? Asylum seeking in Australia: myths, facts and statistics

What Next? A Public Forum on Asylum Seekers in Australia

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The extraordinary measures taken by the government in recent weeks have been predicated on the assertion that Australia is seen as a “soft touch” for people smugglers and would-be refugees. The Prime Minister made this assertion in defending the decision to refuse to allow the Tampa to land its ‘cargo’ of rescued asylum seekers at Christmas Islandⁱ. It is on this basis that the federal government is proposing to exclude the territories of Christmas Island and Ashmore Reef from the ‘migration zone’ and so prevent anyone who lands at those places from applying for protection under the 1951 Refugee Convention. Immigration Minister Philip Ruddock used the same argument when introducing legislation to parliament that would make it harder for asylum seekers who do make it to Australia to gain recognition as refugees. The Migration Legislation Amendment Bill (No. 6) seeks to define the notion of persecution in Australian law and requires that persecution must constitute ‘serious harm’. The bill would allow the Minister or his delegates to draw adverse inferences if an asylum seeker does not have identity documents, or if they refuse to swear an oath or make an affirmation about the truth of their statements. It also extends the government’s power to exclude refugee applications submitted by asylum seekers who have committed serious crimes.

The Minister told parliament that the legislation is necessary because “generous interpretations” of Australia’s obligations under the 1951 Refugee Convention were “adding to perceptions that Australia is a soft touch”, and encouraging people who are not refugees to seek protection hereⁱⁱ. He said Australia’s jurisprudential model – in other words, the cumulative weight of past court decisions - has so broadened the definition of a refugee that “Australia now provides protection visas in cases lying well beyond the bounds originally envisaged by the convention.”

My purpose here is to ask whether or not this is true. Is Australia really “a soft touch”? Is our refugee determination system overly generous in comparison to other nations, thus making Australia a magnet for asylum seekers? Or is Australia simply grappling with the same challenges posed refugee flows and unauthorised migration that beset all developed nations? A careful reading of relevant data reveals that Australia’s record on approving or rejecting asylum seekers is not dramatically different from that of other nations or the United Nations High Commissioner for Refugees. (UNHCR) The issue has been muddied by the highly selective use of very particular statistics, some of which appear to have little basis in fact.

In his second reading speech on the proposed amendments to the Migration Act, the Minister told parliament that 84 per cent of Afghan asylum seekers were recognised as refugees under Australia’s system, but that only 14 per cent would be approved if

the UNHCR assessed the same caseload in Indonesiaⁱⁱⁱ. A spokeswoman for the Department of Immigration and Multicultural Affairs in Canberra was unable to explain the source of the 14 per cent figure used by the Minister in parliament. UNHCR officials in Jakarta and Canberra said the figure did not accord with their own statistics. On the publicly available evidence the figure of 14 per cent quoted by the Minister appears to be wrong.

The correct figure, according to statistics supplied to me by the UNHCR in Jakarta is 31.48 per cent^{iv}. That is 31.48 per cent of Afghan applicants assessed in Indonesia meet the definition of a refugee. At this point it might be objected that the exact figure is immaterial, and that the gap between the UNHCR approval rate and the Australian approval rate – 31 per cent versus 84 per cent – is still so large, that it simply serves to prove the Minister’s point. But let us take a closer look at the UNHCR figure. It is based on just 108 completed decisions, which is a very small sample upon which to make sweeping assumptions. Note too, that UNHCR regional representative Raymond Hall has cautioned that this number may rise as some negative decisions are still under appeal^v. For comparison, let’s look at an earlier set of UNHCR figures, which gave a somewhat different impression. According to the UNHCR website, of 90 Afghan asylum seekers assessed in Indonesia in the year 2000, 29 were accepted as refugees and only 12 were rejected^{vi}. This equates to a recognition rate of 70.7 per cent for Afghan asylum seekers where a final decision was reached. In the other 49 cases no final decision was made, and the cases were described as “otherwise closed”, presumably because the applicants failed to complete the process, and quite possibly because they chose to travel on to Australia rather than await the UNHCR’s decision.

Now does this matter? Does it matter that the Minister’s facts were a bit off the mark? Well yes it does. The impression it leaves is that the vast majority of Afghan asylum applicants, and by implication, all so called ‘boat people’ are seeking to abuse the system. It suggests, as the Minister has argued, that our system is overly generous, that our decision makers are gullible. The Minister’s 14 per cent figure was taken up and repeated in the public debate about the Tampa. I saw it reproduced, unchallenged, in such respected publications as Britain’s *Guardian* newspaper and *the Australian Financial Review*. I heard *Daily Telegraph* editor Piers Ackerman repeating it on the afternoon show on 774 ABC Radio in Melbourne, and it was used by ABA Chief David Flint to defend the government’s actions in a debate on *The 7.30 Report*.

Note too, that the Minister used the same statistic on at least one other occasion in parliament, in answer to a question from the Member for Dunkely. He stated that undocumented asylum seekers claiming to be from Afghanistan had an 84 per cent chance of being accepted in Australia, but “if those same groups with documents are assessed elsewhere, 14 per cent of the assessments by the UNHCR are accepted”. And Mr Ruddock said this applies “not only to Afghani; it applies to Iraqi and Iranian, and that is the fact.”^{vii}

This is demonstrably untrue. According to the most recent UNHCR statistics, of the 366 Iraqi applications that have been determined in Jakarta, 270 were found to be refugees – an approval rate of 74 per cent, which is not dramatically different from the approval rate of 80 per cent plus for Iraqi applicants in Australia.

The Minister appears to be on firmer statistical ground in relation to applicants from Iran. In 2000 Australia’s recognition rate for Iranian asylum seekers was 30 per cent while the UNHCR approval rate in Jakarta, was just 9 per cent^{viii}. But let us broaden

the comparison. In determinations carried out in Turkey in the year 2000, the UNHCR, the recognition rate for Iranians was 62.8 per cent, in Pakistan it was 47.8 per cent and in Iraq it was 51.3 per cent. In Canada, where the government does assessments, 62.9 per cent of Iranian applicants were recognised as refugees. According to my calculations the overall approval rate for UNHCR decisions in Iranian cases was 54.6 per cent. In other words, in international comparison, Australia could be seen to be extraordinarily tough on Iranians who apply for refugee status.

Rather than swamp you with yet more data, let me get to the fundamental point. It is possible to read refugee statistics in all sorts of different ways, and produce all sorts of different outcomes. The 1951 Convention does not prescribe the mechanisms that treaty signatories should use to determine whether or not a person fits the definition of a refugee. As a consequence, asylum seekers are assessed in different ways around the world, according to different legal and political regimes. In many cases, particularly in countries that are not party to the Convention, national governments will hand the determination system over to the UNHCR. This results in different outcomes in different places, and means that direct comparisons between particular results in particular countries must be treated with considerable caution. For example, Sweden appears at first glance to be extremely tough, accepting less than 3 per cent of all asylum seekers as Convention refugees. However, Sweden allows around 40 per cent of all applicants to stay on humanitarian grounds and in the year 2000, 80 per cent of Iraqi applicants and 75 per cent of Afghan asylum seekers were allowed to stay in the country. Unlike Australia's all-or-nothing system, most European countries have this kind of fallback humanitarian category. In Britain it is called "exceptional leave to remain" and last year the number of asylum applicants allowed to stay in Britain on that basis was greater than the number given recognition as refugees. While stepping up its efforts to remove failed asylum seekers from its shores, the British government has said explicitly that it will not seek to remove Afghans, in recognition of the appalling situation that exists in the country at this time. It is important to remember that while many asylum applicants may not meet the strict Convention definition of a refugee, that does not mean that they are out to abuse the system, or that they have no claim on our compassion. As Guy Goodwin-Gill, Professor of International Refugee Law at Oxford University points out, amongst those who fail to qualify as refugees under the 1951 Convention 'we do often find a very significant number who have valid reasons, other valid reasons, for not at present being required to return to their countries'.^{ix}

Arguably the best test of Australia's generosity towards refugees is arrived at if the statistics are broadened to include asylum seekers from all source countries. If this is done, then Australia's refugee recognition rate appears to be very much in line with that of comparable nations and with UNHCR. In the year 2000, the total average recognition rate for asylum seekers by national governments and the UNHCR around the world was 19.9 per cent, or 26.4 per cent if the "otherwise closed" category is removed from the statistics (that is those cases where no final determination is made – and UNHCR Regional Representative Raymond Hall argues that this is the way the statistic should best be read). By comparison, Australia approved between 24 and 25 per cent of asylum claims in the same period. In other words, our overall recognition rate was unremarkable.

The Minister has further argued that, quite apart from approval rates, asylum seekers are seen to prefer Australia as a preferred destination because of the relative wealth and stability of Australian society and because of the social security benefits and health services

on offer to those recognised as refugees. There is no doubt that this makes Australia a more desirable destination than, say, Indonesia, which remember, is struggling to cope with 1.25 million internal refugees of its own, displaced by the conflicts in Aceh, Maluku, Kalimantan and elsewhere. But it is important to note that Australia is the only developed country that, by law, requires all asylum seekers who arrive without permission to be detained until their status is determined. This policy has been in place for more than a decade and can hardly be construed as making us 'a soft touch' More recently, Australia has introduced a system of temporary protection visas that circumscribe the rights of those people who are recognised as refugees, which restricts their freedom of travel and prevents them from applying to have their families join them in Australia for at least three years.

Prime Minister John Howard says that "Australia is the second most generous taker of refugees in the world after Canada"^x and this is correct if one looks in isolation, and in per capita terms, at the off-shore resettlement of refugees under the humanitarian component of our migration program. But let us not forget that the majority of refugees and other displaced people are hosted by developing countries (see table). Pakistan hosts more than 2 million displaced people from Afghanistan, Iran hosts almost the same number from Afghanistan and Iraq. Closer to home, Thailand hosts more than 200 000 refugees from Burma.

It is true that people smugglers are targeting Australia. There is no disputing this fact. But the smugglers are targeting every other developed nation as well and their 'clients' come from the same places. Afghans, Iraqis and Iranians account for three of the top five nationalities seeking asylum in Britain. ^{xi}As long as the conditions in source countries do not improve, they will have a large pool of potential customers willing to engage their services, despite the huge risks and enormous expense involved, and despite disincentives like detention and temporary visas. As legal researcher Andreas Schloenhardt, an expert on people smuggling rackets and organised crime has commented, Australia's tough measures will not stop anyone "who is desperate for asylum, be it for economic reasons or be it for political reasons, from migrating to a country that is so much safer or so much wealthier than their own"^{xii}.

The Immigration Minister says his proposed amendments to the Migration Act are designed to "restore the intention of the refugee convention" and ensure that refugee determination in Australia "is the same process that is applied by the United Nations High Commissioner for Refugees", but his determination to define terms like "persecution" in Australian law has alarmed refugee advocates. The notion of persecution is the fundamental term at the heart of the 1951 Refugee Convention, and is not defined in the treaty or in Australian domestic law. However as the Refugee and Immigration Legal Centre argues in a commentary on the proposed changes to the Migration Act, by seeking to define specific words and phrases, such as persecution and serious harm, "the government is attempting to impose a straitjacket on an international treaty designed to be flexible enough to deal with changing circumstances and developments in human rights law". There is no disputing Mr Ruddock's view that the understanding of who is a refugee has changed since the text of the Refugee Convention was agreed at a meeting in Geneva half a century ago. However as Guy Goodwin-Gill, Professor of International Refugee Law at Oxford University, points out, this is hardly surprising, given that international concepts of human rights have also evolved over the past fifty years. "Like a law, no treaty is written in stone" he says. "If it doesn't evolve... then it dies."

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Table: Burden sharing: who has the real “refugee problem”?*

Country	No of asylum seekers and refugees	Ratio of refugees and asylum seekers to host country population
Pakistan	2 019 000	1:75
Iran	1 895 000	1:36
Tanzania	543 000	1:65
USA	481 500	1:572
Yugoslavia	484 200	1:22
Guinea	390 000	1:19
Sudan	385 000	1:76
Zambia	255 000	1:38
Thailand	217 000	1:285
Germany	180 000	1:456
United Kingdom	87 800	1: 681
Australia	16 700	1:1197

*Source US Committee for Refugees ‘World Refugee Survey 2001’. Selected countries only. Figures do not include internally displaced people.

ⁱ See for example the Prime Minister’s comments to Neil Mitchell on 3AW 31.8.01 “But we believe we do have to take a position in relation to these people that says we’re just not going to go on accepting a situation where for practical purposes Australia is seen as a country of easy destination even if you do not have a genuine refugee claim”

ⁱⁱ Philip Ruddock Migration Legislation Amendment Bill (No. 6) 2001: Second reading speech Hansard 28.8.2001

ⁱⁱⁱ Ibid

^{iv} Current Status of individual cases in Indonesia as of 30 August 2001 – table prepared by Protection Unit, UNHCR Regional Office, and Jakarta.

^v Interview with the author, broadcast on Correspondent’s Report, ABC Radio National, 2.9.01

^{vi} These figures, and all other UNHCR statistics for the year 2000 referred to in this article can be found in the Provisional Statistics on Refugees and Others of Concern to UNHCR for the year 2000 at www.unhcr.ch

^{vii} Philip Ruddock speaking in answer to a question without notice. Hansard 28.8.01 2.14pm

^{viii} It should be noted that the UNHCR statistic is based on a very small sample of just 55 decisions.

^{ix} Interview with the author July 2001

^x Interview with Jon Faine, 774 ABC Radio Melbourne 4.9.01

^{xi} The other two major source countries are Sri Lanka and Somalia. Home Office Statistics Guardian Unlimited www.guardian.co.uk/Refugees_in_Britain

^{xii} Asia Pacific ABC Radio National, Radio Australia 6.9.01 Transcript available at www.abc.net.au/ra/asiapac