

6 September 2001

Further information on EXTRA 58/01 (ASA 12/003/2001, 29 August 2001) - Fear of forcible repatriation

AUSTRALIAAsylum seekers stranded off Australian coast

Amnesty International is concerned that the fate of the 433 asylum-seekers, including women and children, who were rescued by the Norwegian freighter, the *Tampa*, remains unresolved. They are now on an Australian Navy ship which is heading for Papua New Guinea (PNG).

At PNG it is expected that the group will be divided. New Zealand has agreed to take 150, who will have their asylum applications examined there. The others will have their asylum claims examined on the tiny Pacific island state of Nauru, and it is understood that those of them found to be refugees will be resettled in other countries.

The Australian authorities have maintained their refusal to allow them to make their asylum claims in Australia. This has been challenged in the Federal Court of Australia, in a joint application by human rights lawyer Eric Vadarlis and the Victorian Council for Civil Liberties (VCCL), who argued that the government had acted unlawfully by refusing to let the asylum-seekers into Australia to apply for asylum. They also challenged the detention of the asylum-seekers on the *Tampa* without access to a court to challenge their detention. Amnesty International has taken part in this case, providing information to the court about relevant international refugee law and human rights law and standards. The judge is expected to give his decision by 10 September.

The court also issued an emergency order to prevent the authorities removing the asylum-seekers from Australian territorial waters. The order was lifted on 3 September following an agreement between the plaintiffs and the government. Shortly afterwards the asylum-seekers were moved onto an Australian Navy ship, which is now heading for PNG.

Amnesty International is concerned that the asylum seekers have not been able to obtain advice from the Office of the United Nations High Commissioner for Refugees (UNHCR), or from independent specialist refugee lawyers or NGOs with expertise in international human rights and refugee law and relevant national refugee laws. Amnesty International considers it vital that the asylum-seekers have access to such advice well in advance of their transfer from PNG. They need access to such advice so that they can make informed decisions about such options as may be open to them.

Amnesty International understands that staff of the International Organization for Migration (IOM) have had access to the asylum-seekers in order to register them and provide them with counselling on the available options. However, Amnesty International is concerned that this is not enough to ensure that their rights are fully protected, because the IOM is not expert in protection of refugees and asylum-seekers.

The situation is changing quickly and future developments are unpredictable. Amnesty International is concerned about what will happen to the asylum seekers in Nauru, whether they will be held in detention, what their living conditions will be, and how long they will be expected to remain there. Nauru is not a party to the 1951 Refugee Convention, or to most other major international human rights treaties. Intensive phosphate mining has left 90% of the 21 square

kilometre island a wasteland, and it is dependent on imports from Australia for most necessities, including fresh water. It is not yet clear what authority will examine and decide on their asylum applications; which national laws and procedures will apply; and whether their applications will be examined in a fair and satisfactory asylum procedure, which includes full access to independent expert legal advice and competent interpretation, and an effective right to appeal to an independent authority.

FURTHER RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language:

- calling on the authorities to ensure as a matter of urgency that the asylum-seekers are given access to advice from the UNHCR or specialist NGOs about their options, well before they are transferred from PNG;
- urging the authorities to ensure that their applications are examined in a fair and satisfactory asylum procedure, which includes an effective right to appeal to an independent authority;
- urging the authorities to ensure that the asylum-seekers have full access to independent legal advice and representation and competent interpretation, while they prepare their applications and throughout all stages of the asylum procedure;
- pointing out that under customary international law and as a party to the 1951 Refugee Convention and other human rights instruments, Australia is obliged not to forcibly return anyone to a country where they would be at risk of human rights violations.

APPEALS TO:

Hon. Philip Ruddock
Minister for Immigration and Multicultural Affairs
Suite MF 40
Parliament House
Canberra ACT 2600

Fax: + 61 2 6273 4144

Salutation: Dear Minister

Hon. John Howard
Prime Minister
Suite MG8
Parliament House
Canberra ACT 2600
Fax: + 61 2 6273 4100
Salutation: Dear Prime Minister

COPIES TO:

Mr Ruud Lubbers, High Commissioner
Office of the UN High Commissioner for Refugees - Headquarters
94 Rue de Montbrillant
1202 Geneva
Switzerland

Fax: + 41 22 739 7373

Salutation: Dear High Commissioner

and to diplomatic representatives of Australia accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 4 October 2001.