



AUSTRALIAN
LAWYERS
FOR
HUMAN RIGHTS

The Hon John Howard MP
Prime Minister
Parliament House
Canberra ACT 2600

12 April 2006

Dear Prime Minister,

Australian Lawyers for Human Rights (ALHR) is concerned about recent suggestions that the refugee status determination procedure in Australia will be revised to include “national interest” or similar issues following the friction between Australia and Indonesia over 42 West Papuan refugees being granted temporary protection visas.

ALHR is a national organisation with a membership of over 1100 lawyers throughout Australia promoting human rights.

The grant of refugee status is well recognised in international law to be a humanitarian and apolitical act. This is a principle of refugee protection that is fundamental to ensure the effectiveness and integrity of not just the Australian but the international protection regime. Should Australia depart from this well established principle it will undermine Australia’s adherence to its international obligations. Indeed, the introduction of national interest or similar issues to the assessment process runs the risk of Australia breaching its obligation under Article 3 of the *1951 Refugees Convention* that it not discriminate between countries.

ALHR is also concerned about suggestions that the principle of confidentiality should be called into question in the context of refugee status determinations. It is unthinkable that a state should liaise with the country in which persecution has allegedly occurred to ascertain identity or assess claims of an asylum seeker. International human rights laws, including the right to privacy, require that states ensure that personal information is not used or shared with third parties for purposes that are incompatible with human rights obligations. ALHR is concerned that such inappropriate disclosure may lead to human rights abuses of family or associates of the refugee in the country of origin.

There are also good practical reasons why confidentiality must be maintained in the processing of asylum claims. First, it is essential that asylum-seekers can give evidence secure in the knowledge that neither the information that they provide nor their identities, are divulged to anyone, but above all their country of origin, without

their knowledge or informed consent. Failure to do so is highly likely to compromise the quality and detail of information that can be gathered in the course of status determination procedures.

Secondly, the identification of an asylum-seeker by Australia to the authorities of the country from which a person is fleeing may create grounds for a refugee *sur place* claim. That is, the person could become a refugee as a result of the actions of Australian officials.

In the recently published *UNHCR Guide to International Refugee Law* the UNHCR has stated clearly and unequivocally that,

“The confidentiality of personal information related to asylum-seekers and refugees must be safeguarded. [Furthermore,] [d]isclosure of any such personal information to outside parties should always be subject to the consent of the refugee or asylum-seeker concerned.”

The Guide was developed with the Inter-Parliamentary Union to assist parliamentarians to understand their country’s international obligations to refugees.

ALHR strongly urges any review of Australia’s refugee status determination and related procedures to ensure that human rights including refugee standards and norms are upheld in a manner which is consistent not only with the letter of the law, but also with its purpose and spirit.

Yours sincerely,

Simeon Beckett
President
Australian Lawyers for Human Rights

cc. Senator the Hon Amanda Vanstone