Refugees and asylum seekers: Finding a better way
Contributions by notable Australians

Editors Bob Douglas and Jo Wodak
Why the need for a compassionate policy on refugees?

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Abstract

Having lived the life of a refugee as an 11-year-old child, I see compassionate policy for refugees as the only encompassing policy worthy of Australia. Before a persecuted person becomes refugee, s/he is a human like everyone else. Refugee status is not a choice it is a compulsion. Every year, millions of people are forced to flee their habitual place of residence, almost always through no fault of their own. In the global world of today, a threat to mankind in one corner of the world is a threat to mankind in every corner of the globe. It is with this in mind that one needs to appreciate that a compassionate and humane policy is what Australia should adopt when it comes to refugees and asylum seekers. Australia has voluntarily undertaken human rights obligations that are directly relevant to refugees as well. The fulfilment of these obligations can only be achieved through a compassionate policy.

The human face of refugees

Refugees are the most vulnerable people in the world as they lack the effective protection of any State until and unless they are afforded protection. Their desperate situation should oblige others to treat them with compassion. Refugees are human beings and their vulnerability should not be politicised for unethical ends, because this will portray a demonised image of refugees. Refugees do not embark on dangerous journeys out of choice. Australia has voluntarily ratified human rights treaties to uphold human rights both domestically and internationally and advance its international standing in this arena. Australia’s policy on refugees damages its standing in the international community as its uncompassionate attitude is contrary.
to its human rights obligations. The threats that cause people to flee their homeland and become refugees are threats against the whole of humanity. Australia has consistently recognised this and has been involved in wars thousands of kilometres away to protect others. However the very victims of terror who have arrived in our shores have been treated inhumanely.

Compassion lies at the heart of all ethical, spiritual and religious traditions, which preach the principle of treating others as you wish to be treated yourself.

I have personally lived the life of a refugee, like millions of others. It was not a matter of choice for me and for millions of other Hazaras forced away from home, family, friends and loved ones. I did not choose to be born a Hazara, and Hazaras did not choose to be persecuted by Taliban.

In Australia, a western liberal democracy where people have freedom of choice in most matters that shape their lives, it is often hard to imagine not having any choice in life and only playing the cards you are dealt. Therefore, commentators and the public at large describe asylum seekers as illegals, and queue jumpers.

As a former refugee, for me there was no choice of legal or illegal path to safety, and there certainly was no choice of a queue. There was only one way to escape the persecution of the Taliban.

As a refugee lawyer today, this lack of choice applies to most of the asylum seekers I deal with, no matter which country or region they’re fleeing. They have no option as they are desperate, and desperate people will do desperate things, such as paying people smugglers and piling their family on leaky boats. Thus, the start of a compassionate policy has to be the understanding that refugees who flee their home countries and board leaky boats have no choice but to flee by any means possible.

Being or becoming a refugee is not a choice or a voluntary act. It is what circumstances force upon a person or a group. But more importantly, the debate on whether or not one chooses to become a refugee is completely irrelevant. What should be considered in the debate on refugees is the fact that it is a vulnerable state to be in; and seeing a human being in a vulnerable state raises a moral and legal demand to treat that person with compassion.

The notion that asylum seekers have no choice but to board leaky boats has been missing from our political discourse and media coverage of the issue. This is evidenced by the persistent use of language such as ‘illegals’, ‘boat people’, ‘queue jumpers’ and more recently ‘detainees’. The use of such language helps to promote anti asylum-seeker sentiments, dehumanises asylum seekers, and portrays them as unworthy of our compassion. Refugees are human beings like anyone else. They are men, women and children with hopes, dreams and aspirations. In the political debates, our politicians often forget the very crucial point - that the definition of human beings is not centred on place of origin, colour, race or faith. As the great Persian poet Sa’adi puts it:
‘Human beings are members of a whole, in creation of one essence and soul. If one member is afflicted with pain, other members uneasy will remain. If you have no empathy for human pain, the name of human you cannot retain’

Those who use negative language to describe asylum seekers are either ill-informed about or do not understand Australia’s international obligations. The international and national human rights conventions and laws that protect human beings do not define or discriminate against particular classes of human beings such as refugees. In fact the whole purpose of the Refugee Convention is to extend extra human rights protections to the most vulnerable group of human beings - refugees.

Australia has voluntarily undertaken to respect, protect and advance human rights in its jurisdiction and internationally. According to the Department of Foreign Affairs International Treaty-making kit, Australia as a sovereign State has recognised and ratified international treaties in order to participate in the international system of law and maintain its position among the community of nations. In so doing, Australia has agreed to be bound by the scheme of international responsibilities and rights that regulates the actions of sovereign States.

For instance, take the example of refugee children and their human rights under international law and our domestic law. In this regard Australia ratified the Convention on the Rights of the Child (CRC) on 17 December 1990, the International Covenant on Civil and Political Rights (ICCPR) on 13 August 1980 and the Refugee Convention on 22 January 1954. The ratification of these conventions by Australia is an explicit agreement to ensure that existing laws are applied in a manner that gives proper expression to the treaty obligations and convention provisions with effect under domestic law. Certain provisions of these treaties are mirrored in domestic legislation. For example article 1A (2) of the Refugee Convention is reflected in sections 91R and 36 of the Migration Act. In addition all States of Australia have child protection legislation which in most cases reflects article 19 of CRC; the protection of children from abuse. Further, common law has confirmed that the legislative provisions should be interpreted by courts in a manner that ensures, as far as possible, that they are consistent with the provisions of treaties to which Australia is a party.
In the light of the above and despite the presence of State and Commonwealth legislation, Australia has frequently failed to meet its human rights obligations when it comes to CRC and ICCPR in regard to children in its jurisdiction. It is argued that Australia’s immigration detention law is fundamentally inconsistent with CRC provisions. As per article 37, CRC only allows for detention of children as ‘a measure of last resort’ while s189 of the Migration Act makes detention of unlawful non-citizen children the first and only resort. Australian authorities have insisted that the initial detention of children who arrive in Australia without a visa is not unlawful because it is prescribed in the Migration Act and it is so-called preventive detention for reasons of public interest and national security. The loophole in such an argument is that a child would hardly pose a risk to national security, as has never been the case in Australian immigration history.

It is therefore manifest that despite deficiencies in the implementation of our human rights obligations, we have voluntarily taken on the responsibility to protect and respect the human rights of children out of good will, compassion and ethical obligation. There is no force or coercion to the undertaking to ratify the above named conventions, because we can always pull out.

In an increasingly globalised world, Australia’s geographical isolation does not mean that we are not affected by events around the world. This is evidenced by the Bali Bombings, David Hicks training with the Taliban, and Australia committing to the war on terror. More specifically Australia’s role along with other international forces in Afghanistan has affected the situation in Afghanistan and Australia.

For Hazaras like me the international forces including Australia removing the Taliban from power in 2001 meant that we would not be persecuted anymore. However this optimism proved to be short-lived as the Taliban regrouped a few years later and started targeting Afghanistan’s Hazara population once more. The resurgence of the Taliban in Afghanistan and the target killing of Hazaras in neighbouring Pakistan by Lasker-e-Jangvi saw a hike in the number of boats carrying Hazaras seeking asylum in 2007. This shows how we live in an interconnected world where our actions and deeds have inadvertent consequences that we sometimes do not appreciate.
More inadvertent consequences can be seen in the association Hazaras have had with the western forces in Afghanistan. In a recent message the renowned Mujahedin leader Gulbadin Hekmatyar, the leader of the Hezb-e Islami political party, threatened to exterminate the Hazaras because they welcomed and sided with foreign forces in Afghanistan. He accused the US of supporting the Hazaras and said that ‘The time will come when the oppressed people of Afghanistan will stand for taking their usurped rights and then the (Hazaras) will have no safe havens in any corner of the country’ (1).

As is evident, Hazaras are threatened with extermination because they welcomed foreign forces including Australian forces to Afghanistan. Now if Australia’s justification to go to war in Afghanistan and Iraq was to save human life, to uphold human rights and dignity and to advance the rule of law and democracy, one wonders why we can’t do the same on our shores when the very victims of human rights violations arrive here to seek refuge? This is especially so when it is the Australian presence that has implicated these victims because they welcomed us.

Australia has recognised the significance of association with western forces for Afghans by proposing to grant 800 visas to Afghans who assisted the Australian defence force directly. However Afghans who have helped and sided with the foreign troops morally and politically, and who managed to escape persecution and find their way to Australia by boat, are not afforded the same recognition and compassion even though as evidenced by Hekmatyar’s threat the Taliban do not make a distinction between those who directly supported the international forces and those who supported them morally and politically.

Those who do not see justification for a more compassionate policy on refugees based on the moral and international legal obligations outlined above may be more inclined by the contribution that refugees make to this country. The contribution of refugees, I believe, can be grouped into two categories, cultural and economic. The contribution that refugees make to Australian culture in the way of enhancing multiculturalism and increasing cultural diversity is hard to quantify. However the economic contribution that asylum seekers make and could make is more readily quantifiable and has been studied.

Refugees engage intensely in job searching and vocational education. In his analysis, Graeme Hugo suggests that refugees face substantial obstacles in employment in the early stages but are highly successful in the long run (2). This view is echoed by the Refugee Council of Australia, who have stated that there may be short-term cost as refugees are resettled and adjust to their new surroundings but once successful integration has occurred refugees are able to quickly make permanent cultural, social and economic contributions (3). In his article ‘Refugees in a Region; Afghans in Young NSW’, Emeritus Professor Frank Stilwell estimated that Afghan asylum seekers have contributed between $2.4 million and $2.7 million to regional development (4). Refugees like me are eager to work, to get educated and to contribute both culturally and economically. What is holding refugees back is an uncompassionate policy.
In conclusion, the refugee and asylum-seeking issue cannot be morally or legally addressed by keeping it contained in one geographical area and out of sight. It is a human issue and has always been so. Since the dawn of history human beings have always had to migrate for one or the other reason. This should be recognised and addressed in a humane way. Taking the human face away from the refugee or asylum-seeking issue is the first step in eliminating any chance of compassionate treatment towards them; disregarding international and legal obligations is much easier after that.

**References**


