



AMNESTY INTERNATIONAL'S COMMENTS ON THE HUMAN RIGHTS COMMISSION DRAFT DOCUMENT ON THE RIGHT TO ASYLUM

July 2010

Amnesty International Aotearoa New Zealand (AIANZ) welcomes the opportunity to comment on the draft for discussion of the Right to Asylum Chapter.

Amnesty International commends the HRC for so clearly articulating the human rights concerns impacting on asylum seekers and refugees and the supporting information that this chapter incorporates. It highlights the grave human rights concerns Amnesty International shares, and the variable service delivery to this sector, including the disparities between Quota and Convention Refugees. The priorities for action largely address those service inequities.

We additionally welcome acknowledgement of environmentally displaced people as persons in need of international protection. With the impact of global warming on Pacific Island nations, New Zealand is likely to experience increased flows of such people and will need to adequately prepare for that eventuality.

Within its cover letter Amnesty International urged that throughout this review priority actions incorporate ratification of outstanding relevant treaties and conventions. Noting that New Zealand acceded to the Stateless Persons Convention in 2006 we urge its ratification.

Amnesty believes potentially grave human rights concerns need to be addressed in the recommendations. The following comments highlight Amnesty's concerns.

ADVANCE PASSENGER PROCESSING

Amnesty International shares the HRC concerns that the Advance Passenger Processing system could lead to people seeking asylum being refused permission to board flights to New Zealand as a result of incorrect or incomplete documentation. This could contravene the principle of non-refoulement and could see New Zealand in breach of its international obligations under the Refugee Convention, the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT).

With that as a background we recommend that this process be transparently monitored with regular reports provided to the United Nations High Commission for Refugees (UNHCR), and a relevant New Zealand body, such as the Refugee Council of New Zealand. These reports could include such information as numbers, gender, age, ethnicity or nationality, reason for refusal, and who refused permission.

DETENTION

Amnesty International believes the use of detention for the purposes of immigration control is a measure of last resort only. Additionally we have deep concerns with the detention of asylum seekers in correctional facilities.

Alternatives to detention are provided for within the Immigration Act 2009 and non custodial measures should be the preferred solution. Please find attached our report - Alternatives to Detention) in support of non-custodial options and which has separately been alerted to Immigration New Zealand.



We therefore recommend:

1. The practice of detaining asylum seekers in correctional facilities must be brought to an end.
2. Alternatives to detention are to be fully explored as the preferred options when dealing with immigration related cases

CLASSIFIED INFORMATION

Amnesty welcomes the discussion on the concerns regarding the use of classified information in refugee determinations and the concerns that the use of such information to detain asylum seekers could result in a violation of their rights.

Amnesty notes that the UNHCR prohibits the use of classified information when processing these claims.

These improvements that the New Zealand Government has taken since 2004 alongside these new recommendations will offer security to both the vulnerable seeking protection and New Zealand's longstanding human rights record.