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Introduction

Australia's current legislative approaches regarding asylum seekers are a strongly contested area of public policy. The issue of where and how to process the growing number of asylum seekers that arrive at the border has become a significant matter in terms of 2013 Australian federal elections campaign. However, no proposed solution appears to be without its weaknesses. In the past, the Labour Government has considered various countries to launch offshore processing, such as Papua New Guinea, Malaysia and Nauru. However, these potential solutions have met with legal obstacles to prevent them from going ahead. Similarly, the future reforms promised by the Liberal Government threaten to change many of the current rights of asylum seekers and consequently may lead to Australia's breaking its international obligations. The question becomes whether either of policies or their combination can provide both practical and ethical solution to Australia's asylum seeker situation. By assessing the two policies, as well as the policies in other countries, it is possible to highlight the respective strengths and weaknesses of the proposed arrangements, the degree to which they act as a deterrence or encouragement to more asylum claims, and whether they can be justly applied against the background of Australian current legislation regarding asylum seekers.

Let us proceed with the analysis of both policies of Australian political parties under study, and further consider current challenges, which prevent the coexistence of Australia's current applications offshoring policies (mainly to Papua, New Guinea and islands in the Pacific).

Challenges in refugee law and policies in Australia

The Asia Pacific region currently hosts more than 3.6 million refugees.

Determination of refugees and asylum seekers in Asia Pacific is characterized by mixed migration flows, caused by intersections between different types of migrants. According to the information, provided in the Report of the Expert Panel on Asylum Seekers (2012), the number of potential asylum seekers, who have entered Australia over the period of first seven months of 2012, exceeds total numbers of those entering in 2011 and 2010 respectively (7). In this regard most important challenges, connected with designing migration and refugee law, are securing the borders of Australia; working out a policy, which will not contravene with Australia's human rights-related obligations under domestic and international law; developing and maintaining programs of migration support, and promoting effectiveness of regional cooperation schemas in Asia Pacific. Both the Report of the Expert Panel on Asylum Seekers (2012) and Liza Yarwood (2009) emphasize strong need to ensure safety of maritime voyages and combating smuggling in goods and trafficking in human beings. Current situation both in Asia Pacific and Australia requires ensuring more effective cooperation between stakeholders, representing international intergovernmental organizations, state, non-governmental sector and refugees' community.

As it is specifically underlined by L. Yarwood (2009), the State should ensure its agencies' compliance to such rules of return of asylum-seekers as protecting applicant's human rights in terms of return, state's undertaking practical in-depth examination of the circumstances related to the asylum

seeker and the country of first arrival, so that it is possible to determine whether an individual faces some risk, when returned and seeking Returning state to assure that the applicant is going to experience a fair process for determination of asylum status. The need to cope with the challenges under study and ensuring quality and human rights-friendly procedures of receiving and processing asylum seekers' applications, asylum seekers' acceptance and return urges the State reconsider existing laws and policies concerning refugees and asylum seekers.

Recent developments in the framework for asylum seekers' and refugees' status in Australia

Australia has variety of international obligations to protect the human rights of all asylum seekers and refugees, who arrive in Australia, regardless of how they arrive and their visa status. According to the information, provided by Australian Human Rights Commission (2013), these obligations stem from such international human rights treaties as the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment etc. Furthermore, Australia is one of 147 countries, who signed the UN Convention Relating to the Status of Refugees (Refugees Convention).

One of most important mechanisms in this regard is providing on-shore protection, which manifests itself in individuals' arriving in Australia being granted Protection Visas. Offshore protection schema includes Refugee Visas and Special Humanitarian Program Visas. Nowadays offers on Australia's providing complimentary protection for refugees are being considered. For

the purposes of enhancing stability of relations between receiving state (Australia) and refugees, Temporary Protection Visas and Temporary Humanitarian Visas were abolished (Australian Immigration Factsheet 60, 2011).

Current domestic legal framework for the protection of migrants and refugees is comprised based on Migration Act 1958 (the Migration Act). Over the period of 2010-2011 a wide range of laws were adopted and amended with respect to protecting human rights of asylum seekers. They are Combating the Financing of People Smuggling and Other Measures Bill, Migration Amendment (Complementary Protection) Bill, Migration Legislation Amendment (Offshore Processing and Other Measures) Bill, Migration Amendment (Strengthening the Character Test and Other Provisions) Bill and Detering People Smuggling Bill. Seriousness of current changes is explained not only by tremendous amounts of migrants, coming to North Pacific, but the implications of well-known Australia High Court Decision in the Christmas Island case. In these rulings the Court was concerned with the validity of the scheme by which " offshore entrant" asylum seekers were prevented from applying for Protection Visas until they gained relevant allowance from the Minister. Despite the fact that the Court acknowledged the fact of such a practice infringing the rights of offshore entrants, it stated that it lacked constitutional authorities to oblige the Minister to exercise his discretions with regard to the rights and interests of refugees.

Nevertheless, particularly this decision caused reconsideration of applications' regime, which is currently establishing the regime, which removes the component of merits review from the merits assessment

process for “ offshore entrants”, in spite of the fact that the decision of the Court does not explicitly provide for the introduction of such a move. The period between 2011 and 2012 was also characterized by expansion of the range of services, provided for refugees, which currently include financial assistance for eligible entrants, covering their basic need for food, accommodation and healthcare, and help in preparing towards application through the Immigration Advice and Application Assistance Scheme. Among recent developments within the political and legal framework of refugees’ status we cannot help mentioning current expansion of Australia’s Refugee and Humanitarian Program. Australia’s Refugee and Humanitarian Program aims at performing such functions as ensuring onshore protection (asylum component) by offering protection to people, who have already arrived in Australia and were affirmed to be capable of being considered refugees under the conditions, provided for in the UN Refugees Convention and implementing offshore resettlement component, connected with Australia’s having expressed its commitment to protecting refugees by offering resettlement to people at risk abroad. Onshore protection is also available for people, who are just planning to arriving in Australia, while offshore resettlement option provides protection for potential refugees (who are currently subjected to persecution in their home country) and those, who suffer from their human rights being severely violated beyond the borders of their home country.

Despite significant policymaking, law-making and institutional efforts, which have been recently employed by Australian authorities to improve the situation regarding refugees’ protection, the United Nations still expresses

significant concern related to current practices of processing applications of asylum seekers in Australia. Particular attention is being paid to such current initiatives as “ offshoring” those, who were granted the status of refugees, isolating the system of asylum seekers’ offshoring from judicial oversight and practices of interdicting the boats of asylum seekers and mandatory detention of recently arrived, which is often taking place in remotely and difficult located detention centers (Crock&Chezlbash, 2011).

Current policies, practices and concerns

In July 2013 the UN Refugee Agency has warned Australia that its recent decision to resettle asylum seekers to New Guinea, if they will be granted the status of refugees, can be potentially acknowledged the breach of international law and the range of Australia’s obligations under relevant human rights treaties. Both intergovernmental and nongovernmental organizations are currently expressing significant concerns, associated with the offshoring policies and practices, provided by Australia in different locations in Pacific region, especially with regard to the current situation at Nauru facility, located in the Pacific.

The concerns mostly touch upon several key topics. The most important one deals with the fact that complex of location, conditions and institution functioning-related factors aims more at penalizing asylum seekers for them coming and seeking to file the application for the status of refugees, than implementing Australia’s obligation under international human rights law related to protection of asylum seekers’ and refugees’ rights. So, factually, people are prevented from the chance to get accepted onshore as refugees and benefiting from recently developed legislation on the status of asylum

seekers and refugees.

In its report on the situation at Nauru facility (2012), Amnesty International underlined unlawfulness of offshore detention of asylum seekers due to the fact of them being prevented from filing an application for being accepted as refugees. Locating detention centers in remote areas contributes to the lack of judicial oversight for the functioning of the applications' processing system, which, by-turn, calls forth lack of transparency of the whole system. Moreover, detention and particularly the one, taking place in highly remote regions, physically prevents asylum seekers from getting relevant access to justice, so, decisions, made by immigration institutions, are not likely to be ever changed if they are not made in favour of the asylum seekers (Seiberth, 2012).

Another crucial human rights-related concern, regarding the functioning of the system of asylum seekers' applications processing, is associated with inhumane conditions, which are created in offshore detention centres, being run by Australia. Despite the fact that the government of Australia repeatedly expressed its commitment to substitute detention with housing in appropriate open facilities, hundreds of asylum seekers experiences sever violation of their right to being treated in a humane way, waiting for the opportunity to file their application in the middle of Pacific.

The mix of uncertainty and human rights violations has become what can be called the spirit of the system, aimed at implementing Australia's obligations under international human rights law.

Taking into account severity of current violations and continuing nature of the problem under study, we would like to elaborate on our own vision of the

ways Australia can currently use to get away from apparent human rights law violations, taking place for the time being, and strategies, which can be employed to ensure quality and human rights-friendly functioning of asylum seekers' applications processing system in the future, so that international human rights obligations of Australia can be fulfilled not in the totally formal, but actual manner.

Conclusion

If it is estimated that creating necessary facilities and transferring refugees on shore requires significant time, it is necessary to elaborate on temporarily equipping existing offshore facilities, so that they stop being an explicit violation of human rights of the detainees. To make further steps towards humanization of current system of attitudes towards potential refugees within the asylum seeking system it is necessary to launch a profound study of current resources and capabilities, available to change the situation.

Specific attention should be paid to researching into the relations between Australia, other Pacific region states and typical states of migrants' origin, so that it can be found out whether existing schemas of cooperation can meet the requirements, currently set by the volumes of refugees' flowing into Australia.

It will be of particular use for Australia to offer its regional and international partners launch similar studies, so that the threat can be met with the help of joint efforts. Special part of inquiry shall be concerned with recommendations and analyses, produced by the UN and other intergovernmental and non-governmental organizations, concerned with human rights issues. Particular use can be associated with analyzing case

studies and best practices of asylum seekers' application processing, worked out in foreign countries.

Apart from considering outer chances to get resources and capabilities to improve current situation regarding refugees' rights, Australian government is urged to put an emphasis on reconsidering current policies, including Australia's Refugee and Humanitarian Program, which is continuously being expanded without managing to encompass all the individuals in the need of protection. Apart from applying substantive efforts to reforming the system of application processing and applicants' rights protection, it is still important to pay enough attention to elaborating on fair transparent and accountable procedures, whose results can be subjected to timely judicial oversight.

While completing the assignment, we got extra awareness about the inappropriateness of current practices, exercised by Australia in relation to asylum seekers, and cannot help once more urging Australia to take measures to eliminate current policies and procedures' incompatibility with basic human rights.

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