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June 16, 1994

Senator The Hon. Nick Bolkus
The Minister for Immigration and Ethnic Affairs
Parliament House
Canberra ACT 2600.

Dear Senator Bolkus,

As a Burmese refugee in Australia, I wish to thank the Minister for allowing some Burmese student refugees in Thailand to come to Australia. The total number allocated for those Burmese student refugees appears to have exceeded the capacity of sponsoring bodies. I believe that has been a good gesture of Australian Government showing sympathy and generosity towards Burmese people.

On this occasion, I wish to call the Ministers and Government Authorities attentions to the plight of boat people who were detained for a long period in Australia. In particular, I wish to call upon the minister to give a sympathetic considerations towards the Cambodian asylum-seekers who arrived Australia in 1989. They are being considered by Australian Laws as 'unprocessed persons' who are not eligible to apply for refugee status in Australia. This kind of distinctions to the boat people have been made on the basis that they arrived Australia without relevant papers.

I believe that human beings have the rights to leave its own country and seek refuge when their safety and dignity are at stake. It is also quite understandable that people who have fear of persecution by government authorities are unlikely to get legal permissions from their government to leave the country. Present Australian Law that can detain boat people is made in order to discourage such undocumented arrivals and also to prevent the boat people getting access to the Australian Legal System. Please therefore consider to change that evil-spirited law and give sympathetic considerations to those boat people currently under detentions.

The prolonged detentions of these boat people doesn't promote Australia as having a tolerant society. If we look around our Asian region, no country has given unnecessarily harsh treatment to the distressed people. While Bangladesh housed

250,000 Burma-Rohingya refugees in their territory, the Bangladesh's own Chakmas hill tribes people of similar number are looked after by Indian Authorities. Country like Thailand, for example, have to host millions of Cambodian and Laos nationals and continue to tolerate nearly half million Burmese refugees. India is having tens of thousands of Tibetan refugees whilst China presently tolerates 20,000 Kachin refugees from Burma. I wish Australia to show its tolerance to a less than thousand boat people and understanding to their problems.

In the future, a speedy decisions should be made for such asylum-seekers under Australian Legal System in order to reduce the periods of detentions. Although all those come by boat will not necessarily meet the requirements to become refugees in Australia, the Australian Government should give a compassionate considerations in normal migration process to those people after deportations. Measures such as addressing underlying human rights abuses in the refugee producing countries at the international levels must also be made.

Finally, I wish to urge the Ministers and Australian senators to help in promoting human rights standards at the international level and treat those asylum-seekers with sympathy.

Yours respectfully and sincerely,

16/6/94

(U Ne Oo)

(1) Senator Jim Short, The Shadow Minister for Immigration and Ethnic Affairs.

(2) Senator The Hon. J P McKiernan, The Chair Person for Joint Standing Committee on Migration.

(3) Margaret Piper, Executive Director, Refugee Council of Australia.

# Legal labyrinth

THE ADMISSION INTO AUSTRALIA of any non-citizen or 'alien' is governed by the Migration Act, which has been amended several times since it was introduced in 1958. Under the act non-citizens generally have to obtain a visa (while overseas) or an entry permit (upon arrival). In straightforward cases, non-citizens—other than permanent residents of New Zealand—who enter Australia without authorisation become 'illegal entrants' and are liable to mandatory deportation after 28 days.

Amendments to the Migration Act in 1989 provided that when an authorised immigration official took non-citizens into custody *immediately* upon arrival, they were deemed not to have entered Australia. The legislation placed no conditions on the detention of these 'prohibited non-entrants', although it envisaged that every effort would be made to deport them on the next available craft.

This provision for summary removal contrasted sharply with the provisions that governed the arrest and detention of 'illegal entrants' who had 'entered' the country. Until a deportation order was made, illegal entrants had the right to be presented every seven days before a magistrate, who had the power to order their release under certain conditions.

The provisions for detention and prompt removal worked well enough in the case of stowaways found aboard foreign vessels; they were not designed to deal with asylum-seekers, whose claims cannot be resolved within a matter of hours or days.

It was a matter of dispute whether the Cambodians who arrived in Pender Bay were 'prohibited non-entrants' or 'illegal entrants'. In May 1992 lawyers acting for them raised the question of their status in an attempt to secure their release on conditions. In response, the government amended the Migration Act to place the legality of their continued detention beyond doubt, and the Cambodians and their fellow detainees were given a special title—'designated persons'. This legislation was challenged in the High Court, and in November 1992 further legislation abolished the distinction between 'illegal entrants' and 'prohibited non-entrants', eliminating the fiction that the Cambodians have not entered the country.

Because the Cambodians have sought asylum as refugees, they are subject to the laws and procedures governing the determination of refugee status. Australia, as a signatory of the UN Convention relating to the Status of Refugees, is obliged to grant refugee status to anyone who meets that convention's definition of a 'refugee'—i.e. to any person who 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a social group or political opinion, is outside his country of nationality and, owing to such fear, is unable or unwilling to return to it.'

When the Cambodians arrived in 1989, the Australian system for determining refugee status operated outside the Migration Act, which made it clear that refugee status was ultimately to be decided by the Immigration Minister. In practice the minister was advised by a non-statutory body known as the DORS ('Determination of Refugee Status') Committee, which employed a secretariat of seconded Immigration Department officers to interview applicants.

New procedures were devised in 1991, under which an Immigration Department case officer would assess an applicant for refugee status on the basis of his or her application form, to decide whether the claim was manifestly unfounded. If not, the application was studied in detail, taking into account the form, an interview with the applicant and information about conditions in the country from which the applicant had fled. The officer's recommendation was the basis for the final decision, made by the minister's delegate—who was also a member of the Immigration Department. (In May 1992 these procedures were modified to reduce the paperwork involved.)

The Immigration Minister retained a discretionary power, in some cases, to grant residence on specified humanitarian grounds. These grounds seemed to be slightly broader than those governing refugee status, although policy changes made in 1991 suggested that border claimants such as the Cambodian boat people would not have been eligible, on strict guidelines, for humanitarian consideration.

A Refugee Status Review Committee was also established in 1991. Applicants whose claim had been rejected at the primary stage could appeal to the committee, which again made its recommendation to the minister's delegate. The committee was chaired by an officer of the Immigration Department, with other members from Foreign Affairs and Trade, the Attorney General's Department, and a community representative nominated by the Refugee Council of Australia. A representative of the UN High Commissioner for Refugees was present as an observer.

Refusal of refugee status, or any adverse decision made against claimants for refugee status by the minister, was open to judicial review by the Federal Court or the High Court. Such a review could consider only the legality of the decision, not its merits, and challenges to the legality of the decision could be brought by anyone in Australia who felt aggrieved by it.

The chief objections to this application and review process were that it was under the control of the Immigration Department at all stages, and that its decisions were based only on written submissions.

The legislation introduced in November 1992, however, goes some way towards meeting these objections. The review process is now to be conducted by a Refugee Review Tribunal, one member of which will hear each case. The tribunal is appointed by the government but independent of it, the tribunal's decision will be final, and applicants for refugee status will be entitled to an oral hearing. ■