IS THERE A ROLE FOR COMPASSION IN REFUGEE POLICY?

THE HON JUSTICE MARCUS EINFELD*

I. INTRODUCTION

I am delivering this speech in response to the appeals of the 21.5 million or more refugees and internally displaced persons now astride the world,[1] and the plight of the 3 652 or so people currently held in immigration detention in Australia.[2] As their own countries either instigate the violence that threatens them or fail to protect them, these people have no choice but to turn to the international community for assistance and rescue. And Australia is bound not only by international law, but perhaps more importantly by the dictates of humanity, to offer them protection. If, indeed when, our country fails them, they are forced to appeal to United Nations Committees or to return home to face the very evil they fled.

Some of the most vivid images of our time are of the bombing of Iraq, Sarajevo and Kosovo, and of starvation, famine and war in Africa – from the tragedy of Ethiopia and Eritrea, to the muddled confusion of Somalia, the almost unbelievable horror of Rwanda and Burundi, and its aftermath in Zaire and other neighbouring countries. The people of these places not only suffered and continue to suffer all the deprivations of the world's other refugees, but their fate was made worse by their forced perambulations over thousands of kilometres, back and forth, as they fled one army or militia or another. Yet we have almost totally neglected their plight. Surely our disdainful attitude towards the displaced people of Africa and these other places is not the product of racism or a sense of cultural superiority. They are human beings like the rest of us. Their aspirations to peaceful, stable personal lives are indistinguishable from our own.

---

* AO, QC. Judge of the Federal Court of Australia. This is edited version of a speech delivered at the launch of Amnesty International Australia's Refugee Campaign 2000, which was held at the University of Technology, Sydney on 28 July 2000.

1 United Nations High Commissioner for Refugees, *Populations of Concern to United Nations High Commissioner for Refugees*, July 1999 at Table 1.1.

2 Department of Immigration and Multicultural Affairs, *Detention Report*, 11 May 2000.

In June 1993, I was visiting Malawi as AUSTCARE's Ambassador for Refugees where millions of victims of the Mozambique civil war were 'living' – if that is what you could call it – in refugee camps. The policy of the United Nations High Commissioner for Refugees ("UNHCR") was, as it was in Bosnia, Hong Kong and many other places, all directed towards their early if not immediate repatriation.[3] The problem was that Mozambique was still heavily land-mined and the people's farms and homes had long been destroyed. I said then, and later after my visits to Bosnia and Kosovo, I repeat now, that while repatriation is a worthy goal and is often the only likely long term solution to the problems of many refugees, it is a very dangerous and unworthy, and dare I say illegal, practice to repatriate people to their own countries when the risk of loss of life or injury, or the likelihood of persecution, economic hardship, or even starvation, is still very much alive.[4] The UNHCR has an almost impossible job balancing and managing the manifest conflict between the humanitarian imperative of its charter and the political and financial problems of pleasing or appeasing host and donor countries. But we should not use that excuse to cut ourselves off from the sufferings of the people.

An organisation renowned for its campaigns to free and protect political prisoners and individual victims of persecution, Amnesty International has long recognised the relationship between unchecked human rights violations by governments and armed forces, and the growing number of refugees worldwide. Refugees are not the random product of chance events but rather the inevitable consequences of people making considered decisions to persecute others. Sane people simply cannot understand gratuitous torture, genocide, cruelty or violence by the powerful of the poor and the weak. But all of these horrors are alive and well in the human race at the dawn of the twenty-first century.

Let us hope that the next time the international community is warned of impending genocide, it has the foresight, strength and determination to intervene before the situation deteriorates into a tragic and costly humanitarian disaster, including a refugee crisis. It will surely come – Cuba, Cambodia, Haiti, Taiwan, the former Zaire (now the apparently not very Democratic Republic of Congo), other countries of Africa, some parts of Russia and the former Soviet Union, and the Middle East now playing out an end game for peace in the very midst of deadly conflict – these are just some of the disasters waiting in the wings. In human terms, the international outlook is bleak, but perhaps not so bleak as the outlook for the actual and potential refugees themselves.

That is why Amnesty International's Refugee Campaign, and indeed this very publication, are so timely and so worthy of support. They will not only highlight the plight of minorities subject to unlawful and discriminatory persecution on a worldwide basis, but they will also encourage Australia and its neighbouring countries to honour their responsibilities and give full, frank and satisfactory answers to the requests for protection being made of them.

---

3 United Nations High Commissioner for Refugees, *The State of the World's Refugees – The Challenge of Protection*, 1993 at 108-9.

4 1951 Convention Relating to the Status of Refugees 189 UNTS 150, Article 33(1).

II. THE BALKANS

I could have chosen any number of examples but by concentrating here on the suffering of the Balkan peoples, I hope to illustrate the agonies that others, including many asylum seekers in this country, are experiencing.

We have recently passed the 18 month anniversary of the commencement of the North Atlantic Treaty Organisation ("NATO") air attacks on the former Yugoslavia. From my experiences in Bosnia and Kosovo and the refugee camps in nearby countries, in my capacity as AUSTCARE's Ambassador for Refugees, I am well able to write about the modern incarnation of Nazi-like inhumanity that has manifested itself over recent years in the territories of the former Yugoslavia. When I visited these places, I had the opportunity to meet many local Muslim, Orthodox and Catholic people. I was particularly struck by the ferocity of the hatred each has for the others. When family members are lost in brutal and completely unjustified circumstances – as happens when innocent civilians are killed indiscriminately merely because they are of a particular religious, national or ethnic group – it is not surprising that the victims hate the perpetrators.

But the hatreds I witnessed were not so simply explained. For these hatreds go back generations, with the present generation of children still being taught the same irrational continuation of ancient disputes. They are not the only people obsessed with this type of generational antipathy to close neighbours, but in my experience Balkan hate is as bad as any and more lethal than most.

I told the people I met in the Balkans that in most parts of the world the children are taught the past so that it will not be forgotten, but we do not teach them to hate – and certainly not to kill – anyone. Indeed, it is essential that children be taught to be tolerant and understanding; not to forget, but to forgive as much as possible, and to move on. The Balkan peoples seem unable to adopt this approach.

A. Ethnic Cleansing

It was said that the purpose of the Balkan wars was to stop what has been called 'ethnic cleansing', and to allow the Bosnians and the Kosovars to live in peace. The NATO bombing campaign on Serbia last year actually helped, in the short term, to cause the displacement of people. Nevertheless, I support international assaults on racially-based policies of any type – if only for the very simple and important reason that if we do not stand up to and reject them, as we failed to do to Idi Amin, Pol Pot and the leaders of Rwanda, for example, genocide and the forced removal of innocent civilians from their homes by reason of their family roots will continue, and we will have demonstrated that we have learned nothing from the past. This would represent the ultimate dishonour to those who fell in past instances of such horror.

I completely reject the term 'ethnic cleansing', not merely because it was so ruthlessly visited upon the Jews of Nazi Europe, the ethnic Albanians in Kosovo, the Tutsis in Rwanda, the Kurds and Christians in Iraq and Afghanistan and so

many other hapless minorities but, amongst other reasons, because it suggests something healthy and refreshing, intended to make genocide and other horrors sound good. Until it started there in 1998, Kosovo was home to 1.7 million[5] Albanian-speaking people, mostly but not entirely Muslims, whose forbears had lived there for 1 000 years. It is therefore staggering to realise that the number of Kosovars forced to flee their homes last year was more than a million, around 850 000 of whom fled after the NATO bombing began on 24 March 1999.[6] This was the largest involuntary movement of people in Europe since the Second World War. In addition there were another 260 000 displaced Kosovars who were left to roam the country with very little food and shelter, enduring at best an uncertain and distinctly unsafe future.[7]

B. Creating Refugees

Like our counterparts elsewhere, Australians were shocked and distressed at the images we could not and should not try to avoid, of old and young, men and women, especially mothers, children and babies desperately striving to hang onto their lives and their families as they fled rockets and bombs, the point of the gun, many guns in fact, wholesale rape and other forms of violence, all deliberately targeted at them because of their family roots.

For the second time in 60 years, people were involuntarily herded into trains, trucks and tractors, and transported – or forced to walk – across Europe. Fortunately, unlike the last time, these people were walking, not to death, but to life. But their suffering was great nevertheless. Their homes were largely destroyed; their farms and businesses largely burned; and most grisly and horrible of all, thousands of people, especially men, were brutally tortured and killed.

Virtually all of the people, refugees and internally displaced alike, had their passports or identity cards, their drivers' licences and car registration plates, and all their personal papers – and their money – taken from them. To all intents and purposes, they were converted into non-persons. One elderly refugee told me that he could remember Hitler and his killing of their people. "Hitler was a butcher" he said, "but even Hitler did not kill their cows and sheep as Milosevic did".

C. The Refugee Experience

Of course, it is true that the refugee camps housing the Kosovars were not death camps with gas chambers, mass graves and killing fields. In fact they actually kept people alive, but in conditions as bad as you could possibly have seen and worse than you can imagine. Some of them housed more than 20 000 people, mostly in tents. The tents I saw were supplied by Kuwait, Saudi Arabia, Pakistan and Iran. They offered at best, light shelter from the sun, but not protection from wind or rain. When I was there in May 1999, it was spring and the temperature was 35°C. In July and August the temperature rises to 45°C. In

5 United Nations High Commissioner for Refugees, "A Race Against Time – Kosovo Statistics", (1999) 3(116) *Refugees* 4 at 11.

6 *Ibid.*

7 *Ibid* at 18.

October, the first snows fall. These tents could not protect from summer rain or wind let alone extreme heat and cold.

The refugees who crossed into Macedonia were often making their third or fourth attempt to escape. They arrived on trains packed with three, four or five times their intended load. They had had no food, drink or access to toilets, sometimes for days. They then walked several kilometres to the border in the hot sun, taking many hours to do so because of the military and bureaucratic requirements. We are talking of people often given five minutes to leave their houses, whose homes were looted and ransacked (even of the food in the fridge), and then burned. We are talking of people who, with their children and elderly parents and grandparents, often had to sleep in the open or alongside railway tracks for days, waiting for their turn to leave. We are talking of sick people, pregnant women, little children under the age of 10. I met a man who had had open-heart surgery the day before he was told, at gunpoint, to leave in 15 minutes.

These people had to walk in two columns, and keep the children in line, without food or drink. Though chased and threatened by armed Serbian soldiers or militia because I was giving candy to the children, I walked with them, both as an act of solidarity, and to try to understand and share the horrendous experience to which they were being subjected. When they eventually crossed, they were given hard-boiled eggs, oranges and water – and then packed, 200 people into 60 person buses, and bussed across the country for up to 3 hours, to finish up on a mountain side full of tents housing up to 25 000 people.

I leave the rest to the imagination – the feeding, washing and toilet facilities, recreation and activity for the children, health and baby care and so on. This was civilised central Europe in the last minutes of the twentieth century. Human rights are hardly an appropriate concept to speak of in this context.

D. Peace?

Now the region is supposed to be at peace, but I do not trust the international community to pay for the peace as they have paid for the war. The Gulf War cost the allies more than $US60 billion, yet women in Kuwait still do not have the right to a driver's licence, let alone a vote.[8] Bernard Kouchner, who heads the UN mission in Kosovo, said recently that the $US300 million he needs to run Kosovo for a year amounts to about half of what NATO spent each day it bombed Yugoslavia. Nevertheless, he has had to constantly beg the international community to keep meeting the expenses of the mission.[9] The commitment to assist in the construction of a multi-ethnic democratic society in Kosovo is hardly comparable to the determination of the Western powers to fight the war that was supposed to achieve it.

---

8 United States of America Department of Defense, Final Report to the US Congress, *Conduct of the Persian Gulf War*, April 1992, Appendix P.

9 United Nations Administration Mission in Kosovo, "UN Kosovo Operation Needs Clearer Objectives and Sufficient Funding, Security Council Told", Media Release, 6 March 2000.

III. THE AUSTRALIAN RESPONSE

Our Australian willingness to take in around 4 000 refugees was a kindly response and certainly made us feel good. In general, we are a kind and generous people and our country is the best country in the world to live in. But ours was a desperate reaction, not the most practical way to help. To illustrate the point, the Canadians took in about the same number as us. The two governments have estimated the cost as around $100 million each.[10] I can tell you that $200 million would have made a massive difference in the Albanian and Macedonian refugee camps I saw, benefiting hundreds of thousands of people, not just 8 000 or 10 000.

Isn't it strange how we can always find plenty of money to wage war but not enough to save people? Who sets such values and priorities? In whose name are they set? Certainly not mine.

And, might I add, the deaths of innocent civilians in bombing accidents or miscalculations in the region came about because the West was not prepared to lose soldiers on the battlefield. Clearly, the life of an American or European soldier is regarded as more valuable than busloads of refugees and unarmed villagers. I always thought that all human life was sacred. Silly me.

A. Asylum Seekers

Moreover, our actions in crises must be assessed with reference to our behaviour in less frenetic times. In any civilised country, freedom from arbitrary detention is a fundamental human right derived from the common law, yet successive Australian governments have detained for long periods of time – up to five years and more – asylum seekers who have arrived in Australia without papers, having fled terror, persecution, hunger and other human rights violations in their homelands. Currently, some 482 children under the age of 18 face this very horror. Thirty or so of them are facing it alone.[11] Some have spent, and more will spend, the years from age 0-5, or 3-8, or 6-11 in detention without having committed a single offence.

Both the United Nations Human Rights Committee,[12] and our own Human Rights and Equal Opportunity Commission,[13] have condemned the Australian legislation as breaching fundamental human rights. Unfortunately, these concerns have been brushed aside as 'bleeding heart' stuff not worthy of serious consideration. This easy dismissive attitude could not be more wrong.

It is well recognised – and I of course accept – that states have the exclusive competence to regulate entry to their territory and to determine which non-citizens may remain in their territory. Immigration policy is an expression of the

---

10 Minister for Immigration, P Ruddock, "Kosovars to Leave Australia Next Month", Media Release, 15 March 2000. Canada, House of Commons 1999, Debates, Vol 205, p 1500.

11 Note 2 *supra*.

12 United Nations Human Rights Committee, "Human Rights Committee Concludes Sixty-ninth Session", Media Release, 31 July 2000.

13 Human Rights and Equal Opportunity Commission, *Those Who've Come Across the Seas: Detention of Unauthorised Arrivals*, (1998), p 55.

nation state's sovereignty over its territory. However, refugees and those seeking asylum are not illegal immigrants, a fact that our authorities seem to have forgotten and the media seem not to understand.

Australia is obliged under international refugee law, incorporated into domestic law, to provide sanctuary to refugees.[14] Australia was in fact one of the original drafters of the 1951 Geneva Convention on the Status of Refugees, and on 22 January 1954 became its sixth signatory. These obligations came about because of the international community's concern for the protection of people who have left or remain out of their own countries involuntarily. These are people seeking refuge from actual or threatened persecution of one kind or another, not only by invasion from foreigners but often perpetrated or permitted by people, including the authorities, of their own country. Australia has, in both international and domestic law, declared its commitment to providing protection to such persons and to ensuring that people seeking asylum here as refugees are treated in accordance with internationally recognised human rights standards.

Guidelines issued by the United Nations High Commissioner for Refugees ("UNHCR") state that detention should be avoided.[15] Only in exceptional circumstances is a state entitled to temporarily detain an asylum seeker, and detention should never be automatic, prolonged or imposed as a penalty or as a deterrent to others. It should certainly not be indiscriminate.

Yet Australian legislation deprives all persons detained under the *Migration Act* of the right to apply for and obtain release pending determination of their status[16] – a right, generally known as *habeas corpus*, that has been provided for more than 400 years throughout the common law world, even to murderers, rapists and drug runners. If the case for their detention is so good, why are our governments so unwilling to subject the detention of asylum seekers to judicial scrutiny? No one suggests that democracy is the cheapest system of government but it is far and away the best.

To detain such people without justifiable cause is bad enough in itself, especially as we do so quite indiscriminately – regardless of how young or old, sick or in need of special concern they are. But to detain for more than a few hours or days people who, fleeing possible persecution and unimaginable horrors, have risked their lives, and perhaps paid all the money they had and more, to reach Australia in leaky river craft over thousands of kilometres of dangerous and unfriendly seas, is inhumane and without justification. And we are now the only developed country in the world which practises indiscriminate, indeterminate, incommunicado detention of such people. Alone of all countries in the world, including Canada, the United States and the nations of Europe, we have indiscriminately detained all of them – the elderly, the children, the sick and the

14 *Migration Act* 1958 (Cth), ss 5, 36.

15 United Nations High Commissioner for Refugees, *UNHCR's Guidelines on applicable Criteria and Standards relating to the Detention of Asylum Seekers*, 10 February 1999.

16 *Migration Act* 1958 (Cth), s 196.

pregnant – at a cost by the way of around $41 000 per person per year,[17] while the Catholic Archbishop of Perth was offering free accommodation for all of them in Catholic homes while the review process ground on.

Some say that these people have arrived here illegally because they are without papers. By definition, people seeking refugee asylum are not illegal; they are doing something expressly permitted by Australian and international law, not in defiance of such laws. Moreover, if you are fleeing your own government because it is persecuting you or will not protect you from the persecution of others in your homeland, obtaining papers from them is a nonsense, and Australia has no office to apply to for authorisation in most of the countries concerned. And if you are only a child following your parents' ill-fated lead, how can detention be just?

Some say that these people jump the queue. Refugees do not form queues. They escape persecution and possibly death or starvation for themselves and their children. They do not fix or regulate the times for their terror. Yet apparently to deter applications for refugee status by people to whom we owe solemn, voluntarily undertaken legal obligations, we have introduced harsh laws with financial penalties that operate regardless of the merits of the individual cases concerned. These laws ignore the fact that people who leave countries in haste and fear will often not be able to take their money with them, if they had any in the first place. Who is to say that a person arriving on our door-step without papers or by other informal means is less likely to suffer persecution than one living overseas under the protection of someone chosen by bureaucrats?

One of our immoral practices has been to link the on-shore and off-shore refugee programs, so that once the yearly quota of refugees has been reached, overseas processing of asylum seekers stops. By linking the two programs, we have created a situation where even if there were a queue for asylum seekers to join, no one can be sure that his or her application will even be considered upon reaching the front of the queue. People facing horrors ought not to be the playthings of bureaucratic procedures.

Unlike the laws that apply to the worst of criminals, the *Migration Act* enacts that asylum seekers have no right to legal advice or even to be informed about their right to apply for refugee status. The practical effect of this legislation is that even if detainees express grave fears about returning to their homeland, their failure to express in actual English words, of which many have little or no knowledge, a desire to seek refugee status has in some documented instances meant that decisions have been made to deport without giving the people concerned the opportunity to apply for Australian protection. This practice is contrary to Australian and international law.

---

17 Department of Immigration and Multicultural Affairs, *1998-99 DIMA Annual Report*, 1999 (Note – this statistic was calculated by dividing the total cost of immigration detention ($22.6 million) by 551.2, which figure represents the average number of persons in detention on any given day in 1998-9. The figure 551.2 was calculated by dividing total 'detainee days' (201 205) by 365. Alternatively, if the statistic is calculated by dividing $22.6 million by the total number of detainees admitted in the year 1998-9 (3 475) the figure is $6 323 per detainee).

From recent political propaganda in this country, you would think that Australia had been swamped by boat-people. In fact, in the last 12 years, only just over 8 100 boat people have arrived on Australia's shores without visas,[18] not the tens of thousands a year the preachers of doom and racial prejudice would have us believe. And whilst over 3 000 people are currently in immigration detention, we have given refugee status or entry on other grounds to more than 1 900 of the 8 100,[19] meaning that we have held and paid for all these people in detention for up to five and six years without charge, trial or bail, and eventually found more than 20 per cent of them innocent of even the technical breach of arriving in our country without justification or authorisation.

Moreover, contrary to the scare campaign and playing to people's fears that we are being invaded by boat-loads of gangsters from the Middle East, it should be recorded that of the recent arrivals of Afghans, Iraqis and Kuwaitis from Iran and elsewhere in the region, more than 75 per cent have been granted refugee status by the department itself.[20] Indeed, once the results of the appeals to the Refugee Review Tribunal are included, more than 90 per cent of these recent arrivals have been granted refugee status.[21] So much for the so-called invasion by criminal elements! So much for the utility of advertising campaigns that characterise Australia as the land of snakes, sharks, human-consuming crocodiles and killer spiders! If we had a land border with a country of oppression, our problem would be thousands of times worse. Our protection is our geography, not draconian laws or advertising slogans.

B. Temporary Protection Visas

One of the most alarming trends in the international community's current treatment of refugees is the growth of temporary rather than permanent protection visas. This little creature is a distortion of international law invented by bureaucrats to protect their own positions. The temporary protection visa classification provides the holder with a limited degree of protection, which in Australia is three years. After the expiration of this period, the persons are returned to their countries of origin unless they successfully apply for a permanent protection visa or another temporary protection visa.

Despite the virtual identity of their personal sufferings and deprivations, the holders of temporary protection visas have less rights and access to social services than the holders of permanent visas.[22] Temporary holders are denied the right of re-entry to Australia if they travel internationally during the term of the visa, even to visit sick or dying parents or attend family funerals, and have only limited access to various settlement services. Permanent visa holders have access

18 Department of Immigration and Multicultural Affairs, Fact Sheet 81: *Unauthorised Arrivals by Air and Sea*, 25 July 2000.

19 *Ibid.*

20 *Id*, *Population Flows: Immigration Aspects*, 1999, p 24.

21 Refugee Council of Australia, "Statement on 'Illegal' Boat Arrivals", Media Release, 15 November 1999.

22 *Id*, "Position on Temporary Protection Visas", Position Papers, September 2000 and November 1999; Department of Immigration and Multicultural Affairs, "Temporary Protection Visas", Fact Sheet 63, 21 January 2000.

to 510 hours of English language training, yet no such positive right has yet been expressed in respect of temporary visa holders. Only certain special social security benefits are available to temporary visa holders, for which a range of eligibility criteria apply that do not apply to holders of permanent visas, who have immediate access to the full range of social security benefits. Access to school education for temporary visa holders is subject to state policy, whilst access to tertiary education is effectively ruled out by the imposition of full fees. On the other hand, permanent visa holders rightly have the same access to education as all other permanent residents of Australia. Whilst temporary visa holders have permission to work, their ability to find employment is affected by the temporary nature of their stay in the country. Finally, temporary visa holders are only eligible for Medicare once they have applied for a permanent visa, which means after three years. Permanent visa holders are automatically eligible for Medicare.

The temporary protection visa did not come about, as might have been expected, because of a belief that persons should be returned to their country of origin where possible, such as when a temporary danger has passed or been overcome. In this country, the temporary protection visa owes its existence to the belief that it would discourage the illegal entry of asylum seekers into Australia by limiting their rights in the event of a successful asylum application. While such discouragement is intended to reduce the power and promise of people smugglers, the fact is that the two-tiered system of temporary and full protection visas is allowing a distinction to evolve in the treatment afforded to people with identical lawful claims to stay in the country, depending on whether they arrived here with papers or without.

The current Australian practice of reducing the benefits to people who obtain refugee status after arriving here, including the termination of their temporary visas if they leave the country during its term, is in direct contravention of Australian and international law. The fact that family reunion is not permitted does not sit well in a country which lauds the virtues, and the importance, of the family unit and places it at the centre of its fundamental ethos.

C. Economic Refugees

To escape their solemn legal and moral responsibilities, politicians (including our own) have developed a liking for labelling many asylum seekers 'economic refugees' when there is no such term in international or domestic law, and the economic turmoil which the people suffer is, more often than not, a direct consequence of the effect of foreign military intervention or internal political oppression often fed, or not helped, by the industrialised countries.

D. Detention Centres

The Human Rights Commission has also been critical of the conditions in the detention centres.[23] When asylum seekers are detained for long periods, the conditions become inadequate and in violation of our international human rights

23 Note 13 *supra*, pp 69-88.

obligations, particularly those owed to children, the elderly, pregnant women, and other vulnerable people. Some centres suffer overcrowding, a lack of natural light and recreational facilities, and have completely inadequate sanitary conditions. As the Commission found, they are more like overnight police lock-ups than places suitable for the lengthy detention of people who have committed no crime. And the principal centre is at Port Hedland, 2 000 kilometres north of Perth, about as remote from friends and support groups as possible. It is little wonder then that break-outs occasionally occur from some immigration detention centres.

Australia as a party to many international treaties is bound by international law to ensure that the rights they prescribe are granted to "all individuals within its territory and subject to its jurisdiction ... without distinction of any kind".[24] By relegating refugee law to the status of domestic immigration policy, to be administered under a strict penal regime dressed up as administrative requirements, we have abrogated this obligation to hundreds – even thousands – of asylum seekers in detention for many years.

My questions are simply these: What have people fleeing persecution and the risk of injury, torture or death done to deserve this inhumane and wicked treatment? If there are some cheats amongst the people seeking asylum in Australia, what crime have the rest committed to warrant the Australian Parliament and its members from the two major political groupings taking leave of their senses? What are the crimes of the children and the elderly? The nicest answer is that the opinion polls, which leaders should direct, not follow, on this subject and other such important humanitarian matters, demand their detention. The worst answer I leave to you.

IV. INTERNATIONAL CONSEQUENCES

There has been an increasingly frenetic response by successive Australian governments to international examination and criticism of our domestic policies in this field. This unlovely performance is not only embarrassing; it is a timely warning of the damage to our reputation overseas and the undermining of our social unity at home that can be done if we take our eyes off the ball of decency and humanity. Some people interpret external criticism as unwarranted meddling in the internal affairs of Australia, but this is also the response of the world's worst totalitarian regimes, like those of China, North Korea and Burma. Human rights are, as their most famous declaration says, universal. They are for all of humankind. No one person is more of a human being than another. There is nothing internal or sovereign about a country's violations of human rights. The international community is entirely justified in reminding Australia of its commitments and pointing out failings and areas which need improvement.

---

24 International Covenant on Civil and Political Rights, Article 2(1); see also the Convention Relating to the Status of Refugees, Article 3, Convention on the Rights of the Child, Article 2 and the International Covenant on Economic, Social and Cultural Rights, Article 2(2).

V. CONCLUSION

The current content and administration of refugee law in Australia, like that of other areas involving human rights and racism, such as immigration and Aboriginal affairs, make clear that the more a government bears down on its citizens and pares back their human rights, the greater is the need for a bill of rights to codify and enshrine the people's fundamental entitlements in a free society. The irony is that as the Parliament violates human rights norms more frequently, the less likely it will be amenable to a legislative bill of rights which outlaws its other actions. It may well be the prime role of this generation of Australians to resolve this dilemma, by securing or re-establishing our country's historic commitment to fairness and decency.

I endorse wholeheartedly Amnesty's recent call to the Parliament to gets its unwelcome hands out of our proud record with refugees and our independent and impartial review system.[25] We ought to rid ourselves of visa classifications and restrictions that seek to avoid Australia's international and domestic obligations. The time has long since passed for us to do away with draconian legislation and bureaucratic interference in the task of saving human lives. We must get back to the core of refugee rescue and relief. We must recall and re-emphasise our legal and legally binding obligations, not to mention deep moral responsibilities, to give more than passing acknowledgment to the sanctity of the human condition. This is especially so when the sufferings of the human beings, whose problems are being addressed, have arisen either from the actions and selfish interventions of foreign powers (including Australia), or from their spineless neglect to deal with these problems before they took root.

If we want the benefits of democracy, we have to pay the price. In my opinion, the members of the Australian Parliament, like their colleagues around the world, should stop now and reinstate our long standing humanitarianism to those who seek asylum here. And they should tell the disaffected and the disruptive, the bigoted and the opinionated that we all belong and want to belong to one nation too, but that nation should be a kind, caring, humane, compassionate society that responds creatively to those in despair who look to us for succour, comfort and rescue.

What we are looking for is the emergence of a noble society which seeks national dignity for itself and grants personal dignity to everyone in it. Above all, Australia's greatest need today is to discover or rediscover its soul. As has been proved over and over again, this task will not be undertaken by our politicians. Only the people can achieve it. There is no more urgent task facing us. I urge everyone to be part of it.

---

25 Amnesty International Australia, "Australia: Human Rights for Asylum Seekers", Campaign Kit, July 2000 at 5.