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## **RESPONSE TO AUSTRALIA'S 'REFUGEE SWAP' ANNOUNCEMENT**

The recent announcement that Australia and the United States are planning to "swap" asylum seekers provides further cause for alarm about the way in which some states are attempting to redefine their international obligations as signatories to the Refugee Convention and Protocol. The Universal Declaration of Human Rights (article 14.1) establishes the right of every person "*to seek and to enjoy in other countries asylum from persecution*". It does not, however, seek to specify where such protection may or may not be found.

Australia's suggestion that this scheme will act as a deterrent to illegal migration displays both a lack of logic and a disturbing lack of understanding about what motivates people to migrate. From the dawn of history, there have been very few motivators for migration. They include: The search for a better future; escape from persecution or starvation; deportation to penal colonies or importation as slaves.

Both Australia and the United States have *literally* been built on the contributions of tens of millions of migrants and former refugees who now form an integral part of their respective societies and economies. As two of the world's leading cosmopolitan countries, it is hardly surprising that victims of persecution - and those who can see only continuing poverty and desperation in their own land - should seek to find refuge or opportunity elsewhere.

Desperate people, who can muster the resources, will sometimes resort to the use of migrant-smugglers to help them reach the shores of another country. Such journeys are usually dangerous and many thousands of genuine refugees and 'would-be migrants' have been murdered by pirates, drowned at sea or suffocated in containers in their efforts to find a new future. In reality, genuine refugees often have no alternative but to use migrant-smugglers - as any attempt to leave their country through official channels could result in their arrest, detention, imprisonment or execution.

In recent years there has been an increase in the number of intercepted vessels carrying "*mixed flows*" . . . that is, a combination of both genuine refugees and "*illegal*" or "*economic migrants*". Every country has a sovereign right to refuse entry to (or to return) illegal migrants who are trying to by-pass normal immigration channels to find a 'back-door' into a country of their choice. This does not mean, however, that these "*economic migrants*" should be treated as criminals. Most of them are people who have taken great risks to seek a better future for themselves and their families. To have lost their money to a migrant-smuggler and

subsequently be denied the right to reach their intended-destination is surely punishment enough.

Additionally, many “*economic migrants*” may face prosecution and punishment on their return to their own country, because “*illegal-departure*” is an offence.

Unless asylum claims can be shown to be “*manifestly unfounded*”, countries that are signatories to the Convention on the Status of Refugees and/or its subsequent Protocol have an obligation to examine the claims of all those who reach their shores, or the shores of territories under their jurisdiction. Australia’s policy of intercepting asylum seekers *on the high seas* and ‘diverting’ them to Nauru, pending determination, has been a thinly veiled method of avoiding these obligations - by ensuring asylum seekers do not in fact reach its shores.

Burmese Rohingya, escaping the brutal persecution of their country’s military government, may sometimes attempt to cross through Thailand into neighbouring countries. If they are not arrested and returned to Myanmar by Thai authorities, they may reach Malaysia or Indonesia. However, neither of these countries is currently a signatory to the Refugee Convention or Protocol, so it is entirely understandable that such refugees might try to find onward-passage to Australia - which is widely perceived as a just society with fair refugee-determination processes.

The refugee “swap policy” seems designed to send the message that asylum seekers should not seek refuge in the closest and most obvious country. Perhaps the architects of the new policy have not consulted a map recently? There are, in fact, not a lot of smuggling boats heading from Indonesia to Florida, and it’s no doubt just as difficult for Cuban refugees to find an easy boat-ride to Darwin!

If, as the announcement suggests, the intention is to accept only those who are determined to be genuine refugees, then the ‘*swap policy*’ seems absurd. Does it not make far more sense to settle Cuban refugees in the USA and Sri Lankan and Burmese refugees in Australia? This would not only be in line with UNHCR’s desire to seek *regional solutions* for refugees, but it would also maximise the likelihood of successful resettlement, supported by well-established ethnic communities.

*Mixed flows* will undoubtedly continue to pose challenges for some countries. However, the best way to police borders and respond to legitimate humanitarian obligations and responsibilities is via a transparent multilateral approach such the well-established UNHCR multipartite process. Bi-laterally arranged ‘refugee swaps’ can only invite skepticism.

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