

Asylum Seekers – mundane problem or divine presence?

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The reflections of Ranjini and Rosemary raise the question of refugees and asylum seekers in Australia. This article is intended to explain some of the background about Australian policy and the reasons that it is being widely criticised both in Australia and beyond. It also offers some theological reflection.

In Australia and other developed nations, there is considerable debate about the responsibility that nations have towards refugees. Australia, for example, wants refugees to come to us through orderly immigration programs, after the United Nations High Commission on Refugees has assessed their status. Our government does not want to have to deal directly with asylum seekers, especially those who come in a disorderly way on boats organised by so-called “people smugglers”.

Asylum seekers who arrive in Australia on a visa (for example, a tourist visa or student visa), are treated very differently from those who arrive without a visa, who are treated as “illegals”, although they are officially described as “unauthorised”. Only those who arrive unauthorised are kept in detention centres. This article is about the treatment of those who are “unauthorised” especially the “boat people” of Ranjini’s reflection.

There are now about 20 million refugees world-wide, and another 25 million people who are within their own country, but are “displaced persons”. About 80% of these people are women and their dependent children. The issue of refugees and asylum seekers (people seeking to be given the status of refugee and therefore protection), is a women’s issue.

Australia has a number of small islands (such as Christmas Island and Ashmore

Reef) which are some distance from the mainland. A recent law removed these from Australia for the purposes of the Immigration Act. Asylum seekers arriving in these places are now sent to other Pacific Island nations to have their claims assessed. Australia funds this process, but does not let people come directly to Australia because it would have to let them stay if they proved they were refugees. Instead, Papua New Guinea and Nauru receive the asylum seekers.

When “unauthorised” asylum seekers manage to reach the mainland, they are put in detention centres until their application is decided. These are located far away from the main cities, at places like Woomera and Port Headland. This makes it difficult for refugees to get access to lawyers. Many asylum seekers have to try to convince the authorities that they are refugees, without any legal advice about the convention. If they do not put their case the right way, they are rejected as refugees. This refusal to give people information about the refugee convention is unfair and unreasonable. It is intended to make it hard for people to get refugee status. Once it is decided that a person is a refugee, they are released, but this can take months or even years. Australia is the only nation that has mandatory detention for asylum seekers who arrive “illegally”, even if they are children. The government says that this is not prison or punishment, but the conditions at detention centres are often worse than prisons. Also there is no set period.

The churches and many non-government organisations in Australia oppose the policy of the Australian government about “unauthorised” asylum seekers. The Refugee Research Centre at the

University of New South Wales in December 2001 held a national conference on the Refugee Convention. They hoped for 200 people; nearly 600 came. This is evidence that large numbers of people are committed to working with asylum seekers and refugees in Australia, and to changing Australia's policy. The conference included academics in law and social policy, practitioners in many relevant fields, including social workers, doctors, and lawyers, and many activists. Most importantly, many refugees attended the conference and told their stories.

The International Convention on Refugees was first developed in 1951. It was intended to give refugees from Europe a new beginning in other nations, such as Canada, the United States of America, and Australia. In 1967, in response to the increasing numbers of refugees from war-torn countries around the world, a new protocol was added so that all refugees, from whatever place of origin, would be covered.

This convention is part of international law. It defines who is a refugee, and what rights refugees have. A refugee is anyone who

Owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country"

Or

"who, not having a nationality and being outside the country of his former habitual residence ...is unwilling to return to it."

The convention gives refugees the right to seek asylum, i.e. protection. Nations signing the convention have the responsibility to provide that protection, to respect their human rights including rights to work, education and health care, and

give them identity papers and travel documents.

Two provisions in the convention are particularly important. The Minister for Immigration justifies Australian policy by talking about "unauthorised entrants to Australia". Under article 31, refugees are not to be penalised for entering a country "illegally", provided they present themselves to the authorities and "show good cause for their illegal entry or presence". Keeping people in detention centre merely because they have arrived without authorisation clearly breaches this article.

Article 33 is also important.

No contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religions, nationality, membership of a particular social group or political opinion".

Thus the Convention gives people who are fleeing from persecution the right to ask for asylum in any country they reach, and requires that nations provide that asylum. Nations are entitled to test whether the fear of persecution is "well-founded", but may not limit how many people apply for refugee status, or send people away before testing their claims. When we make it difficult for people to have legal advice, we increase the danger that we will reject the application of people who really should qualify for the status of refugee.

The complaint has also been made that the Tribunal that deals with the application to be a refugee is not fair and consistent in its findings. There are complaints of political interference. Many people have been granted refugee status when they appealed to the courts. Now Australian law has been changed to prevent judicial review of decisions.

Australia is failing in its obligations under the refugee convention. Its policies are

both morally and legally unacceptable. Australia's legal obligations under international law apply to all parts of our territory. Under international law, our internal laws are no excuse for not fulfilling those obligations.

From a Christian point of view, Australia's policy is morally corrupt. Many Australian politicians claim to be Christian, but their views on this matter show no understanding of the Christian tradition. Every human person has been created by God and has human dignity and human value. Every human being deserves to be treated with respect, and to be given protection from violence. God loves all human beings.

The Bible recognises that strangers or aliens are vulnerable people in any society, and gives them similar rights to widows and orphans. If we take seriously Matthew 25: 31-46, then Christians must believe that each time a boat of asylum seekers arrives on Australia's shores, Christ himself is present in that boat. Each time we send asylum seekers somewhere else to be processed, we send away Christ himself. This is not hyperbole. In Matthew's Gospel, Jesus was indeed a refugee. As a small child he and his family fled from Herod's bloodthirsty attempt to find and kill him. He was persecuted simply for who he was. His family fled to Egypt, where they found refuge. (Matthew 1:13-18). Herod's clones still rule many nations, and Christ still flees from persecution.

For women, this matter is particularly troubling. We recognise that in the Bible there is also a tradition of hospitality. Part of being human is to be hospitable, to create a space where other people are welcome and are free to be themselves. Australians who support the current policies seem to have lost the ability to be hospitable. We are not only destroying the lives of other people, we are also losing part of our own humanity.

This situation is troubling to women because so many asylum seekers are women. Those of us who attended the

recent Indigenous and Refugee Women's Human Rights Court (see "Female energy and spirit to combat injustice"), are in no doubt as to what forces women to become refugees. They flee from authoritarian regimes that imprison, torture and kill people. They flee from vicious civil wars. In many nations, women experience rape as part of their persecution. Australian research suggests that up to 80% of the women who come here as refugees may have been raped in the country from which they are fleeing.

Even more troubling is the fact that children are involved. Whether they arrive alone, or with their family, they are sent to detention centres. Many children are severely traumatised by this experience. This is a violation of the international convention of the rights of the child. It violates all that we know about the needs of children. It violates our humanity.

It is no wonder that the churches are working with academics and community organisations to seek changes in these policies so that asylum seekers may find here the protection that they seek.

Note: In writing this article, I have drawn on the recent conference The Refugee Convention – Where to from here?, organised by Eileen Pittaway, Director, Centre for Refugee Research at the University of New South Wales.