

What we should do now on asylum-seeker policy

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ONE of the most troubling aspects of the refugee policy debate in this country is the almost inevitable reduction of the problem to a search for "solutions".

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No matter what the argument - processing people in Malaysia, Nauru, East Timor or Australia - we end up with a contest over who has the best "solution". The mantra is: find a solution, get all the key players to agree on it, and the problem will be solved. But the stark reality is that there are no silver bullets.

Refugee policy is an area of immense complexity that does not lend itself to quick-fix political proposals of the sort being suggested under the offshore processing schemes before Parliament. Just as the myth of the orderly refugee queue continues to be peddled, the search for solutions perpetuates a gross distortion infecting the public debate, and ultimately impeding the development of sound policy.

The problem with notions of an orderly queue is that for most of the more than 10 million refugees worldwide there are no queues, because there is no real escape from their suffering. They endure desperate environments in which health, hope and basic humanity ebb away. Think Syria and Lebanon. Think Afghanistan and Pakistan. These nations host millions of people in peril. The claim that those who come seeking our help should have waited their turn in line is meaningless.

The debate would be much more constructive if the focus was on tackling the root causes behind the flight of refugees: the genuine desperation which pushes people to take potentially deadly risks to find safety.

One central factor driving the search for solutions is the interminable political jousting, which is largely about who can best stop the boats. This contest has led to the current policy impasse, and the Prime Minister's referral of the issue to an expert panel. It must be hoped that the panel's report helps us to stop talking about solutions and instead focus on the development of a plan of action - not a perfect plan, but a realistic plan.

Millions of people in our region are living in inhumane and intolerable situations. Any plan must be about helping them. It must be about improving protection and minimising harm for as many asylum seekers and refugees as possible. And it must tackle the critical issue of how to save lives at sea. But the plan cannot be confined to this issue. Any plan must accept that the Refugees Convention that Australia has signed does not come with an on/off or pause button. The simple but central fact is, we have committed to taking responsibility for the protection of refugees who come here.

Under international law, Australia cannot subcontract out its obligations to a client state. Asylum seekers cannot be sent elsewhere for processing unless the same protections exist in law and in practice. Transfers are not outlawed, but they come with strict conditions.

The same applies under Australian law, as the High Court ruled in the Malaysia case, finding transfers unlawful because Malaysia did not provide protection to refugees backed by law. It's not about legal niceties which can be dismissed as inconvenient or outdated in these trying times. These laws, and the principles underpinning them, have been carefully designed to provide real protection to people in their daily lives.

As soon as we seek to press the pause button on these laws we risk seriously compromising the safety of the very people that the laws are meant to protect. This is precisely the problem with Parliament's proposals to circumvent the High Court's ruling in the Malaysia case to enable offshore processing in Malaysia or Nauru.

They risk violating our international legal obligations and harming people who have fled from harm. They strip bare the basic protections under our law so that a refugee could even be sent to minefields such as Syria, Afghanistan and Iraq without a requirement to first assess human rights protections there.

Protections under the Malaysian solution would be no more than a political promise without the backing of the law. Malaysia has long engaged in severe mistreatment of refugees. I have seen the scars left on clients from beatings by Malaysian authorities, including one man bludgeoned for pleading for his baby boy's birth to be registered. For me, the Malaysia case has always been about getting the ordinary protection of the law in to help people when the policy was about to fail them.

Nauru does not stand the legal test either. Its recent signing of the Refugees Convention is not enough. Protection has to exist on the ground. It is likely that the inhumanity of indefinite incarceration without any guarantee of resettlement to safety would be repeated.

The policies of both major parties are essentially about deterring asylum seekers from coming to Australia by boat. The logic underlying deterrence policy is brutal: the more painful the penalty, the more effective the policy. It becomes acceptable, if not necessary, to expel an unaccompanied child to somewhere like Malaysia with no guarantees to protect their wellbeing or guard against more abuse. All that deterrence does is divert people from our doorstep to dangers elsewhere.

So what should be done? Australia can and must develop a plan for refugees that has humanitarian outcomes at its heart. This must start with a focus on the plight of refugees in our region - not on how to stop them getting here, but on why they are trying to get here in the first place. It is clear that we need to build a better, co-operative system of protection in our neighbourhood - one that encourages people who have fled their homelands to remain where they are rather than risk their lives at sea.

Again, there are no off-the-shelf solutions. And we must shoulder our responsibilities rather than try to shift them on to our neighbours. Instead of seeking to circumvent the High Court's Malaysia ruling, it would be far better to use its benchmarks to promote improved protection. We should start by increasing our refugee intake to at least 25,000 places a year, with priority given to those with family in Australia. These places should not be reduced by the numbers of those who seek asylum here. In addition, we should improve access to fair processing of claims in the region, and increase resourcing of the refugee support agencies through aid programs in countries such as Indonesia and Malaysia.

We need to accept that any plan will be far from perfect. It will be incremental, and even very untidy at times. It will require patience and persistence, not more knee-jerk solutions. Even if our Parliament doesn't lay down its arms over the issue, the expert panel has the opportunity to reframe the debate away from illusory solutions to an innovative plan that recognises that in improving the plight of vulnerable people, we need not and should not sacrifice the very standards of human rights protection which are designed to do this.

We must extend a hand of help to those in need, rather than a hand that shuns.

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