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COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

## SENATE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

**Reference: Migration Legislation Amendment (Further Border Protection Measures) Bill 2002**

TUESDAY, 6 AUGUST 2002

CANBERRA

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**[PROOF COPY]**

[2.53 p.m.]

**OO, Dr U Ne, Secretary, Network for International Protection of Refugees**

**CHAIR**—Welcome. You have registered with the committee your submission, No. 24. Are there any amendments or alterations that you would like to make to that submission?

**Dr Oo**—No, I do not have any amendments, but I would like to make an opening statement.

**CHAIR** —I invite you to do so.

**Dr Oo**—Before I make my opening statement, I would like to encourage you to ask questions if you do not understand me very well. I did not fly here from Adelaide to be misunderstood by this committee.

**CHAIR** —We will try and understand you to the best of our capacities.

**Dr Oo**—My accent is difficult to understand.

**CHAIR**— We have a little bit of time.

**Dr Oo**—Could you also please speak a little bit slowly so that I can understand.

**CHAIR** —Sure.

**Dr Oo**—Firstly, I would like to thank this committee and the Romero justice community in Adelaide for enabling me to come here and present my organisation's view. I am U Ne Oo, a Burmese exile and refugee living in Adelaide. I was sent to Australia in 1988 by the Rangoon University physics department to do a doctorate under the Australian government's Colombo Plan scholarship, and I obtained a PhD in physics from Adelaide University. I applied for refugee status in Australia in 1992, and the government granted a refugee visa in 1993.

Since then, I have survived as a refugee in Australia and as an exiled person from Burma. Over the years, from 1992 to date, as a Burmese exile I have had an extensive involvement with Burmese democracy and human rights movements. As the committee members may have noted from one of the attachments to my submission, I began to be seriously concerned about the refugees in Australia in 1997-98. In response, I started a South Australian based grassroots refugee advocacy group, the Network for International Protection of Refugees, and its objectives are outlined in an appendix to my submission.

Our organisation seeks to address the government's views on the human rights of refugees and displaced persons at the policy level. In a personal capacity I am also involved with several other refugee support groups in South Australia. Our organisation is disturbed by the Australian government's continuing inhuman treatment of asylum seekers and refugees. Over the years we have seen the Australian government carry out misinformation campaigns about asylum seekers

and refugees in this country. Day after day the government ministers regurgitate untruths about asylum seekers so as to dehumanise asylum seekers. The children overboard scandal was one such example.

As the senators may understand, refugees in any society are marginalised and powerless. It is so unfair of the government to launch misinformation campaigns about refugees, because refugees have no capacity whatsoever to conquer such campaigns. This current amendment bill, just like many of the other government initiatives on the so-called border protection, is just poking around the refugee issue. Whenever the Australian government desires popular attention or wishes to create a political situation, it is immoral for it to use refugees and asylum seekers as pawns to further its political agenda. Our organisation is greatly concerned that the Australian government is heading towards the old apartheid system of South Africa and will be shunned by the rest of the world.

Mr Chairman and committee members, you no doubt find it disturbing when you hear about the behaviour of human smugglers. You are disturbed when human smugglers exploit refugees and asylum seekers. You are distressed when human smugglers make money out of these vulnerable people. You feel outraged when human smugglers show <sup>callous disregard</sup> ~~careless respect~~ for the wellbeing of their human cargo. You find human smugglers despicable because they make a profit out of vulnerable people, such as refugees. Now, here in this parliament, your very own government is using refugees and asylum seekers as pawns in its political agenda. The government exploited refugee and border protection issues to win the election. The government shows <sup>careless</sup> ~~careless~~ disregard for the lives of asylum seekers by intercepting and turning away refugee boats on the high seas. And, most importantly, the government has demonised and given inhuman treatment to refugees in order to sustain its political power. This is inhuman conduct committed on a grand scale by the Australian government, and it is much worse than what any human smugglers have done. I ask: don't you find that disturbing? I certainly find the Australian government's conduct inhuman, despicable and disturbing.

I would like to complete my statement by highlighting our organisation's recommendations. Our organisation, the Network for International Protection of Refugees, calls on the Australian government and the Prime Minister to:

- Apologise to the refugees who were being wrongly accused of throwing their children overboard
- Conduct an independent inquiry into the death of two women asylum seekers in November 2001
- Carry out speedy processing and resettlement of asylum-seekers who are held in off-shore detention centers
- Cease the interception of refugee boats on the high seas and put a halt to the Pacific Solution
- Repeal Temporary Protection Visa legislation of October 1999
- Remove existing excision bill of September 1001 and withdraw current amendment.

**CHAIR**—Dr Oo, you have given us a press statement from December 1998 in which you mention office-holders: patron, Sister Janet Mead, and chairperson, Reverend Martin Chittleborough and so on. Are they still your office-holders?

**Dr Oo**—Yes. The only change is in the executive committee members. This is the original document that was put out in 1998.

**CHAIR**—On page 2 of your submission you say that an analysis of unauthorised arrivals shows an increase in the percentage of women and children since the introduction of the temporary protection visa legislation in October 1999. Could you provide us with the sources of information that you relied on for that statement?

**Dr Oo**—I cannot give you out of hand which source I got that from, but I have been interested in these issues over the years, so I sourced this fact from somewhere. If the committee wants it, I will provide it to you.

**CHAIR**—Would you take that question away with you to find the source of the information and give it to the committee?

**Dr Oo**—Yes.

**CHAIR**—You also state that the policies are not well thought out in a legal and constitutional sense. Are you saying that there are some constitutional problems with the legislation?

**Dr Oo**—I am not a lawyer. That certainly does not help my capacity to fully comprehend all those legal and constitutional implications. But, as graduate activists and a refugee advocacy group, we take data from reliable sources like Amnesty International, Human Rights Watch and human rights committees.

**CHAIR**—If you could take that question away and find the source of that constitutional concern, you could come back to us with it.

**Senator STEPHENS**—Regarding your organisation's experience, perhaps you would comment on the impact of the restriction that refugees currently in Australia on temporary protection visas granted after 27 September 2001, who spent more than seven days in a safe country en route to Australia, will not be eligible for a permanent protection visa. This means that although the person may be recognised as a refugee, they will not be able to bring their family out to Australia, they will not be able to leave the country without their TPV being cancelled and, if they try to re-enter Australia, they will be deemed an illegal arrival. Has that been the experience of your organisation?

**Dr Oo**—Our organisation has more of an advocacy role, and I do not have a direct involvement with refugees and resettlement issues. I only look at the policy and policy implications of those refugees.

**Senator PAYNE**—There are number of statements you have made with which not every member of the committee would agree. I am probably going to indicate that there are number of statements that I do not agree with, but I am interested in a number of the points that you make in your submission. In considering that document and some of the aspects that you have raised today, what is your organisation's view of people who, some might say, in their role as people smugglers extort from, but most certainly exploit, vulnerable individuals and make them pay extortionate amounts of money to transport them around the world and bring them to places like

Australia in pretty average circumstances—of transport at least? What do you think about people smugglers at your organisation?

**Dr Oo**—The people smugglers do break the laws and they are not good people, but, as an organisation and human rights activists, we are more concerned about the government implicating the refugees in association with the human smugglers.

**Senator PAYNE**—I understand that that is your concern. Do you think governments, of any colour, who are in a position to do so, should make any efforts to deter people smugglers from doing what they try to do?

**Dr Oo**—I did not quite hear you. What did you say?

**Senator PAYNE**—I was wondering whether you thought governments in any context should take steps to deter people smugglers from doing what they do. Should we just let it go on all around us with little regard for the consequences either for the individuals being smuggled or for the people smugglers or for the recipient countries?

**Dr Oo**—If governments try to make refugees less exploitable, that would be a welcome initiative. But to my knowledge, Australia's human smuggling law and penalties are so tough already that if Oscar Schindler were still alive, even he would not be able to smuggle into Australia.

**CHAIR**—Thank you, Doctor. I think we can leave it there. The committee looks forward to receiving the information we have sought from you. Thank you and your organisation for your submission.

**Proceedings suspended from 3.11 p.m. to 3.30 p.m.**

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## The additional submission to the Senate Legal and Constitutional References Committee re: Migration Zone Excision bill 2002 25 August 2002

At the Senate Committee's public hearing on 6 August 2002, the NetIPR was asked by the Committee to provide information as to (1) the increase of women and children among asylum seekers who arrived by sea after Australian government enactment of Temporary Protection Visa Legislation and (2) the legal and constitutional inconsistencies of the government's September 2001 border protection legislation ("TAMPA Legislation").

### 1. The increase of women and children among Middle Eastern asylum seekers

There has been a marked increase of children and women on board refugee boats after the TPV legislation was introduced in 1999. The attached table shows that the increase in frequency of refugee boats with children on board as well as the percentage of children onboard those boats has increased. It is a clear indication that the asylum seekers have elected to take children (and women) after TPV legislation because of the legislations' restrictions.

	Pre-TPV (1995-1999 November)	Post-TPV (1999 December-2001)
No. of boats (passengers)	57 (1902 passengers)	100 (7728 passengers)
No. of boat with children (no. of children onboard)	26 (148 children)	83 (1779 children)
Frequency of boat with children	46 %	83 %
Percentage of children Among passengers	8 %	23 %

### 2. Legal and Constitutional inconsistencies of "TAMPA legislations"

So far, NetIPR has found no group or person(s) plainly stating that the "TAMPA Legislation" has specific legal or constitutional problem. However, given the extent to which the legislation is contravening various international human rights treaties that Australia has signed (as presented by the Human Rights Committee [*Refugee Policy: is there a way out of the mess?*, *Racial Respect Seminar 21 February 2002*] and Amnesty International Australia [*Submission (25) to the Senate Select Committee on Certain Maritime Incident*] ) the conclusion can be drawn that legal and constitutional challenges against the "TAMPA Legislation" is inevitable in the future. The "TAMPA Legislation" obviously denied natural justice and procedural fairness to the asylum seekers. It is as a matter of time community and legal groups, through judiciary, will seek to challenge and overturn the legislation.

**Executive Committee**

**Network for International Protection of Refugees.**

**The increase of children and women among Middle Eastern Asylum Seekers  
after the TPV legislation of October 1999 (source DIMIA fact sheet 74)**

Year	No.	Total on-board	No. of children	Child-Percent age
1995	40	5	0	0
1996	44	4	0	0
1996	57	7	0	0
1996	58	5	0	0
1996	60	8	0	0
1996	61	24	1	4 %
1996	62	12	0	0
1997	63	4	0	0
1997	64	7	0	0
1997	66	9	0	0
1997	70	15	0	0
1997	71	25	8	32 %
1997	73	6	2	33 %
1998	75	22	2	9 %
1998	89	15	0	0
1999	91	9	4	44 %
1999	92	3	0	0
1999	95	5	0	0
1999	96	10	0	0
1999	98	13	0	0
1999	100	12	7	58 %
1999	103	8	0	0
1999	105	10	1	10 %
1999	108	15	0	0
1999	109	54	1	2 %
1999	112	20	0	0
1999	114	10	0	0
1999	118	10	0	0
1999	119	8	1	12 %
1999	120	76	2	3 %
1999	123	12	0	0
1999	124	53	7	13 %
1999	126	16	5	31 %
1999	128	7	0	0
1999	130	44	0	0
1999	131	16	0	0
1999	132	140	14	10 %
1999	133	8	0	0
1999	134	13	1	10 %
1999	135	24	2	8 %

Year	No.	Total on-board	No. of children	Child-Percent age
1999	136	98	15	15 %
1999	137	35	1	3 %
1999	138	14	0	0
1999	139	6	0	0
1999	141	6	0	0
1999	142	49	3	6 %
1999	144	21	0	0
1999	145	23	1	4 %
1999	146	62	5	8 %
1999	147	110	21	19 %
1999	148	12	2	16 %
1999	149	24	2	8 %
1999	151	140	4	3 %
1999	152	26	0	0
1999	153	355	29	8 %
1999	154	75	7	9 %
1999	155	82	0	0
	<b>TPV</b>	<b>TPV</b>		<b>TPV</b>
1999	156	25	2	8 %
1999	157	156	22	14 %
1999	158	23	0	0
1999	159	31	7	23 %
1999	160	33	3	9 %
1999	162	23	2	8 %
1999	163	24	5	20 %
1999	164	151	24	16 %
1999	165	28	3	11 %
1999	166	180	27	15 %
1999	168	135	21	16 %
1999	169	7	0	0
1999	170	127	9	7 %
1999	171	58	26	45 %
1999	172	53	19	36 %
1999	173	229	65	28 %
1999	175	35	15	43 %
1999	176	4	0	0
2000	177	118	15	13 %
2000	178	44	2	5 %
2000	179	25	2	8 %
2000	180	54	7	13 %
2000	181	38	6	16 %

Year	No.	Total on-board	No. of children	Child-Percent age
2000	182	281	50	18 %
2000	183	47	6	13 %
2000	184	22	1	5 %
2000	185	14	0	0
2000	186	71	20	28 %
2000	187	21	0	0
2000	188	47	16	34 %
2000	189	34	10	29 %
2000	190	70	8	11 %
2000	191	10	0	0
2000	192	62	16	26 %
2000	193	4	0	0
2000	194	78	3	4 %
2000	195	66	14	21 %
2000	196	17	2	12 %
2000	197	36	4	11 %
2000	198	112	28	25 %
2000	199	3	1	33 %
2000	200	30	0	0
2000	201	36	3	8 %
2000	202	23	1	4 %
2000	203	74	20	27 %
2000	204	77	8	10 %
2000	205	101	30	30 %
2000	206	2	0	0
2000	207	47	10	21 %
2000	208	14	4	29 %
2000	209	94	10	11 %
2000	210	33	5	15 %
2000	211	32	7	22 %
2000	212	116	18	16 %
2000	213	69	7	10 %
2000	214	24	0	0
2000	215	48	0	0
2000	216	100	0	0
2000	217	3	0	0
2000	218	117	33	28 %
2000	219	92	20	22 %
2000	220	35	0	0
2000	221	97	19	20 %
2000	222	32	2	6 %
2000	223	30	4	13 %
2000	224	43	7	16 %
2000	225	49	11	22 %
2000	226	177	69	39 %

Year	No.	Total on-board	No. of children	Child-Percent age
2000	227	68	19	28 %
2001	228	51	17	33 %
2001	229	84	21	25 %
2001	230	148	39	26 %
2001	231	49	10	20 %
2001	232	115	32	28 %
2001	233	179	28	16 %
2001	234	62	16	26 %
2001	235	169	48	28 %
2001	236	196	61	31 %
2001	237	22	4	18 %
2001	238	14	10	71 %
2001	239	82	26	32 %
2001	240	43	8	19 %
2001	241	24	0	0
2001	242	94	12	13 %
2001	243	120	35	29 %
2001	244	198	32	16 %
2001	245	65	27	42 %
2001	246	2	0	0
2001	247	131	21	16 %
2001	248	1	0	0
2001	249	54	25	58 %
2001	251	235	83	35 %
2001	252	231	50	22 %
2001	253	108	9	8 %
2001	254	76	12	16 %
2001	255	147	50	34 %
2001	256	60	13	22 %
2001	257	345	154	45 %
2001	258	225	73	32 %
2001	259	359	95	26 %

[\* the nationality of all boat arrivals after 2000 is taken as Middle Eastern asylum seekers. ]