

17 April 2015

Office of the High Commissioner for Human Rights  
United Nations Office at Geneva  
8-14 Avenue de la Paix  
1211 Geneva 10  
SWITZERLAND

By email: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org)

**To:** Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment  
Mr Juan Ernesto Méndez

**Copy:** The Hon Peter Dutton, Minister for Immigration and Border Protection  
The Hon George Brandis, Attorney-General for Australia

Dear Sir

**Request for urgent action on the incommunicado detention and potential refoulement of asylum seekers in Australia's custody**

We write in relation to a group of approximately 50 Vietnamese asylum seekers who were reportedly travelling to Australia to claim protection. Circumstantial evidence and logical inference suggest that these asylum seekers have been intercepted at sea by Australian officials and are being held pending imminent transfer into the custody of Vietnamese authorities.

We are concerned the group will be returned to Vietnam without any opportunity to make a protection claim and in contravention of Australia's non-refoulement obligations.

**The information available**

Media reports suggest that the group of about 50 Vietnamese asylum seekers were intercepted earlier this month by Australian customs and navy vessels north of Australia and are now being held on the Australian Navy ship HMAS Choules off the coast of Vietnam.<sup>1</sup>

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<sup>1</sup> See Nick Butterly, 'Navy in secret asylum seeker mission', *The West Australian*, available at <https://au.news.yahoo.com/thewest/a/27169707/navy-in-secret-asylum-seeker-mission/>

The Australian Government will not disclose the current whereabouts of the asylum seekers, whether they are in Australian custody and, if so, where they will be sent, citing its policy of not commenting on “operational matters”.<sup>2</sup>

### **Imminent human rights violations**

There are reports that Australia may involuntarily return the asylum seekers to Vietnam despite the very real prospect that such action would expose them to a risk of serious human rights violations. Doing so would place Australia in clear breach of its non-refoulement obligations under Article 33(1) of the *Refugee Convention*, Article 7 of the *International Covenant on Civil and Political Rights* and Article 3 of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

Since commencing its ‘Operation Sovereign Borders’ policy on 18 September 2013, the Australian Government has intercepted and returned 15 asylum seeker boats.<sup>3</sup> Despite past figures showing that between 70 and 100 per cent of asylum seekers arriving in Australia by boat at different times have been found to be refugees,<sup>4</sup> all 429 asylum seekers on board the 15 intercepted boats have been returned. Some of those returned have subsequently been assessed by the UNHCR as refugees.<sup>5</sup> Plainly, the Australian Government’s processes at sea do not safeguard against refoulement.

### **Current Human Rights Situation in Vietnam**

Leading international organisation Human Rights Watch (**HRW**) reports that the human rights situation in Vietnam has deteriorated significantly in recent years. Its *2014 World Report*<sup>6</sup> raises particular concerns with the intimidation, harassment, arbitrary arrest and prolonged detention of political activists, human rights defenders and independent writers and bloggers. HRW also reports that the Vietnamese Government continues to monitor, harass and at times violently crackdown on religious groups operating outside government-registered and controlled religious institutions and that there continue to be reports of abuse, torture and killings in police custody.

### **Request for urgent action**

The Human Rights Law Centre requests that you take urgent action with a view to ensuring that:

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<sup>2</sup> See Heath Aston, ‘Abbott government under fire for secret bid to hand back asylum seekers to Vietnam’, *The Age*, available at <http://www.theage.com.au/federal-politics/political-news/abbott-government-under-fire-for-secret-bid-to-hand-back-asylum-seekers-to-vietnam-20150417-1mnlpb.html>.

<sup>3</sup> See Shalailah Medhora and Ben Doherty, ‘Australia confirms 15 boats carrying 429 asylum seekers have been turned back’, *The Guardian*, available at <http://www.theguardian.com/australia-news/2015/jan/28/australia-confirms-15-boats-carrying-429-asylum-seekers-have-been-turned-back>.

<sup>4</sup> See ‘Asylum seekers and refugees: what are the facts?’, Parliament of Australia’s Parliamentary Library, available at [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1415/AsylumFacts#\\_Toc413067445](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/AsylumFacts#_Toc413067445).

<sup>5</sup> See David Corlett, ‘Sinhalese asylum seekers’ on-water claims accepted by UN’, *The Saturday Paper*, available at <http://www.thesaturdaypaper.com.au/news/politics/2015/01/31/sinhalese-asylum-seekers-water-claims-accepted-un/14226228001441#.VTETSfmUeSo>.

<sup>6</sup> See <http://www.hrw.org/world-report/2014/country-chapters/vietnam>.

- (a) Australia discloses the whereabouts of the asylum seekers and the legal basis for their detention or deprivation of liberty, and facilitates their communication with a legal adviser or representative;
- (b) Australia refrains from involuntarily returning the asylum seekers to Vietnam in potential violation of the non-refoulement provisions of the *Refugee Convention*, the *International Covenant on Civil and Political Rights* and the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; and
- (c) the asylum seekers be permitted and facilitated to make a protection visa application in accordance with the Australian *Migration Act 1958*, including by ensuring that they have access to adequate legal advice and translation and interpretative services.

Yours sincerely

**Daniel Webb**

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Human Rights Law Centre

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