

ONE STEP CLOSER TO DEPORTATION ONE STEP CLOSER TO DEPORTATION ONE STEP CLOSER TO DEPORTATION ONE STEP CLOSER TO DEPORTATION ONE STEP CLOSER TO DEPORTATION ONE

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Despite completing their sentences, and a finding that their continued detention is a breach of human rights, 30 Vietnamese refugees remain in prison pending deportation some day to Vietnam. Peter Williamson reports on their continuing struggle to return to their homes and families.

Mr Pham sits in Parramatta Jail. He faces no charge, has no release date, no parole, and is not under sentence for any crime. For more than two years he has been waiting for news of a fate that lies out of his hands, locked in a stalemate of international diplomacy.

Mr Pham is no stranger to suffering. A refugee from Vietnam, he arrived in Australia aged 14 after five years in a Philippine refugee camp, to face a range of personal and social problems that contributed to him becoming a drug addict. He was convicted of various drug-related robberies in 1991. He completed his sentence in April 1999, but has not been released. The Minister for Immigration and Multicultural Affairs has decided that he is no longer wanted in Australia. As a Vietnamese citizen, he can be deported, but Vietnam refused to take him back.

Following complaints by Mr Pham and nine other detainees, the Human Rights and Equal Opportunity Commission (HREOC) found that the length of detention of the complainants is "plainly unpredictable, indefinite and indeterminate". As such, there has been a breach of human rights and the Commission recommended that the complainants be released from detention pending their deportation.

The Government remains indifferent to the Commission's recommendations, and Mr Pham's plight evokes little sympathy. He has been imprisoned and

served eight years in a New South Wales prison. "Fair enough", many will say. But he's done his time, plus two years beyond his sentence. Fairfield councillor Thang Ngo says that the Vietnamese community is unwilling to speak out in support of the detainees, for fear of appearing soft on the drugs trade which has tarnished the community's image in Australia. He says, however, that in accepting refugees, Australia should accept "the good with the bad".

Now the stalemate may have eased, and the situation is one step nearer to resolution. Not a resolution, however, which will offer much comfort to the detainees or their family. Australia has recently signed a Memorandum of Understanding with Vietnam, establishing a process for deporting Vietnamese nationals.

According to the Department of Immigration and Multicultural Affairs (DIMA) there are thirty Vietnamese in Australian jails who, like Mr Pham, are awaiting deportation after having completed sentences. Few details have been released, but it is understood that the Vietnamese Government will want to make detailed village-level background checks on these people, before accepting them as deportees.

The deportation of refugees raises a number of concerns. Firstly, the detainees, having fled Vietnam, were found to have a well-founded fear of persecution upon their return. Their deportation would divide their families

and place further stress and suffering onto families who have already suffered through the Vietnam War, flight from Vietnam, and the difficulties of resettlement in Australia. Some have suffered far more - loss of family members, torture and persecution.

The battle for rehabilitation and to establish stable lives in Australia is ongoing and life-long for some people. That some should fall into drug abuse is hardly surprising. This is a problem within all communities in Australia, and not one for which people should be continuously punished. Their friends, their families, and their support structures are in Australia. They have been in Australia for most of their lives, and many have little to return to in Vietnam.

The refugees who have committed crimes have served their sentences and should be allowed to be rehabilitated within the community. Deportation will most likely result in life-long hardship and isolation, and quite possibly in persecution by a government they have already rejected and from which they have fled. Despite the most serious of outcomes resting on these cases, there is no legal aid for detainees who wish to appeal deportation decisions. Many of these people are forced to represent themselves in court, with limited English language skills and inadequate understanding of the legal process being played out.

Australian law allows for per- ▶

manent residents, who have not taken out Australian citizenship to be deported. For many of the detainees, taking out citizenship is a step which had never seemed important or which never occurred to them. One detainee, Tran Thanh Tuan applied, had his citizenship application approved, but was unable to complete the process because he had been arrested.

Peta Cowell of Justice Action, a prisoners' rights group in Sydney, says that one prisoner complained that the State Office Compliance Officer has not visited for four to five months. According to DIMA, the officer is supposed to visit every 30 days. Furthermore, when an officer does visit, it is always a different person, and on the last visit there was no interpreter.

She also states that DIMA sent a letter to the brother of one Parramatta detainee in which they said that the prisoner could be taken away at any time. The prisoner himself has received no information at all. She says that the prisoners have not been informed of what is happening, either by DIMA or the Vietnamese Embassy. They are confused, anxious and worried. She also states that one of the Parramatta prisoners is in an extreme state of distress, not eating, depressed and suicidal.

Holding detainees who are not under sentence is improper and some lawyers believe it is also illegal. The detentions may well compound emotional problems and suffering at a time when help is most needed. ■

Rome Statute of the International Criminal Court



Dr Helen Durham of the Australian Red Cross calls for Australian ratification of the Rome Statute to establish an International Criminal Court.

Progress is being made towards the establishment of an International Criminal Court (ICC). The Australian Government has announced plans to introduce legislation to ratify the ICC. The Joint Standing Committee on Treaties, a federal parliamentary body, has been taking written and oral submissions relating to this proposed international legal institution.

The proposed ICC is a major step forward for international humanitarian law, and brings the world closer to ending impunity for those accused of committing atrocities. The ICC will be established after 60 states have ratified the Rome Statute for the International Criminal Court, which was agreed upon in July 1998. So far 29 states have ratified it.

The Court will be located in The Hague, in the Netherlands, with links to the United Nations. It will have the power to try individuals who are believed to have committed genocide, crimes against humanity and war crimes. The crime of aggression will also be included in the ICC statute after further work has been done to create a clear legal definition of this crime.

Whilst the Court cannot ensure an end to the horrors that are committed throughout the world, it must be seen as a giant step in the right direction towards peace and international justice. As Mr Yves Sandoz, Head of the International Committee of the Red Cross delegation stated only hours after the ICC Statute was approved: 'The Statute that has just been adopted offers States an extraordinary opportunity, at the dawn of the 21st century, to unite in defending fundamental values and to give true meaning to the concept of 'international community' - I hope they will take it.'

The topic under consideration is extremely important to the Australian Red Cross (ARC), which has the responsibility for educating the public on international humanitarian law (often called the laws of war) and in the last few years has held over 100 seminars, talks, training sessions and conferences on topics including the International Criminal Court. Well over 40,000 people from all walks of life have attended these events and specifically expressed interest in the creation of a new institution to try those accused of atrocities.

In a submission to the Joint Standing Committee on Treaties, the ARC stated that educators in the area of international humanitarian law find it impossible to talk about the laws of war without questions being raised on methods of enforcing this area of law. Once the concept and the Statute of the ICC is explained in a clear and concise manner, the response from the public is very positive. In particular, the fact that the ICC will not detract from Australia's capacity to try its own people, but rather will add an extra, and in most instances optional, layer to the process, is of great interest to the public. The recent overwhelming pride felt by Australia in relation to the

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actions taken in restoring security and peace in East Timor, and the concern expressed by many members of the public at the possibility of the presence of alleged war criminals in Australia, demonstrate that the Australian public has a strong commitment to international justice.

The ARC believes that the ICC is not only viable but an essential step towards international justice. The United Nations has considered the idea of establishing a permanent international criminal court at various times since the end of the Second World War. The creation of the Statute of the ICC was the culmination of years of effort and indicates the resolve of the international community to ensure that those who commit grave crimes do not go unpunished.

The Australian Government played a role at all levels of the negotiations to create the Statute. The ARC was represented in the International Committee of the Red Cross delegation at the Rome Conference and, as a National Society within the Red Cross and Red Crescent Movement, has noted that Australians are interested to engage in international legal issues and are especially concerned about matters of justice. International lawyers within the ARC have been discussing the issue of ratification with other National Societies, such as British Red Cross, and sharing positive views and opinions on the best way to create suitable domestic legislation to ratify the Rome Statute.

The ICC will not impact upon national sovereignty as Australia will have fully formed domestic legislation to allow the prosecution of Australian suspects within this country. As a nation with a commitment to human rights and the dignity of all people, it is in Australia's interest to ratify the ICC.

'The establishment of the International Criminal Court is a gift of hope to future generations, and a giant step forwards in the march towards universal human rights and the rule of law. It is an achievement which, only a few years ago, nobody would have thought possible' - Kofi Annan. ■

What can the court do?

Its various divisions can

- investigate and prosecute relevant crime
- try those who have been charged
- hear appeals
- pass sentences.

Who will appoint the judges?

- The parties to the statute (states) will elect judges from those who would be eligible for the judiciary in their own countries and having appropriate experience in criminal law.

Who can be tried?

- citizens of ratifying countries or countries giving consent for a particular crime or situation
- people who have committed crimes in these countries.

What crimes are included?

- genocide
- crimes against humanity
- war crimes
- the crime of aggression (still to be defined)

These include:

- the taking of hostages
- torture
- enslavement
- deportation or forcible transfer of population
- the enforced disappearance of persons
- imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law
- rape
- sexual slavery
- enforced prostitution
- forced pregnancy
- enforced sterilization
- persecution against any identifiable political, racial, national, ethnic, cultural, religious group or gender
- and all serious breaches of the Geneva Convention.

What sentences can be handed down?

- imprisonment for up to 30 years
- life imprisonment in extreme cases
- in addition to imprisonment, the Court may order:
 - a fine
 - forfeiture of proceeds, property and assets derived from the crime.

Can past crimes be tried?

- No, only crimes committed after the establishment of the court, or after the relevant country's ratification of the Statute, whichever is the later.