

## **Damning evidence of officials' involvement in transnational crime uncovered**

### **AMNESTY INTERNATIONAL MEDIA RELEASE**

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## **Australia: Damning evidence of officials' involvement in transnational crime uncovered**

Transparency and accountability to the public is vital to making sure that governments live up to the principles and values they claim to uphold, such as tackling crime and protecting the lives of those seeking asylum.

However, new evidence gathered by Amnesty International suggests that Australia's secretive maritime border control operations now resemble a lawless venture with evidence of criminal activity by government officials, including pay-offs to boat crews and abusive treatment of women, men and children seeking asylum.

Through interviews with asylum-seekers, a boat crew and Indonesian police, a new report – *By hook or by crook* – exposes evidence that, in May 2015, Australian officials working as part of Operation Sovereign Borders paid USD 32,000 to six crew who had been taking 65 people seeking asylum to New Zealand and told them to take the people to Indonesia instead. The Australians also provided maps showing the crew where to land in Indonesia.

Witness testimonies backed by video footage reveal how the intervention by Australian officials endangered the lives of the people seeking asylum by transferring them to different boats that did not have enough fuel, and how the incident fits into a wider pattern of abusive so-called "turnbacks" or "pushbacks" of boats.

The report also raises questions about whether Australian officials paid money to the crew of another boat turned back in July.

"Australia has, for months, denied that it paid for people smuggling, but our report provides detailed evidence pointing to a very different set of events," said Anna Shea, Refugee Researcher at Amnesty International.

"All of the available evidence points to Australian officials having committed a transnational crime by, in effect, directing a people-smuggling operation, paying a boat crew and then instructing them on exactly what to do and where to land in Indonesia. People-smuggling is a crime usually associated with private individuals, not governments – but here we have strong evidence that Australian officials are not just involved, but directing operations.

"In the two incidents documented by Amnesty International, Border Force and Navy officials also put the lives of dozens of people at risk by forcing them onto poorly equipped vessels. When it comes to its treatment of those seeking asylum, Australia is becoming a lawless state."

### **May 2015 incident**

Since this incident was first reported in the media, Australian government officials have repeatedly denied paying people-smugglers and have claimed the border patrols were responding to a boat in distress at sea.

However, the crew members of the boat – interviewed by Amnesty International in Indonesia in August where they are currently in police custody – as well as the passengers, whom Amnesty International also interviewed, all say the boat was not in trouble and that they never made a distress call.

Australian border control officials initially approached the boat on 17 May 2015, and then again on 22 May. Most of the passengers– including a pregnant woman, two seven-year-olds and an infant – boarded a Border Force vessel after being told they could bathe there. Once aboard Australian officials held the people in two hot, overcrowded cells for almost a week. Some were denied medical care or access to their own medication.

On the original boat, the six crew claim that Australian officials gave them a total of 32,000 USD. At least one person seeking asylum witnessed the transaction and gave his testimony to Amnesty International. Indonesian police confirmed to Amnesty International that they found this amount of money on the crew when they arrested them on arrival in the country.

Amnesty International's investigation is based on interviews with the 62 adults seeking asylum, the six crew members and Indonesian officials. The organization has also accessed crucial documentary evidence, including photos and a video taken by the passengers themselves during their journey. Indonesian police also showed an Amnesty International researcher the money they confiscated from the six crew - in crisp US 100 dollar bills.

On 31 May Australian officials forced the crew and people seeking asylum onto two different and smaller boats, and the crew were given instructions to go to Rote Island in Indonesia as well as a map showing landing sites. The two boats had little fuel and one ran out of fuel while at sea. The terrified passengers were forced to do a dangerous mid-sea transfer onto the remaining boat and were eventually rescued by Indonesian locals after hitting a reef.

### **The July incident**

*By hook or by crook* documents another case of possible payment by Australian officials to a boat crew to smuggle people to Indonesia in July 2015. This case, unlike the May 2015 incident, has not received widespread media coverage. In this case Australian officials again appear to have directed the crew of a boat to take people to Rote Island in Indonesia. Passengers who were on the boat told Amnesty International that they were intercepted by the Australian Navy and Border Force on 25 July, and then put onto a new boat on 1 August. By this time the boat crew had two new bags that the

passengers had not seen before. When the passengers became suspicious and threatened to open the bags the Australians repeatedly told them not to.

These incidents took place in the context of Australia's Operation Sovereign Borders (OSB), a military-led border control operation launched in 2013 to stop anyone – including refugees and people seeking asylum – from reaching Australia irregularly by boat.

Amnesty International is calling for a Royal Commission into Operation Sovereign Borders, to investigate and report on allegations of criminal and unlawful acts committed by Australian government officials.

Despite persistent government claims that OSB is designed to "save life at sea," Amnesty International and many others have documented an alarming pattern of abusive and illegal pushbacks by the Australian authorities.

Other people seeking asylum in Indonesia told Amnesty International how they had been involved in pushbacks at sea by Australian officials, who they said used verbal and physical abuse against those on board boats.

Such turnbacks violate the principle of *non-refoulement*, which says refugees cannot be sent back to countries where they are at risk, and also deny people the right to have their asylum claims assessed.

"Operation Sovereign Borders, far from saving lives, has become synonymous with abuse of some of the world's most vulnerable people. Australia must once and for all start taking its international obligations towards refugees seriously. All people seeking asylum deserve to have their claims fairly dealt with. And instead of continuing with turnbacks Australia must engage in effective dialogue to improve regional protections for vulnerable populations in the Asia-Pacific region, and expand safe and legal routes for people to reach safety," said Anna Shea.

## **BACKGROUND**

The *UN Convention against Transnational Organized Crime (Convention)* sets out states' legal obligations to cooperate to prevent and combat transnational organized crime. The *Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling Protocol)*, which supplements the *Convention*, requires states to prevent and combat the smuggling of migrants and protect the rights of smuggled persons. Australia has ratified both the *Convention* and the *Smuggling Protocol*. The *Smuggling Protocol* requires that signatories criminalize the smuggling of migrants, which is defined as "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident".

People-smuggling is a transnational crime, though people who are smuggled are not criminals, and international law forbids states from penalizing asylum-seekers solely for the manner of their entry into a country.

Under the *Smuggling Protocol*, the modes of commission – in other words, the ways in which someone can be found responsible – of a smuggling offence include committing an offence,

attempting to commit an offence, participating as an accomplice in an offence, and organizing or directing others to commit an offence.

The evidence collected by Amnesty International about the events of May 2015 indicates that on or about 24 May Australian officials appear to have organized or directed the crew to commit a people-smuggling offence. It was under Australian officials' instruction and with their material assistance (including two boats, fuel, maps and GPS) that the offence of smuggling people into Indonesia took place. The mode of entry into Indonesia that, according to the crew, the Australian officials directed them to follow – landing at identified points in Rote Island rather than presenting themselves to Indonesian border officials and complying with procedures for entry by boat to Indonesia – amounts to illegal entry within the terms of the *Smuggling Protocol*. The 32,000 USD constitutes a financial benefit to the crew to procure the illegal entry. The Australian officials who paid the crew and instructed them to land on Rote Island in May 2015 may also have participated as accomplices in the transnational crime of people-smuggling.

#### **Note to editors**

You can find [AV material from the report here](#) (with blurred footage + images). Some of the pictures are taken by the asylum seekers themselves from aboard the boat, and there are also pictures of the money Australian officials handed over to the crew (in crisp USD100 dollar bills), as well as of a letter written by the asylum-seekers to Amnesty.

The video is also taken on a mobile phone by the asylum-seekers. It relates to the May 2015 incident, and shows asylum seekers moving transferring from one boat to another. These are the boats they were provided by Australian officials after the payment, and they had to abandon one of them after it ran out of fuel. Australian officials put the asylum seekers at risk by transferring them to boats that were not as well equipped (including a lack of fuel) as the one they arrived on.

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