

**AMNESTY
INTERNATIONAL**



Submission to the

**Joint Select Committee on
Australia's Immigration Detention
Network**

submitted by

Amnesty International Australia

22 August 2011

Contact: Ms Tamara Lions

Phone:

Email:

Address: PO Box 1028, Civic Square, Canberra, ACT, 2608

Executive Summary

Amnesty International believes urgent reforms should be made to Australia's immigration detention network, including:

1. Ending the policy of excision and offshore processing.

Amnesty International remains opposed to the policy of offshore processing maintained by successive Australian governments. Amnesty International considers that offshore processing of asylum seekers, such as on Christmas Island, circumvents important domestic and international legal protections for refugees. Amnesty International has repeatedly urged successive governments to rescind the policy of excision, reinstate Christmas Island, and all other Australian territory, to Australia's migration zone and abolish the two-tiered system of processing asylum seekers so that all asylum-seekers are treated equally under Australian law and have their claims processed on mainland Australia in accordance with the UN Refugee Convention.

2. Ending the policy of mandatory detention

Amnesty International considers the current system of mandatory, non-reviewable detention to contravene several international human rights agreements to which Australia is a party. Article 9 of the *International Covenant on Civil and Political Rights* prohibits arbitrary detention and provides that a detained person must be able to take proceedings before a court; Articles 3 and 9 of the *Universal Declaration of Human Rights* establish the right to liberty and freedom from arbitrary detention; and Article 31(1) of the *Refugee Convention* provides that refugees should not be subjected to any form of punishment due to their illegal entry. Amnesty International urges the Australian Government to end mandatory detention until status resolution.

3. Removing all children from detention.

Amnesty International considers that Australia's practice of detaining children asylum seekers indefinitely contravenes Article 37 (b) of the Convention on the Rights of the Child. The Article states that "No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time". The policy of mandatory detention is inconsistent with the Convention's stipulation that detention should only be used as a last resort.

Recommendations

Recommendation 1

Amnesty International recommends that all unaccompanied minors, children and their families and individuals at risk, including survivors of torture and trauma, should be removed from detention centres as a matter of priority.

Recommendation 2

Amnesty International recommends the Government end indefinite detention by legislating maximum limits to periods of time in detention.

Recommendation 3

Amnesty International recommends the Government reinstate Christmas Island, and all other Australian territory, to Australia's migration zone and abolish the two-tiered system of processing asylum seekers.

Recommendation 4

Amnesty International recommends that all asylum seekers arriving in Australia be processed on the Australian mainland.

Recommendation 5

Amnesty International recommends that the practice of detaining people in remote areas of Australia should be ceased.

Recommendation 6

Amnesty International recommends that the conflict of interest that exists due to the Minister for Immigration and Citizenship being the legal guardian of unaccompanied minors be resolved.

Recommendation 7

Amnesty International recommends that appropriate solutions be developed for refugees, or those in need of complementary protection. the jurisdiction of the Administration Appeals Tribunal be extended to allow merit review of adverse security assessments of refugees.

Recommendation 8

Amnesty International recommends that minimum training standards be developed and implemented for all government and contractor staff who engage with asylum seekers in

detention including, as appropriate, adequate mental health training, counseling, critical incident training, child care and welfare management.

Recommendation 9

Amnesty International recommends that providing there is no risk to the community, asylum seekers and refugees should be released into the community while their claims are processed.

Recommendation 10

DIAC must resume the regular publication of the Immigration Detention Statistics Summary and make the document available on the DIAC website.

Introduction

Amnesty International has long campaigned for reform of Australian immigration detention practices to comply with Australia's international human rights obligations. Some of the submissions Amnesty International has made to Government on immigration issues include:

- **Universal Periodic Review – Australia**
Available at http://www.amnesty.org.au/images/uploads/ref/AIA-submission-HRC%2017_Australia%20UPR.pdf.
- **Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010**
Available at http://www.aph.gov.au/Senate/committee/legcon_ctte/migration_detentionreform_proceduralfairness/submissions.htm, Submission No. 23.
- **Migration Amendment (Character Test) Bill**
Available at http://www.aph.gov.au/senate/committee/legcon_ctte/migration_strengthening/submissions.htm, Submission No. 17.
- **Human Rights (Parliamentary Scrutiny) Bill 2010**
Available at http://www.aph.gov.au/senate/committee/legcon_ctte/human_rights_bills_43/submissions.htm, Submission No. 6.
- **National Security Legislation Amendment Bill 2010 and Parliamentary Joint Committee on Law Enforcement Bill 2010**
Available at http://www.aph.gov.au/Senate/committee/legcon_ctte/National_Security_Legislation/submissions.htm, Joint Submission No. 15.
- **Anti-People Smuggling and Other Measures Bill 2010**
Available at http://www.aph.gov.au/Senate/committee/legcon_ctte/antipeoplesmuggling/submissions.htm, Submission No. 16.
- **Migration Amendment (Complementary Protection) Bill 2009**
Available at http://www.aph.gov.au/Senate/committee/legcon_ctte/migration_complementary/submissions.htm, Submission No. 25.
- **Migration Amendment (Immigration Detention Reform) Bill 2009**
Available at http://www.aph.gov.au/Senate/committee/legcon_ctte/migration_2009/submissions.htm, Submission No. 39.

In particular, Amnesty International remains concerned with the policies of indefinite mandatory detention, excision and offshore processing.

Amnesty International welcomes the Joint Select Committee review of Australia's immigration detention network and is pleased to have the opportunity to participate in the inquiry. This inquiry represents a unique opportunity to thoroughly investigate broad aspects of Australia's immigration detention network and in doing so highlight areas for reform.

The Department of Immigration and Citizenship (DIAC) Secretary Mr Andrew Metcalfe raised some important questions for the Committee to consider during the course of this review into Australia's Detention Network. He asked,

“How do we manage reception? By this I refer not only to the policy of mandatory detention, but refer to the broader issue of how we manage unauthorised arrivals at our border, and indeed how we manage our detention network? Is immigration detention a deterrent? Does immigration detention facilitate case resolution? What range of facilities should be utilized? For how long is an immigration arrival and status determination process in a detention centre environment required?”¹

Amnesty International encourages the Committee to make recommendations to reform Australia's immigration system that would establish a human rights-based approach and ensure compliance with Australia's international obligations. Amnesty International reiterates that seeking asylum is a fundamental human right.

About Amnesty International

Amnesty International is a worldwide movement of more than 3 million people across 160 countries working to promote the observance of all human rights enshrined in *the Universal Declaration of Human Rights* and other international standards. Amnesty International undertakes research and action focused on preventing abuses of human rights, including rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination.

Protecting the rights of refugees and asylum seekers is an essential component of Amnesty International's global work. We aim to contribute to the worldwide observance of human rights as set out in the *Universal Declaration of Human Rights*, the 1951 *UN Convention of the Status of Refugees* ("Refugee Convention") and other internationally recognised standards. Amnesty International works to prevent human rights violations that cause refugees to flee their homes. At the same time, we oppose the forcible return of any individual to a country where it is probable that he or she would face serious human rights abuse.

Amnesty International Australia representatives regularly visit immigration detention facilities across Australia. In October 2010 the organisation inspected facilities in Darwin, Christmas Island and Curtin.

¹ Mr Andrew Metcalfe, 16 August 2011, *Opening Statement to Joint Select Committee on Australia's Immigration Detention Network*, available online at http://www.aph.gov.au/Senate/committee/immigration_detention_ctte/immigration_detention/submissions.htm, Additional Information Received, No. 1.

Background

Amnesty International has consistently called for reform of immigration detention practices in line with Australia's human rights obligations.

On 7 May 2011, the Government announced it had reached a 'transfer arrangement' with the Malaysian Government whereby Australia will send up to 800 asylum seekers who arrive in Australia by boat to Malaysia for refugee status determination. In return, Australia will resettle 4,000 refugees currently residing in Malaysia over four years.² Both the Senate and the House of Representatives passed motions condemning the arrangement and on 16 June 2011 the Parliament established the Joint Select Committee on Australia's Immigration Detention Network to conduct a comprehensive report into Australia's immigration detention practices. The Terms of Reference for the inquiry can be found in Attachment A.

This document is Amnesty International's submission to the Committee.

Key Issues

Mandatory detention contravenes international human rights agreements

Amnesty International remains strongly opposed to the policy of mandatory detention for immigration purposes. We are concerned that despite some positive steps the Government has taken to realign its immigration policy with international human rights standards, it has also repeatedly stated its commitment to mandatory detention.

Amnesty International considers the current system of mandatory, non-reviewable detention to contravene several international human rights agreements to which Australia is a party. Article 9 of the *International Covenant on Civil and Political Rights* (ICCPR) prohibits arbitrary detention and provides that a detained person must be able to take proceedings before a court. Mandatory detention is arbitrary because all 'unauthorised maritime arrivals' are detained, regardless of any individual considerations.

The Australian Human Rights Commission (AHRC) (formerly known as the Human Rights and Equal Opportunity Commission) argues that:

"To avoid being arbitrary, detention must be necessary and reasonable in all the circumstances of the case, and a proportionate means of achieving a legitimate aim. If that aim could be achieved through less invasive means than detaining a person, their detention will be rendered arbitrary. Australia's mandatory detention system fails to provide an individual assessment

² Minister for Immigration and Citizenship, 7 May 2011, *The regional cooperation framework*, (media release), available online at <http://www.minister.immi.gov.au/media/cb/2011/cb165079.htm>.

mechanism to determine whether the immigration detention of each person is necessary, reasonable or proportionate.”³

Articles 3 and 9 of the *Universal Declaration of Human Rights* also establish the right to liberty and freedom from arbitrary detention.

Furthermore, people in detention do not currently have access to courts for review. AHRC finds that this is a breach of Article 9 of the ICCPR.

“Further, under Australia’s international human rights obligations, anyone deprived of their liberty should be able to challenge their detention in a court. To comply with article 9(4) of the ICCPR, the court must have the power to order the person’s release if their detention is not lawful. The lawfulness of their detention is not limited to compliance with Australia’s domestic law – it extends to whether their detention is compatible with the requirements of article 9(1) of the ICCPR, which affirms the right to liberty and prohibits arbitrary detention.

Currently, in breach of its international obligations, Australia does not provide access to such review. While people in immigration detention may be able to seek judicial review of the domestic legality of their detention, Australian courts have no authority to order that a person be released from immigration detention on the grounds that the person’s continued detention is arbitrary, in breach of article 9(1) of the ICCPR.”⁴

Article 31(1) of the *Refugee Convention* provides that refugees should not be subjected to any form of punishment due to their illegal entry. The policy of mandatory detention punishes asylum seekers who arrive in Australia by boat simply due to their mode of arrival. People who arrive in Australia legally and then claim asylum are not subjected to this treatment. Treating asylum-seekers differently based solely on their mode of arrival places the government in contravention of its international obligations of equal treatment and protection before the law.

Furthermore, policies initiated by the government at various times, such as suspending the processing of applications from Sri Lankan and Afghan asylum-seekers, violate the principles of the *Refugee Convention* and the *International Convention on the Elimination of All Forms of Racial Discrimination*.⁵

In its concluding Observations following a review of Australia’s compliance with the International Covenant on Civil and Political Rights (ICCPR), the UN Human Rights Committee stated:

³ Australian Human Rights Committee, *Immigration and Detention Rights*, (website), available online at http://www.hreoc.gov.au/human_rights/immigration/detention_rights.html.

⁴ *Ibid.*

⁵ United Nations, *1951 Convention Relating to the Status of Refugees*, Article 3: “The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.” The action is also in violation of certain provisions in the International Convention on the Elimination of All Forms of Racial Discrimination, including Articles 1(3), 5(a) and 6.

“While noting with satisfaction the State party’s commitment to use detention in immigration detention centres only in limited circumstances and for the shortest practicable period, the Committee remains concerned at its mandatory use in all cases of illegal entry, the retention of the excise zone, as well as at the non-statutory decision-making process for people who arrive by boat to the Australian territory and are taken in Christmas Island. The Committee is also concerned at the lack of effective review process available with respect to detention decisions. (art. 9 and 14).

The State party should: a) consider abolishing the remaining elements of its mandatory immigration detention policy; b) implement the recommendations of the Human Rights Commission made in its Immigration Detention Report of 2008; c) consider closing down the Christmas Island detention centre; and d) enact in legislation a comprehensive immigration framework in compliance with the Covenant.”⁶

Amnesty International also considers that the detention of children breaches Australia’s responsibilities under the Convention of the Rights of the Child. The Convention states that a child should only be detained as a measure of last resort and for the shortest appropriate period of time. In 2004, an Australian Human Rights Commission inquiry found that mandatory immigration detention is,

“...fundamentally inconsistent with Australia’s obligations under the Convention on the Rights of the Child. Under the Convention, a child should only be detained as a measure of last resort and for the shortest appropriate period of time. The Inquiry also found that children in immigration detention for long periods of time are at high risk of serious mental harm.”⁷

In its Concluding Observations following a review of Australia’s compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT), the UN Committee Against Torture recommended that the Australian Government:

“Abide by the commitment that children no longer be held in immigration detention centres under any circumstances. Furthermore, it should ensure that any kind of detention of children is always used as a measure of last resort and for a minimum period of time”.⁸

Amnesty International encourages the Government to remove all children and their families from immigration detention centres as a matter of priority.

Furthermore, Amnesty International remains concerned about the ongoing conflict of interest that exists due to the Minister for Immigration and Citizenship being the legal guardian of

⁶ UN Human Rights Committee, April 2009, *Concluding Observations on Australia’s compliance with the ICCPR*, available at <http://www.hrlrc.org.au/content/topics/civil-and-political-rights/human-rights-committee-concluding-observations/>, paragraph 23.

⁷ Human Rights and Equal Opportunity Commission, *Asylum Seekers and Refugees Q and A*, (website), available online at http://www.hreoc.gov.au/human_rights/immigration/detention_rights.html.

⁸ UN Committee Against Torture, May 2008, *Concluding Observations on Australia’s compliance with the CAT*, available at <http://www.hrlrc.org.au/files/CX9F5DW2WB/Australia%20CAT%20COBs.pdf>, p.8.

unaccompanied minors under the *Immigration (Guardianship of Children) Act 1946*. Under the Convention on the Rights of the Child, the legal guardian has a duty to act in the best interests of the child.⁹ This conflicts with the Minister's role in immigration matters, particularly in creating and applying detention laws and especially in relation to offshore asylum applications.

In its landmark report, *A last resort? National inquiry into Children in Immigration Detention*, the Australian Human Rights Commission recommended that,

“...Australia's laws be amended so that the Minister is no longer the legal guardian of unaccompanied children. This is the only way to ensure that the role of the Minister (and the Department) as visa decision-maker and detention authority is separated from the role of advocate for the best interests of unaccompanied children.”¹⁰

Amnesty International supports this recommendation.

The indefinite nature of detention

Under current Australian law, asylum seekers, including children and unaccompanied minors, can be detained for an indefinite period while their claims for refugee status are being assessed. They often have little information about the progress of their application and have no idea when their detention will end.

Amnesty International is still particularly concerned about the length of time it takes to process large numbers of people in detention. According to the most recent statistics provided by the Department of Immigration and Citizenship (DIAC) (current at 20 May 2011), 68 per cent of the 6,729 people in detention at the time had been in detention for longer than 6 months¹¹. 175 people had been in detention for longer than 18 months, 29 of whom had been in detention for greater than two years¹². It should be noted that DIAC has not provided an update to Immigration Detention Statistics Summary since 20 May 2011 and it is no longer available on the DIAC website.

⁹ United Nations, *Convention on the Rights of the Child*, 1989, available at <http://www2.ohchr.org/english/law/crc.htm>, Article 3.

¹⁰ Australian Human Rights Commission, *A last resort? National inquiry into children in immigration detention*, available at http://www.hreoc.gov.au/human_rights/children_detention_report/report/chap17.htm#17_3, Chapter 17.

¹¹ Department of Immigration and Citizenship, Immigration Detention Statistics Summary, 20 May 2011, archived online at http://pandora.nla.gov.au/pan/115165/20110622-0005/www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20110520.pdf.

¹² Ibid.

Asylum seekers interviewed by Amnesty International in October 2010 expressed frustration at the time elapsed between interviews and the lack of communication about the progress of asylum claims.

“Amnesty International representatives met a number of Kurdish families from Iran in Darwin who had had their first application rejected but were only provided with the notification letter three months after it was dated, resulting in a three month delay before they could commence the lengthy appeals process and an additional three months in detention. In Darwin Amnesty International also met approximately 30 Rohingyans from Burma who had been granted protection visas but five months later were still being detained as their security clearances had not been finalised.”¹³

Also of great concern is the Government’s failure to develop guidelines to respond to asylum seekers who are found to be refugees (or are in need of complementary protection) but who receive a negative security assessment from the Australian Security Intelligence Organisation (ASIO). These people cannot be sent back to their country of origin and are effectively being kept in indefinite detention with no prospect of release. Such is the case of around 30 people currently in detention – mostly Tamils from Sri Lanka, including families with small children, one who was born in detention and is now a year old. Some of these refugees have been in detention for more than two years.

For detainees not recognised as refugees and not able to be returned to their country of origin or sent to a third country to which they had legal attachment, mandatory detention can be both protracted and punitive in effect: such individuals have no definite date of release, no legal remedy, and are forced to remain for extended periods in an institution that is not designed to accommodate inmates for long periods.

Amnesty International encourages the Australian Government to consider a system such as that operating in New Zealand where an independently appointed Inspector General has oversight of New Zealand Security Intelligence Service findings on refugee cases. No decisions are publicly available but the independent oversight ensures a measure of accountability which is lacking from the current Australian process.

The Government should consider extending the jurisdiction of the Administrative Appeals Tribunal (AAT) to allow merit review of adverse security assessments of refugees. The Government should also consider reforming the ASIO Act, so that at a minimum refugees can challenge security assessment decisions in the same way that Australian citizens and permanent residents can. Amnesty International recommends that the required amendment to the ASIO Act add the following subsection to ss36(b):

“(iv) a person who satisfies the criterion in subsection 36(2) of the *Migration Act 1958*,”

¹³ Amnesty International, 3 November 2010, *Report on Immigration Detention Conditions – October 2010*, provided to the UN Committee Against Torture, p. 2.

The impact of detention on mental health

There is considerable evidence suggesting that lengthy periods of time spent in detention have a negative impact on detainees. Amnesty International asserts that the indefinite nature of immigration detention, combined with the remote location and inadequacy of facilities, as well as a lack of access to services have a detrimental effect on detainees, even leading to mental illness, suicide and other destructive behaviour. This is evidenced by the high rates of mental illness, self-harm and suicide among detainee populations.

Amnesty International's Submission to the UN Committee Against Torture noted that:

"The levels of distress among detainees at all the centres were noticeable to Amnesty International staff, with men and women breaking down within minutes of speaking with Amnesty International. Medical staff advised Amnesty International that reported incidents of self harm were rising, particularly on Christmas Island. Dozens of men had visible scars on their wrists and others admitted to having tried to hang themselves in recent days."¹⁴

The Australian Medical Association (AMA) suggests that prolonged immigration detention puts detainees at a higher risk of mental illness.¹⁵ Research published in the Medical Journal of Australia shows that detention can provide a 'retraumatising environment' for detainees, who have often already had traumatic experiences.¹⁶

In a speech to the AMA Parliamentary Dinner on 17 August 2011, Dr Steve Hambleton, AMA President, clearly voiced the opinion of the medical community on the effects of detention on asylum seekers.

*"The AMA believes that the system of mandatory detention of asylum seekers is inherently harmful to the physical and mental health of detainees. The harm is especially acute in the case of children. Despite improvements in the provision of health care to immigration detainees, the policy of mandatory detention and the remote location of most detainees mean that the health status of detainees continues to decline."*¹⁷

¹⁴ Amnesty International Australia, November 2010, *Submission to the UN Committee Against Torture*, available at <http://www.amnesty.org.au/images/uploads/ref/Australia-immigration-detention-conditions-oct2010.pdf>.

¹⁵ Australian Medical Association, 17 January 2010, *Prolonged immigration detention puts detainees at higher risk of mental illness*, available online at <http://ama.com.au/node/5277>.

¹⁶ Australian Medical Association, 18 December 2001, *Mental health impact of detention on asylum seekers*, available online at <http://ama.com.au/node/333>.

¹⁷ Dr Steve Hambleton, 17 August 2011, *Speech to the AMA Parliamentary Dinner*.

In May 2011, during her visit to Australia, the United Nations High Commissioner for Human Rights, Ms Navi Pillay, also criticised the policy of mandatory detention of asylum seekers, saying it has led to suicides, self-harm and trauma.¹⁸

During visits to Immigration Detention Centres Amnesty International representatives were told by detainees that ongoing periods of detention lead to feelings of stress and tension, despair, helplessness and depression. Some detainees showed strong aggressive-impulsive and self-harming behaviours, reflected in cutting and suicide attempts. On a broader scale, these behaviours have manifested in acts of mass violence, group break-outs, rioting, burning of facilities and hunger strikes.

Amnesty International does not condone violence or criminal behaviour committed by detainees in immigration detention. However, it is clear that the conditions inside detention centres contribute to such behaviour.

Amnesty International continues to assert that the detention of individuals must have legislated reasonable maximum time limits. After this limit is over, assuming an individual does not pose a risk to the community, the individual should be automatically released.¹⁹

Conditions in Detention Centres

In October 2010, Amnesty International representatives visited Australian immigration detention facilities in Darwin, Curtin and Christmas Island to witness first-hand the conditions of the facilities, services for detainees and the impact of detention on detainees.

Amnesty International spoke with senior DIAC officials as well as staff from Serco, the privacy company contracted to run the operational aspects of the facilities. The delegation also privately interviewed the independent medical and mental health teams, including the torture and trauma counselors as well as representatives of different volunteer organisations that run some of the activities. The delegation also spoke to several hundred asylum seekers in the different centres with interpreters. Some of these discussions were in groups and some were one-on-one. All of the interviews were conducted in private without an Australian official present.

The resulting report on Immigration Detention Conditions was submitted to the UN Committee Against Torture on 3 November 2010.²⁰ The following excerpts from that report provide evidence about conditions in immigration detention and the impact of detention on detainees.

¹⁸ ABC Radio Australia News, 26 May 2011, *Australia defends mandatory detention policy for refugees*, available online at <http://www.radioaustralianews.net.au/stories/201105/3226706.htm?desktop>.

¹⁹ Amnesty International Australia, August 2008, *Submission to The Joint Standing Committee on Migration Regarding the Inquiry into Immigration Detention in Australia*.

Limited access to services

Mental health resources are under severe strain across all the facilities. Psychologists in the different detention centres have raised concerns that extended periods of detention are diminishing the ability of people to cope with their situation. They recommended that several at risk individuals be removed from detention and placed either in a regional hospital where they can access around the clock psychological support or in the community where additional services could also be provided. While Department of Immigration staff are aware of these cases, the lack of capacity in regional hospitals and centres makes these transfers logistically very difficult and therefore occur only rarely.

Welfare experts working with asylum seekers have also raised concerns that there is insufficient training for government and contractor staff who have the primary responsibility for the welfare of asylum seekers. With growing numbers of detainees, contractor and government staff recruitment is ballooning, many arriving on site with minimal training or experience. Asylum seekers often mentioned that they were worried at the varying levels of quality in interpreter services they were receiving. Many pointed out to AI staff examples of where their cases had been interpreted incorrectly and the names and details of their family members were wrong. AI met with some interpreters who were not coping with their assignments and were themselves often in tears. No formal debriefing processes are available to interpreters who must accompany asylum seekers to all immigration, police and medical interviews as well as torture and trauma counselling sessions. AI is concerned that interpreters are not receiving adequate psychological support.

Christmas Island Detention Centre

Out of all the detention centres AI visited, the Christmas Island detention centre could most be likened to a maximum security prison with its heavy steel reinforced doors and electrical fences lining the perimeters. The men are subject to lockdowns three times a day where they are locked behind metal roll-down doors in their compounds for welfare checks (during meal times) between 7-8 am; 12-1pm and 5-6 pm.

The AI delegation was extremely concerned at the deterioration in the mental wellbeing of men detained in the detention centre with reported cases of self harm and attempted suicides on the rise. Several hundred men approached AI staff to express their anxiety and frustrations during the delegation's walk through the compound.

²⁰ The full text of the submission to the UN Committee Against Torture, 3 November 2010, is available online at <http://www.amnesty.org.au/images/uploads/ref/Australia-immigration-detention-conditions-oct2010.pdf>.

DIAC advised AI that there had been a few hunger strikes in the last few months, most recently by two Afghans whose appeal against their negative asylum assessment was also rejected. One man refused to eat for two days and the other one for three.

According to staff a number of men had been in detention for over 16 months, 140 had been detained for over a year and over 1000 had been on the island for over six months.

With only 26 case managers working out of the detention centre, each case manager has a case load in excess of 76 clients. An additional 11 case managers are expected to be recruited shortly.

Adding to the pressures are the numbers of men in the centre. The surge facility which has 140 beds in the visitors and property area is currently full and 229 men were being detained in large tents where 40 men slept in each. These often flood during heavy tropical downpours and the demountable bathrooms next to the tents often flood with water as well. Senior Serco staff in charge of the operational components of the centre have also expressed their concern to DIAC representatives at the ongoing use of these tents, which were erected a year ago as a temporary measure. Serco have described these as being unacceptable and inappropriate.

Lack of adequate medical and mental health resources

The medical and mental health clinics are overrun. The medical clinic has on average 75 scheduled consultations a day including 45 appointments between four nurses and 30 consultations between two general practitioners. Additionally there are usually about 30 'walk-ins' a day.

There are four mental health nurses rostered on at one time but there is only one mental health room. Therefore three mental health consultations at any given time occur in the clinic's corridors or in the metal cage immediately outside the medical clinic. Neither the corridors or the metal cage are appropriate places to conduct confidential counselling sessions with often distressed individuals as their conversations can easily be overheard and other asylum seekers can see who is receiving counselling. Medical and mental health staff also acknowledged there had recently been incidents of self harming and suicide attempts and expressed their concern that the detention centre is not an appropriate environment for suicidal people. Also of concern to the medical and mental health staff is the limited number of interpreters available to the clinic. If interpreters of a particular language group are indisposed on a particular day, the clinic is not able to see anyone from that client cohort.

Torture and trauma counselling is outsourced to a local psychologist based at the Christmas Island Hospital. He and his two other counsellors see on average four torture and trauma survivors a day. The hospital was not developed to house such a specialised clinic. An additional demountable unit is being erected alongside the hospital to cater for the torture and trauma clinic.

The availability of interpreters is also a persistent problem for the torture and trauma clinic. The psychologist warned that the majority of the men in the detention centre were really struggling and the prolonged detention was worsening their conditions. He added that some of his patients require a lot more psychological support than is available on the island and need to be sent to a hospital on the mainland. Unfortunately many of the places on the mainland were also full. He acknowledged that DIAC and Serco staff always listened to his team's recommendations but there were still a number of his patients who should not be in detention.

Between 200 and 300 men are on the dental waiting list.

Activities

Every Saturday and Sunday a group of 35 men is taken on an excursion around the island. The groups are rotated with those being in detention longer going first but given the numbers of men in the detention centre, each person is likely to go on an excursion about once every six months.

Over 500 men participate in English classes a day, between 1900 and 2000 signatures are collected for structured activities a day and 300 men use the gym daily. There are also regular soccer and volleyball tournaments which are well attended.

However, Serco recognised that the centre needs to develop more activities for detainees, but some facilities where these could take place were being used to accommodate more asylum seekers.

Access to phones and internet portals

Across the main compounds which hold 1406 men, there were 34 phones and 23 computers with internet access.

Compounds Lilac and Aqua

Since AI's last visit to Christmas Island, these two new compounds were erected at the back of the detention centre in which 582 men were detained in demountable units.

The men can access the main compounds via a long unpaved but caged footpath during the day. Medical staff indicated that the distance from the main centre made it difficult for men who needed to access the medical clinic. The conditions in these two compounds were some of the worst on the island.

Across these two compounds there were 12 phones and 13 computer terminals.

Compound Bravo

At the time of AI's visit there were 172 men being kept in a secure compound made up of demountable units and large tents, across the road from the 'Construction Camp' APOD. The compound was being used as an overflow from the detention centre nearby. The compound holds primarily Tamil asylum seekers, as well as few Afghan and couple of Vietnamese men.

Men who experience bullying in the main detention centre are usually brought here as this is a smaller area. DIAC and Serco staff advised that bullying was a lot less frequent in this compound.

Sixty-four Tamil men had been in Compound Bravo for 11 months or more. Several had been in detention for over 15 months. Three Tamil men showed AI where shrapnel fragments were still lodged in their arms, legs and torsos from fleeing the conflict in Sri Lanka. They complained of being in extreme pain and having to wait for several months before being able to undergo surgery due to the limited number of surgeons on the island. Similarly to other centres, chronic pain was only managed by regular pain killer medication. Those suffering from severe pain complained that they were not provided with stronger pain relief medication.

The conditions in Compound Bravo are dire, with the compound resembling a dust bowl with virtually no shaded areas and the bathroom blocks smelling of raw sewage. A really strong odour could be smelt throughout one of the tents in which 40 men slept. DIAC staff advised that this had been an ongoing problem for the last three months. Like the tents in the main detention centre, the air-conditioning routinely broke down leaving 40 men in each tent to sleep in the tropical heat, and the tents flooded during heavy tropical downpours.

Serco admitted that men detained in Compound Bravo had 'less than everyone else on the island'.

Construction Camp APOD

In total there were 465 people held at the Construction Camp APOD including 147 'UAMs', 82 accompanied children and 87 women. AI maintains that the conditions in which 'UAMs' and children are kept here are inappropriate.

The site consists of demountable units, tightly packed in together and under 24 hour security. Women and children cannot leave the compound without being escorted.

Some 'UAMs' have been detained there for six months. Two staff from Life Without Barriers, (the not-for-profit organisation contracted to provide additional support to UAMs) work with them and must accompany them to all of their immigration, police and health interviews. Interviews cannot happen without a Life Without Barriers person in attendance which further prolongs the process as there are only two on the island.

In interviews it was mentioned that boredom was a contributing factor to some incidents on site between the 'UAMs' including bullying, fights and petty theft. Also of concern is the

inconsistency in basic childcare training among DIAC and Serco staff. Serco and DIAC case managers reportedly do not have the time, resources or adequate training to properly look after the children's welfare. Also noted were the lack of adequate physical resources to keep children including 'UAMs' occupied.

Schooling

The local Christmas Island school currently provides schooling in different formats for 120 asylum seeker children. All children under 13 years of age attend specially tailored classes down at the school. Another classroom has been established next to the Construction Camp in a demountable unit. At the time there were 30-40 children who were still waiting to attend school at either location.

The format has been changed for those that go to school next to the Construction Camp, in order to allow for more children to participate. Two staggered sessions are run a day consisting of two hours in the class room and one hour outside.

The teachers have observed that children are currently staying longer on Christmas Island. In the past, the average stay was three months. Some Sri Lankan children have been attending school for between 6 and 12 months. Asylum seeker parents are able to help as teachers aids up in the Construction Camp classrooms for sessions where their own children are not attending.

Darwin

At the time of AI's visit 736 people were being kept in immigration facilities in Darwin. This included 363 men in the Northern Immigration Detention Centre and 370 in the two Alternative Places of Detention (APODs) where families with children, women and 'UAMs' are kept.

Northern Immigration Detention Centre (NIDC)

A month before AI's visit there were two incidents in the NIDC which received substantial national media coverage. On 1 September, about 70 Afghan asylum seekers broke out and held a peaceful protest by the side of the road. They told reporters that they were terrified of being forcibly returned to Afghanistan²¹. The protest was resolved several hours later. Five men who participated in the action were taken to hospital. The remainder of the men were taken to the police watch-house overnight and are now subject to an ongoing police investigation into the break-out and action. In a statement the DIAC advised that some of the

²¹ L.Statham and L.Martin, 'Riot leads to mass breakout at NT Detention Centre', *The Herald Sun*, 1 September 2010 available at: <http://www.heraldsun.com.au/news/national/riot-leads-to-mass-breakout-at-nt-detention-centre/story-e6frf716-1225912626834> (last accessed 17 October 2010)

men had been told that their protection claims had been unsuccessful²². Some of the men involved in the protest have since been transferred to the Curtin detention centre as part of a 'prudent detainee management measure'²³.

Days previously, at 4am on 29 August, about 117 Indonesian crew members facing charges of people smuggling started a riot in which they smashed some computer terminals and set mattresses on fire, while some climbed onto the roof brandishing metal poles²⁴. The riot is understood to have started as a result of the growing frustration by the Indonesian crew members at the time it was taking for them to have their charges heard in court²⁵.

The riot highlights the problem of detaining suspected people smugglers in the same location as asylum seekers. When AI inspected the premises a month later, while some asylum seekers requested to be separated, others complained that they had to be moved out of their compound during the riots and were still in different compounds. They felt they were being unfairly punished for actions they did not take part in. Many of the computers which were damaged had yet to be replaced, another source of tension between the Indonesian crew and the asylum seekers.

About 80 percent of the men in NIDC were Afghan asylum seekers. There are also a few Myanmar Rohingyans who were still in detention waiting for their security clearances despite being notified they would be granted protection visas approximately 4 months ago.

Physical and logistical overview of NIDC

The NIDC is made up of four compounds. The detention centre was at 66 percent capacity with the maximum capacity currently being 570. There was no evidence of overcrowding and the men detained there were able to access the different compounds.

The compounds comprise of identical air-conditioned demountable structures that house two men in each and have ensuites. Shower blocks and toilets are also mounted in each compound.

²² Department of Immigration and Citizenship, "NIDC protest resolved" (media release), 1 September 2010 available at: http://www.newsroom.immi.gov.au/media_releases/845?page=2& (last accessed 17 October 2010)

²³ Department of Immigration and Citizenship, "Darwin detainees transferred to Curtin" (media release) 2 September 2010 available at: http://www.newsroom.immi.gov.au/media_releases/848?page=2& (last accessed 17 October 2010)

²⁴ *The Australian*, "Riot continues at Darwin Centre", 30 August 2010 available at: <http://www.theaustralian.com.au/news/nation/riot-continues-at-darwin-detention-centre/story-e6frg6nf-1225911963206> (last accessed 17 October 2010).

²⁵ L.Kerin, "Police probe detention centre riot", *ABC News* available at: <http://www.abc.net.au/news/stories/2010/08/30/2996715.htm> (last assessed 17 October 2010).

It is important to note that the centre has seen a dramatic shift in its client cohort. The centre was originally designed to accommodate illegal foreign fisherman who are normally held for a period of two weeks to a month before being sent back to Indonesia. These men were often taken on excursions into the centre of Darwin and the Darwin community was accustomed to this taking place.

Since April, the Immigration Minister announced that asylum seekers would be transferred to Darwin as the facilities on Christmas Island were overflowing²⁶. The NIDC is not equipped to cater for the needs of these new arrivals who have different needs and remain in detention for much longer periods.

It is evident that both DIAC staff and Serco have been scrambling to introduce adequate facilities and services to cater for the special needs of asylum seekers.

The NIDC does not provide the recreational activities as in the past, such as for taking detainees off site for outings. The number of men being held there previously was significantly less with the occupancy rate of the centre never in the past reaching 100.

Excursions

As a result of the sheer numbers in the facility, DIAC and Serco have not been able to run excursions for the men who are therefore not able to leave the IDC other than for medical appointments. In a positive development however, the week before AI visited a trial visit to the local Mosque took place with 10 men. DIAC hopes that this program will be successful and they will be able to systematically increase the number of men they can take on a rotation basis to attend Friday prayers at the Mosque. The Indonesian detainees continue to have regular excursions.

Activities

As in all immigration facilities, the provision of activities is the responsibility of Serco. Structured and unstructured activities are on offer. Unstructured ones involve fully equipped gymnasiums, pool tables and a volleyball court. Structured activities run in the morning and afternoon and include different level English classes, cooking classes, religious lectures, Australian culture classes and movie nights. Karaoke nights are also regularly scheduled. A football coach also comes to the centre once a month to run sports clinics.

Other facilities in the process of being introduced include: a library; garden beds in each compound to enable the men to grow their own vegetables, herbs and flowers; regular soccer

²⁶ Senator Chris Evans Minister for Immigration and Citizenship, "Curtin to hold suspended asylum seekers" (media release), 18 April 2010 available at: <http://www.minister.immi.gov.au/media/media-releases/2010/ce10030.htm> (last accessed 17 October 2010)

competitions which the men will be in charge of coordinating; and tours of Darwin for the most at risk individuals.

Access to phones and internet portals

Given the dramatic influx of men being detained at the NIDC, Serco has been struggling to provide enough phones and internet portals for the men to call and email their families. In one of the compounds there are only 2 phones for 220 men. Six phones were recently installed in a compound with 173 men. In that same compound there were also only four computers.

Alternative Places of Detention (APOD)

Women, families with children and 'UAMs' are housed in these APODs which are monitored by security guards 24 hours a day. Asylum seekers are not allowed off the premises without an escort. This usually only occurs for medical appointments or for parents to visit their children at school.

DIAC and Serco staff recently commenced taking small groups - a maximum 20 at time - from the APODs on excursions to the beach three times a week. Following the two incidents at the NIDC, the excursions have temporarily stopped as DIAC described the need to regain the confidence of the Darwin community and law enforcement agencies.

As of 10 September 2010, asylum seeker children between the ages of 5 and 15 who have finished undergoing health checks started attending local Darwin schools in dedicated classroom spaces²⁷. When AI visited, 64 children were attending local schools.

DIAC and Serco staff was currently examining options for younger and older children to have access to other schooling options. A local university is hoping to be able to commence in the near future a pre-school program for children under five. At the moment there are no designated activities for these children either at the Asti Motel or the Lodge APODs; a source of great concern for the children's parents.

At the time of the visit there were also 14 pregnant women in the Darwin APODs. AI met with a woman who had recently miscarried. She believed the uncertainty of her current situation and the stress she was under were significant contributors to her miscarriage. AI also heard reports of mothers not being able to produce enough breast milk for their babies due to the stress they were under.

The Asti Motel APOD

²⁷ DIAC, "Asylum seeker children to attend school in Darwin" (media release), 10 September 2010 available at: http://www.newsroom.immi.gov.au/media_releases/850?page=1& (last assessed 14 October 2010)

Like the NIDC, the Asti Motel used to house illegal fisherman. Now DIAC has sole occupancy of the sight. When AI visited, the motel was full with 176 asylum seekers including 28 'UAMs' from Afghanistan and 30 children who had come with their family.

The site was extremely overcrowded with families living in very close proximity to each other. Despite the extreme heat, there is practically no shade or areas where children can play. There is no grass area either as the site is all concreted. There is no suitable space for activities to be conducted.

Many of the women AI spoke to feared they were losing their minds from boredom and anxiety at the uncertainty of their situation. Many mentioned that they were struggling to cope with the extreme heat and lack of activities. All of them had been transferred from Christmas Island where they had been able to go under escort to the nearby recreational centre, had been able to play sports and exercise as well as attend women's groups, and more English classes.

The women told AI that nearly all of them were on anti-depressant and sleeping medication.

The asylum seekers residing in the Asti APOD were predominantly Iranian, Iraqi, Sri Lankan and Kurds from Iran. Many of the Kurdish families had been notified days before AI's visit that their protection claims had been rejected. They were yet to begin their review process. Many were particularly distressed and cried when AI staff spoke to them.

Many of the families at the Asti had been held in an immigration facility either on Christmas Island or at Darwin for between seven and nine months. For some it had been over five months since their last interview had taken place. One Kurdish family waited seven months before being rejected and then waited another three months before their appeal process had begun.

The Lodge APOD

At the time of AI's visit there were 185 people at the Lodge APOD including 92 'UAMs' and 30 accompanied children. The centre is currently being expanded to house 400 people.

There are more activities for children at this site as it has a higher number of 'UAMs'. Like the Asti APOD, asylum seekers are not allowed to leave the site unescorted. However, compared to the Asti, the site is considerably more hospitable with more shaded areas, an oval and playgrounds mounted in different parts of the site. The rooms are also significantly larger and the site itself is a lot larger enabling people a greater area to walk around.

Curtin

As of June 2010, Afghan asylum seekers started being transferred to the newly re-opened Curtin Detention Centre more than 2,200 kilometres away from Perth in the Western Australian desert. AI staff spent two days inspecting the premises and speaking to asylum

seekers. On both days temperatures exceeded 43 degrees Celsius. Temperatures and humidity levels are expected to rise even higher during the approaching wet season.

At the time of the visit there were 749 Afghan male detainees in the facility. Nearly all of them were subject to the six month suspension of processing asylum claims from Afghanistan which ended in early October. As a result of the suspension there is a backlog of over 2000 Afghan asylum seekers who were yet to commence their application for asylum across all the detention facilities. The men in the Curtin Detention Centre had been advised that it would be at least another six months before the outcome of their first application is determined. For those whose application is rejected and chose to appeal it through the Independent Merit Review process, it could be a further six months before a second decision is made. It is therefore highly likely that many asylum seekers will spent at least 18 months in detention. At this stage there is no plan to transfer asylum seekers who will have been in detention for a long time to less remote sites.

Construction is currently underway to expand the centre's capacity to 1200.

Physical and logistical overview of centre

Asylum seekers, DIAC staff and Serco contractors all acknowledged that access to activities and services had dramatically improved since the first arrivals in June. For instance, the two torture and trauma counsellors had only arrived a few days before AI's visit and were therefore only beginning to provide specialised counselling to the 56 men who were identified as needing torture and trauma counselling. The medical clinic and mental health teams are under strain to provide adequate health services to the men. The health team had 18 members: two torture and trauma officers, three mental health nurses, one mental health leader, one psychologist, two General Practitioners, four nurses, two paramedics at night, and three administration staff. The team was hoping to expand to 25.

Many of the men spoke of the delays in being able to see a doctor and the lack of prescription pain medication to deal with acute or chronic pain from injuries they suffered before coming to Australia. The mental health team sees between 20 and 24 men a day and runs clinics six days a week. Up until the recent arrival of the specialist torture and trauma counsellors, the mental health team were not able to provide torture and trauma survivors with the specific counselling they required, and instead were only able to provide them with more generic supportive sessions. There is a perception among many of the men that requesting mental health support, either in the form of torture and trauma counselling, or more general assistance, will be detrimental to their application process. Unlike the Christmas Island detention centre, there have been very few instances of self harm since the re-opening of the centre in June. Only one man was at the time considered to be at risk.

Those needing to see a specialist have to join a waiting list, which is usually quite long because of the shortage of specialists in northern Western Australia. At the time twenty men

were waiting to see a specialist. One man who had been transferred from Christmas Island had been identified as needing to see a cardiologist. He died of a heart attack soon after arriving at Curtin before he could see a cardiologist.

Every week four men are taken to Broome, approximately 220 kilometres away, for dental appointments. Over 90 men had outstanding dental referrals.

Activities were still in the process of being implemented and staff were still being recruited. Of particular concern was the caseload for DIAC case managers. Each case manager was assigned 47 cases.

The majority of men are housed in demountable units, each holding three men. Unlike in the Darwin Detention Centre, each unit did not come with an ensuite so the men had to use communal bathroom blocks. Some men were housed in dormitories that slept 25 men in each.

All of the men AI spoke to preferred being in the Curtin Detention Centre to the one on Christmas Island as they were able to walk around freely between different compounds and there were no lockdown periods in Curtin. A client-reference group was recently established, with a delegate appointed from each block. The group meets regularly to discuss some of the issues that asylum seekers are facing as well as different requests for services.

Activities

There are two full-time English teachers who provide different level classes. Some of the men who speak English also run their own classes. Music and art classes also run on site every day as well as other activities which SERCO run. One initiative which is proving to be quite popular, especially with the older men, is the new aquaponics and horticulture classes which teach the men how to farm fish, compost and grow plants and vegetables. The vegetables that are grown out of this process will be donated to a local program that helps to feed local disadvantaged children.

Football and volleyball tournaments are also run regularly.

Excursions

Due to the extreme remoteness of the site, there are no excursions out of the centre. Some local volunteer groups including church groups and local Aboriginal communities have started visiting.

Access to phones and internet portals

Across the different compounds there are currently 20 computers and 15 phones. Another 20 computer terminals have been ordered and are expected to be installed shortly. The phone lines to the centre have to be routed through the same mobile tower that services the local township of Derby 30 kilometres away. Calls made and received by both the township and the

centre impact on each other's ability to get through. While DIAC is putting in further infrastructure to deal with this issue, it does highlight the lack of existing infrastructure in such remote areas to cope with such large numbers of asylum seekers.

Detention as a last resort

In April 2009, Amnesty International released a report entitled, *Irregular migrants and asylum seekers: alternatives to immigration detention*.²⁸ This document highlights the need for a legislated presumption against the use of immigration detention, arguing that alternative non-custodial measures should always be considered first and given preference before resorting to detention.

Detention of irregular migrants and asylum seekers will only be lawful when the authorities can demonstrate in each individual case that alternatives will not be effective, that it is necessary and proportionate to achieve one of three recognised legitimate objectives: to prevent absconding, to verify identity or to ensure compliance with a removal order. In all cases where detention is used it must be on grounds prescribed by law.

Amnesty International is also concerned that a measure "of last resort" is a vague term that lends itself to a wide range of interpretations. To ensure clarity, transparency and fairness in the process, Amnesty International recommends that clear guidelines be established to determine what constitutes a 'last resort'.

Compliance with the Immigration Detention Values

At present, Amnesty International does not consider that practices in the immigration detention system are compliant with the Key Immigration Detention Values²⁹.

On 29 July 2008, the then Minister for Immigration and Citizenship, the Hon Senator Chris Evans, explained that the Key Immigration Detention Values had been adopted to facilitate changes to the immigration detention system. He said,

"...the set of values adopted are designed to drive the development of a very different detention model."

²⁸ Amnesty International Australia, *Irregular migrants and asylum seekers: alternatives to immigration detention*, April 2009, AIA POL 33/001/2009.

²⁹ Department of Immigration and Citizenship, *Key Immigration Detention Values*, available online at <http://www.immi.gov.au/managing-australias-borders/detention/about/key-values.htm>.

However, it is clear that this has not been the case, as the Key Immigration Detention Values are not being upheld in practice and have done little to guide the development of a different detention model.

Children in detention

The third Key Immigration Detention Value states that:

“Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre (IDC).”

According to latest estimates, there are over 300 children currently in immigration detention, a clear breach of this value.³⁰ Further to this, of great concern are the 60 Indonesian boat crew members who claim to be under 18 years of age who are being held indefinitely and treated as adults in Australian maximum security jails and immigration detention centres.³¹

Indefinite detention

The fourth Key Immigration Detention Value states that:

“Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.”³²

It is evident that there are people being held indefinitely in immigration detention. Asylum seekers who are found to be genuine refugees, but whose applications fail due to a negative security assessment and who have exhausted all options for review are at risk of being held indefinitely.

Clearly, detention practices are not currently compliant with the Key Immigration Detention Values.

Amnesty International has developed its own set of immigration detention principles that establish a human rights-based approach to immigration practices. The table below contrasts these values with the current Immigration Detention Values.

³⁰ Minister for Immigration and Citizenship, 29 June 2011, *Government meets commitment on community detention*, (media release), available online at <http://www.minister.immi.gov.au/media/cb/2011/cb167699.htm>. If 62 per cent of children (588 children) have been moved to community detention, then 38 per cent (around 360) remain in detention.

³¹ Murdoch, L., 15 June 2011, “Jailing of boys an ‘abuse of rights’”, *The Age*, available online at <http://www.theage.com.au/national/jailing-of-boys-an-abuse-of-rights-20110614-1q1yt.html>.

³² Department of Immigration and Citizenship, *Key Immigration Detention Values*, available online at <http://www.immi.gov.au/managing-australias-borders/detention/about/key-values.htm>.

| Amnesty International principles for immigration detention | Current Immigration Detention Values |
|--|---|
| <p>Immigration detention should be governed by standards that protect human rights and dignity, including those set out in the UN <i>Minimum Standards for the Treatment of Prisoners</i>, and the <i>Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment</i>.</p> | |
| <p>Immigration detention should not be mandatory. The need for detention should be individually assessed and used as a last resort only where there is a proven need to undertake health, character, identity or security assessments.</p> <p>Immigration detention should not be used to discourage asylum seekers, as this contravenes obligations under the Refugee Convention.</p> | <p>1. Mandatory detention is an essential component of strong border control.</p> <p>2. To support the integrity of Australia's immigration program, three groups will be subject to mandatory detention:</p> <ul style="list-style-type: none"> a. all unauthorised arrivals, for management of health, identity and security risks to the community b. unlawful non-citizens who present unacceptable risks to the community and c. unlawful non-citizens who have repeatedly refused to comply with their visa conditions. <p>4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.</p> |
| <p>Immigration detention should never be used for an indefinite duration. The psychological impact of indefinite detention is irrefutable, breaching international principles of humane treatment of persons in detention and the prohibition of cruel, inhumane or degrading treatment.</p> | <p>5. Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.</p> <p>3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre (IDC).</p> |
| <p>Immigration detention should be applied in accordance with clear legal criteria and subject to judicial review, while also being transparent and accountable.</p> | <p>6. People in detention will be treated fairly and reasonably within the law.</p> <p>7. Conditions of detention will ensure the inherent dignity of the human person.</p> |

Repealing excised offshore places

Amnesty International considers that offshore processing of asylum seekers, such as on Christmas Island, in Malaysia, on Manus Island (Papua New Guinea) or on Nauru, circumvents important domestic and international legal protections for refugees.

Amnesty International has repeatedly urged the Government to reinstate Christmas Island and other excised territories to Australia's migration zone and to abolish the two-tiered system of processing asylum seekers. The current system effectively allows for asylum seekers who have reached the mainland, and those who are intercepted by boat outside the zone, to be treated differently.

Furthermore, the practice of offshore processing seems to create inconsistency in the application of immigration law for certain parts of the Australian territory, and yet still provides no guarantee that asylum seekers processed on Christmas Island, or the other excised zones who are found to be genuine refugees, will be resettled in Australia.

In its Concluding Observations following a review of Australia's compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT), the UN Committee Against Torture noted that,

'...“excised” offshore locations, notably Christmas Island, are still used for the detention of asylum seekers who are subsequently denied the possibility of a visa, except if the Minister exercises discretionary power.

The State party should end the use of “excised” offshore locations for visa processing purposes in order to allow all asylum-seekers an equal opportunity to apply for a visa.³³

Amnesty International suggests that due to excision, asylum-seekers who arrive by boat in Australia are granted fewer rights, such as limited access to health and legal services, than those who arrive by plane. The excision policy has seen an expansion of detention facilities in remote locations across Australia. Each of these has proven to be extremely problematic.

Furthermore, the Government's decision to send 800 asylum seekers to Malaysia raises serious human rights concerns, particularly as Malaysia is not a signatory to the UN Refugee Convention and has a history of human rights abuse. Amnesty International considers the arrangement a breach of Australia's obligations under the UN Refugee Convention and has fears for the safety and wellbeing of those transferred to Malaysia.

³³ UN Committee Against Torture, Concluding Observations on Australia, May 2008, available at <http://www.hrlrc.org.au/files/CX9F5DW2WB/Australia%20CAT%20COBs.pdf>.

De-linking the onshore program from the offshore humanitarian program quota.

Linking the number of places available under the offshore humanitarian program to the number of places granted under the onshore humanitarian program is unnecessary and creates an opposition between the two programs. It creates a system where onshore applicants essentially take places that would otherwise go to offshore applicants, propagating the misconception that onshore applicants are skipping a 'queue'. The two program quotas should be delinked and should each operate separately.

Training of staff in detention centres

Amnesty International's visits to Australian immigration detention centres confirmed the inadequacy of resources, support and training for Government and contract employees. It is clear that staff have been unprepared for many of the events that occur regularly in detention centres, such as dealing with self-harm, suicide attempts, hunger strikes and violent behaviour and riots.

Suitable training should be required for all government and contractor staff who engage with asylum seekers in detention including, as appropriate, adequate mental health training, counseling, critical incident training, child care and welfare management.

Furthermore, Amnesty International suggests appropriate training could be provided to educate detention centre staff about human rights, in particular, the rights of asylum seekers and refugees.

In its Concluding Observations following a review of Australia's compliance with the CAT, the UN Committee Against Torture observed,

"...that training on human rights obligations is provided for immigration officials and personnel employed at immigration detention centres, however it is concerned over reports that such training is inadequate.

The State party should ensure that education and training of all immigration officials and personnel, including health service providers, employed at immigration detention centres, are conducted on a regular basis. The State party should also regularly evaluate training provided."³⁴

Access to Judicial review

Amnesty International has long advocated that immigration detention in Australia be subject to regular review and external oversight. While the Commonwealth Ombudsman reviews have

³⁴ UN Committee Against Torture, *Concluding Observations on Australia*, May 2008, available at <http://www.hrlrc.org.au/files/CX9F5DW2WB/Australia%20CAT%20COBs.pdf>. p. 7.

proven to be a good first step, detention must also be subject to judicial review. The Commonwealth Ombudsman conducts regular reviews of individual detention cases, however there is no requirement that the Department of Immigration and Citizenship or the Minister, act on the recommendations.

Amnesty International suggests that regular judicial review of detention is a necessary measure to prevent against unduly protracted or indefinite detention. The organisation believes that any person within Australia who is detained as a result of an administrative decision should be availed of the right to test that decision in the courts. It is completely unacceptable that the application of the rule of law is removed from some persons.

Judicial oversight should apply not just to those in detention centres, but also to asylum seekers in alternate forms of detention. In *Irregular migrants and asylum seekers: alternatives to immigration detention*, Amnesty International stated that:

‘Judicial review provides crucial oversight of the use of alternative measures, to guard against their disproportionate, unnecessary or discriminatory use, as well as providing an effective remedy against such violations’.³⁵

Also, as noted previously, introducing a mechanism for judicial review is particularly critical for those refugees who receive a negative security assessment from ASIO and who are at risk of being detained indefinitely. Currently, the AAT hears appeals about adverse security assessments from Australian citizens and permanent residents but is currently unavailable to refugees. Both the Inspector General of Intelligence and Security and the Australian Human Rights Commission have recommended to successive governments that the AAT be given jurisdiction to hear appeals from refugees.

There has been some concern about the burden this would place on the courts, however Amnesty International suggests that if the detention system in place included a presumption against detention, only a small number of cases would in fact go to the courts. Extending the jurisdiction of the ATT to refugees should not, given experiences in other comparable liberal democracies, burden the courts in any significant way.

Community Detention

Amnesty International supports the use of alternative forms of immigration detention, such as community detention. Amnesty International commends the Government on its recent efforts to move children and their families into community detention and encourages the Government to commit to removing *all* children from immigration detention centres and into community detention arrangements.

The Red Cross is the lead organisation coordinating community detention accommodation and services in Australia, and as such, is well qualified to comment on the benefits of its use.

³⁵ Amnesty International Australia, *Irregular migrants and asylum seekers: alternatives to immigration detention*, April 2009, AIA POL 33/001/2009.

“Red Cross believes that community detention placements are a more humane and appropriate option for vulnerable people instead of detention centres, remote locations and other alternative forms of detention such as secured motels. Through the Community Detention Program, with support from partner agencies, clients can access services such as healthcare, education for school-age children, case management, welfare support and community engagement activities. This approach aims to maintain people’s health and wellbeing while waiting for the outcome of their visa application.”³⁶

However Amnesty International believes that in most cases, even community detention of asylum seekers is unnecessary. The vast majority of people claiming asylum should be granted bridging visas after initial health, identity and security checks are completed. This is the process currently in place for people entering Australia on tourist and other visas, and for *onshore* asylum applicants. It is important to note the difference between ‘initial security checks’ and the complete ASIO security assessment required for granting a permanent visa.

There are many benefits to allowing asylum seekers and refugees to live in the community while their claims are being assessed. The Australian Human Rights Commission believes that “community-based alternatives already used in Australia and other countries have been shown to be cheaper and more effective in resolving people’s immigration status, and are more humane than holding people in closed detention facilities for long periods of time.”³⁷

Amnesty International suggests that once initial identity, health and security checks have been completed all asylum seekers should be able to live in the community while their asylum claims are processed. Of course, asylum seekers released into the community on bridging visas should still have access to appropriate support in the community so that they can effectively make an asylum application.

Recommendations

Amnesty International suggests that Australia develop and maintain a more humane immigration detention framework that is consistent with international human rights standards. Amnesty International believes that the two main obstacles to this goal are the continuing regime of mandatory indefinite detention and the excision of certain islands from Australia’s migration zone.

Amnesty International makes the following recommendations to the Parliamentary Joint Committee about Australia’s detention network.

³⁶ Red Cross, *Community Detention Program*, (website), <http://www.redcross.org.au/community-detention-program.aspx>.

³⁷ Australian Human Rights Commission, 29 June 2011, *Commission welcomes expansion of community detention*, (media release), http://www.humanrights.gov.au/about/media/media_releases/2011/56_11.html.

Recommendation 1

Amnesty International recommends that all unaccompanied minors, children and their families and individuals at risk, including survivors of torture and trauma, should be removed from detention centres as a matter of priority.

Recommendation 2

Amnesty International recommends the Government end indefinite detention by legislating maximum limits to periods of time in detention.

Recommendation 3

Amnesty International recommends the Government reinstate Christmas Island, and all other Australian territory, to Australia's migration zone and abolish the two-tiered system of processing asylum seekers.

Recommendation 4

Amnesty International recommends that all asylum seekers arriving in Australia be processed on the Australian mainland.

Recommendation 5

Amnesty International recommends that the practice of detaining people in remote areas of Australia should be ceased.

Recommendation 6

Amnesty International recommends that the conflict of interest that exists due to the Minister for Immigration and Citizenship being the legal guardian of unaccompanied minors be resolved.

Recommendation 7

Amnesty International recommends that durable solutions be developed for people who are given refugee status, or are found in need of complementary protection, but who receive a negative security assessment.

Recommendation 8

Amnesty International recommends that minimum training standards be developed and implemented for all government and contractor staff who engage with asylum seekers in detention including, as appropriate, adequate mental health training, counseling, critical incident training, child care and welfare management.

Recommendation 9

Amnesty International recommends that providing there is no risk to the community, asylum seekers and refugees should be released into the community while their claims are processed.

Recommendation 10

DIAC must resume the regular publication of the Immigration Detention Statistics Summary and make the document available on the DIAC website.

Conclusion

There is now widespread awareness of the need for change in Australia's immigration detention system. There is an obvious need to find a better balance between Australia's border security and the humane treatment of asylum seekers. Amnesty International believes such a balance can be found if the Government reconsiders policies such as mandatory indefinite detention and the policy of excision, and commits to removing all children from detention centres. Australia's human rights record is suffering due to current detention practices. It is our hope that the Parliament will use this review as an opportunity to make positive changes to restore Australia's reputation and ensure asylum seekers and refugees are treated with dignity and respect and in accordance with international best practice.

Attachment A

Joint Inquiry Terms of Reference

(1) a Joint Select Committee on Australia's Immigration Detention Network be appointed to inquire into and report on:

- (a) any reforms needed to the current Immigration Detention Network in Australia;
- (b) the impact of length of detention and the appropriateness of facilities and services for asylum seekers;
- (c) the resources, support and training for employees of Commonwealth agencies and/or their agents or contractors in performing their duties;
- (d) the health, safety and wellbeing of asylum seekers, including specifically children, detained within the detention network;
- (e) impact of detention on children and families, and viable alternatives;
- (f) the effectiveness and long-term viability of outsourcing immigration detention centre contracts to private providers;
- (g) the impact, effectiveness and cost of mandatory detention and any alternatives, including community release; and
- (h) the reasons for and nature of riots and disturbances in detention facilities;
- (i) the performance and management of Commonwealth agencies and/or their agents or contractors in discharging their responsibilities associated with the detention and processing of irregular maritime arrivals or other persons;
- (j) the health, safety and wellbeing of employees of Commonwealth agencies and/or their agents or contractors in performing their duties relating to irregular maritime arrivals or other persons detained in the network;
- (k) the level, adequacy and effectiveness of reporting incidents and the response to incidents within the immigration detention network, including relevant policies, procedures, authorities and protocols;
- (l) compliance with the Government's immigration detention values within the detention network;
- (m) any issues relating to interaction with States and Territories regarding the detention and processing of irregular maritime arrivals or other persons;

(n) the management of good order and public order with respect to the immigration detention network;

(o) the total costs of managing and maintaining the immigration detention network and processing irregular maritime arrivals or other detainees;

(p) the expansion of the immigration detention network, including the cost and process adopted to establish new facilities;

(q) the length of time detainees have been held in the detention network, the reasons for their length of stay and the impact on the detention network;

(r) processes for assessment of protection claims made by irregular maritime arrivals and other persons and the impact on the detention network; and,

(s) any other matters relevant to the above terms of reference.

(2) the committee consist of 11 members, 2 Members to be nominated by the Government Whip or Whips, 2 Senators to be nominated by the Leader of the Government in the Senate, 2 Members to be nominated by the Opposition Whip or Whips, 2 Senators nominated by the Leader of the Opposition in the Senate, 1 Member and 1 Senator nominated by the Australian Greens Whip, and 1 non-aligned member;

(3) participating members may be appointed to the committee. Participating members may participate in hearings of evidence and deliberations of the committee, and have all the rights of a member of the committee, but may not vote on any questions before the committee;

(4) every nomination of a member of the committee be notified in writing to the President of the Senate and the Speaker of the House of Representatives;

(5) the members of the committee hold office as a joint select committee until the House of Representatives is dissolved or expires by effluxion of time, whichever is the earlier;

(6) the committee shall elect as its chair a Government member appointed to the committee on the nomination of the Government Whip or Whips, or the Leader of the Government in the Senate;

(6A)The committee shall elect a member as its deputy chair;

(7) the deputy chair shall act as chair of the committee at any time when the chair is not present at a meeting of the committee, and at any time when the chair and deputy chair are not present at a meeting of the committee the members present shall elect another member to act as chair at that meeting;

(8) in the event of an equally divided vote, the chair, or the deputy chair when acting as chair,

have a casting vote;

(9) 3 members of the committee constitute a quorum of the committee provided that in a deliberative meeting the quorum shall include 1 Government member of either House and 1 non-Government member of either House;

(10) the committee have power to appoint subcommittees consisting of 3 or more of its members and to refer to any subcommittee any matter which the committee is empowered to examine;

(11) the committee appoint the chair of each subcommittee who shall have a casting vote only;

(12) at any time when the chair of a subcommittee is not present at a meeting of the subcommittee the members of the subcommittee present shall elect another member of that subcommittee to act as chair at that meeting;

(13) 2 members of a subcommittee constitute the quorum of that subcommittee;

(14) members of the committee who are not members of a subcommittee may participate in the proceedings of that subcommittee but shall not vote, move any motion or be counted for the purpose of a quorum;

(15) the committee or any subcommittee have power to call for witnesses to attend and for documents to be produced;

(16) the committee or any subcommittee may conduct proceedings at any place it sees fit;

(17) the committee or any subcommittee have power to adjourn from time to time and to sit during any adjournment of the House of Representatives and the Senate;

(18) the committee may report to both Houses of Parliament from time to time and that it present its final report no later than 7 October 2011;

(19) the provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.³⁸

³⁸ Joint Select Committee on Australia's Immigration Detention Network, *Terms of Reference*, available online at http://www.aph.gov.au/Senate/committee/immigration_detention_cte/immigration_detention/tor.htm.