



INTERNATIONAL
COMMISSION
OF JURISTS

30 May 2012

Julie Dennett
Committee Secretary

Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

**SUBMISSION TO THE INQUIRY INTO THE DETENTION OF
INDONESIAN MINORS IN AUSTRALIA**

The International Commission of Jurists (ICJ), founded in 1952, has as its mandate the promotion of the rule of law and the legal protection of human rights throughout the world. As a non-governmental organisation, it has many national sections and affiliates in all regions of the world, each of whom adhere to the ICJ mandate. The Australia Section of the International Commission of Jurists (ICJA) has branches in most States and Territories.

The ICJA wishes to respond to the call by the Senate Standing Committee on Legal and Constitutional Affairs for submissions to the Inquiry into the Detention of Indonesian Minors in Australia. The ICJA has significant concerns about the procedures involved in the detention of these minors in Australia. The ICJA submits that these procedures are contrary to Australia's international human rights obligations and lack sufficient transparency.

The ICJA has evaluated the matters referred to the Committee in its submission to the Inquiry into the treatment of individuals suspected of

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The International Commission of Jurists, founded in Berlin in 1952, is an international non-governmental organisation with consultative status to the United Nations, UNESCO, the Council of Europe, and the Organisation of African Unity. Its headquarters are in Geneva, with autonomous national sections and affiliates around the world. The Australian Section was founded in 1958 by the then Chief Justice of the High Court of Australia, Sir Owen Dixon, OM, GCMG

people smuggling offences that say they are children undertaken by the Australian Human Rights Commission. The ICJA's submission to that inquiry is attached to this submission for the Committee's consideration.

In response to the matters referred to the Committee, the ICJA makes the following submissions:

(a) whether any Indonesian minors are currently being held in Australian prisons, remand centres or detention centres where adults are also held, and the appropriateness of that detention;

The ICJA recognises that twenty-four individuals that are suspected to be minors are being imprisoned following conviction for people smuggling offences.¹ Twenty-two cases were identified by the Australian Human Rights Commission (in the process of undertaking the abovementioned inquiry) and two were identified by the Indonesian Government. The total number of minors held in prisons, remand centres or detention centres awaiting charge or trial, or being detained for the purposes of the 'administration of criminal justice' more broadly, is likely to be much greater.

The ICJA submits that the current policies and processes involved in the detention of these children in Australia are contrary to Australia's human rights obligations under the Convention of the Rights of the Child and the International Covenant on Civil and Political Rights, to which Australia is a party. The ICJA further submits that the current policies and processes involved in the detention of these children in Australia are contrary to the rule of law. It is unacceptable for minors to remain in detention while their age remains in dispute. The ICJA recommends that a presumption of minority status and removal from detention needs to be applied as the norm rather than the exception where doubt as to the age of these children exists.

The ICJA is also concerned with the lack of clarity regarding the grounds for detention of these children. Greater transparency is required to ensure that each individual's rights and our international obligations are upheld. The grounds for detention need to be clear to all involved; suspects, AFP officers, DIAC officers and prosecutors so that the rule of law can be appropriately applied. The ICJA recommends that greater transparency is required in the age assessment determination process.

The ICJA submits that suspected minors, if detained, should be detained in a facility that is completely separated from adult populations who have been detained. The ICJA draws attention to Australia's international obligations which insist on separate detention for minors. Section 9 of the *Children (Detention Centres) Act* (1987) provides that "so far as reasonably practicable they shall be detained in a detention centre appropriate to the class of persons."

¹ Attorney-General (Cth), 'Review of convicted people smuggling crew queried to be minors' (Media Release, 2 May 2012), available at <<http://www.attorneygeneral.gov.au/Media-releases/Pages/2012/Second%20Quarter/2-May-2012---Review-of-convicted-people-smuggling-crew-queried-to-be-minors.aspx>>.

Similarly, Article 37 of the *Convention on the Rights of the Child* provides that,

“c) Every child deprived of liberty shall be separated from adults unless it is considered not in their best interests.”

Furthermore, Article 10 of the *International Covenant on Civil and Political Rights* stipulates that,

“Juveniles shall be separated from adults and brought as speedily as possible for adjudication.”

The ICJA submits that the only circumstance in which a minor should be detained with an adult population is if that minor is placed with a relative or another person well known to them.

(b) what information the Australian authorities possessed or had knowledge of when it was determined that a suspect or convicted person was a minor;

The ICJA has no primary information on this referred matter.

(c) whether there have been cases where information that a person is a minor was not put before the court;

The ICJA has no primary information on this referred matter.

(d) what checks and procedures exist to ensure that evidence given to an Australian authority or department about the age of a defendant/suspect is followed up appropriately;

The ICJA is not aware of any effective checks or procedures that exist within the Department of Immigration and Citizenship, the Commonwealth Attorney-General’s Department, the Australian Federal Police or the Commonwealth Department of Public Prosecutions to ensure that evidence about a defendant/suspect that is provided to an authority is followed up appropriately.

Procedures that mandate these checks and inter-agency cooperation need to be implemented, published and readily available. Ensuring that these procedures are followed, and are subject to internal and external review, is critical for the maintenance of transparency and accountability in the detention procedures. Without this, more instances where individuals have been detained in contravention of Australia’s international human rights obligations are likely to emerge.

(e) the relevant procedures across agencies relating to cases where there is a suggestion that a minor has been imprisoned in an adult facility;

The ICJA is not aware of coordinated procedures that operate across the relevant Commonwealth and State agencies (including corrective services agencies) once an individual has been convicted and imprisoned in an adult facility, and suggestions are raised that they are a minor. The fact that the review currently being undertaken by the Attorney-General's Department into the cases of twenty-four individuals was the result of concerns raised by the Australian Human Rights Commission and the Indonesian Government implies that any procedures that do exist are insufficiently rigorous or coordinated.

As with procedures that ensure the follow-up of age-related evidence, these coordinated procedures need to be implemented, published and subject to internal and external scrutiny in the interests of transparency and accountability.

(f) options for reparation and repatriation for any minor who has been charged (contrary to current government policy) and convicted.

The ICJA submits that minors who have been charged contrary to current government policy should be immediately returned to their families, in coordination with diplomatic representatives from the relevant Embassy. Official reparation should be provided to both the individual/family concerned as well as the injured state in accordance with principles of diplomatic protection.

Sincerely,

Steve Mark
Chairperson, International Commission of Jurists (Australian Section)