

Inquiry into immigration detention in Australia, July 2008
Helen Lewers

Submission No.....	87
Date Received.....	02

Parliament of Australia
Joint Standing Committee on Migration

**Inquiry into immigration detention in
Australia, July 2008**

Email: jscm@aph.gov.au

Submission by Helen Lewers

RECEIVED
30 JUL 2008
BY: MIG

30/07/2008

My Involvement

Please note that I shall refer to the presently named Department of Immigration and Citizenship and its predecessors simply as “the Department of Immigration”.

I have been an active refugee supporter since late 2001 until the present. That advocacy involved close contact with at least 20 detainees in Immigration detention centres in Australia – Woomera, Port Hedland, Perth, Baxter and Maribyrnong – and on Nauru. The nationalities of the people I knew well are as follows: Afghani, Iranian, Iraqi, Chinese, Nepalese, Sri Lankan, Kashmiri and Pakistani. I cannot name them because not all have secure residency or citizenship status in Australia yet and sadly, they still fear retribution from the Department of Immigration if their cases are publicized.

The hounding by the Howard government through the press of the Afghani Bhaktiyari family and Iraqi Kadem family, amongst others, has had the consequence of silencing criticism from many refugees. This has had the unfortunate effect of delaying appreciation by the wider community of their abject conditions and suffering while in detention.

My refugee friends had been detained in Immigration Detention for periods ranging from three to six years, so were all long-term detainees.

So – I speak on behalf of these people detained by the Howard government because many are still virtually denied a voice. I submit that I am an average sort of Australian citizen who takes an interest in community affairs and who values the rights of all human beings. I have no axe to grind. I have witnessed, through my detainee contacts, the goings-on in Immigration Detention during the Howard era; events and consequences that the ordinary Australian citizen had little chance of seeing.

Contact with immigration detainees involved letter writing, phone calls and visits, the latter being restricted to Baxter and Maribyrnong because of distance. I organized a local letter-writing group, which also raised funds to provide phone cards and stamps for detainees, since the Immigration Department's provision of such items was inadequate and sometimes non-existent. We hoped that our letters, phone calls and small gifts to detainees gave them some sympathetic human contact which was so lacking in their places of imprisonment.

At times, I helped organize legal representation for detainees, again because of inadequate provision by the Department. I wrote regularly to the minister on behalf of detainees asking for favourable intervention, and gathered letters of support from many concerned Australian citizens. I agree with the present minister that system of appeals is flawed, but disagree with his solution: to merely send cases back to the department. Refugees need to have the same rights of appeal of executive decisions through the judicial system as do Australian citizens.

Observations

The attitude promoted by the previous government and the Department of Immigration was that asylum seekers' claims were rarely genuine, and were merely in Australia to take advantage of Australia's "superior but misplaced sense of generosity". Refugees were presented as being "illegals" or "illegal immigrants", despite having clear authorization under the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol, to seek asylum. Most of the refugees I knew were later granted asylum after many long and uncertain years.

My impressions of mandatory detention are that it has caused an enormous amount of unnecessary suffering. It has damaged men, women and children. I have witnessed a lot of mental deterioration amongst detainees because of the ever present fear of being returned to their countries of origin, exacerbated by the length of their imprisonment, and their treatment and labeling that they were criminals. I heard about and witnessed physical health problems that were trivialized or ignored by staff. My friends were often humiliated by the culture amongst detention centre guards, or "officers", many of whom believed detainees to be the worthless dregs of international society who would shortly be deported. Guards seemed to set out to deliberately destroy any remnant sense of self-worth of the refugees.

The typical greeting of refugees by the former Department of Immigration manager of the Curtin detention centre in WA is a case in point. To a group of newly arrived asylum seekers on the night of October 12th, 1999, he said: "Who can speak English?" "I will do that" said my friend Matthew (not his real name). "What's your name?" demanded the manager? "Matthew." "Well, you can tell your friends that you are not welcome here in Australia. Nobody in this country wants you here. You should just go back to where you have come from!" Matthew said "These people are not my friends. We have all come from different places. Who are you to say we are not welcome? You yourself came from somewhere else". "What do you mean?" spluttered the manager? "I mean", said Matthew, "your origins are elsewhere, just like us". The manager shone his torch in Matthew's face, coming up close to him and shouting. "What's your name?" "Matthew", said my friend. The manager kept shouting, emphasizing every word: "Well Mr. Matthew, let me tell you something, and please take good note of it! I will personally see to it that you'll either be the last person to leave this place, or the first person to be deported!"

Sometimes detainees, whether men, women or children, were brutalized, including when they were put in solitary confinement. Detainees said of the early days before ordinary Australians began to hear of their stories that conditions were much worse then. Curtin detention centre has been called a "Gulag" by some former inmates. Both Curtin and Port Hedland detention centres had notorious solitary confinement cells more reminiscent of the treatment of prisoners of war by their enemy captors than refugees seeking asylum. Reports of lashings were common, and detainees spoke of being held without toilet facilities, and of having toilet access deliberately delayed. Often the solitary confinement cells were cooled below tolerance level.

Detainees suffered severe psychological stress not just due to what happened to them, but by witnessing distressing scenes where other detainees were humiliated or brutalized. In particular this occurred when family members were targeted. Parents, for instance, were often not in a position to be able to protect their children from harm.

I met several ministers of various religions who were regular visitors to detention centres. They said that Australian detention centres were more punitive and harsh than high security prisons, which they also visited regularly. Food, access to medical and dental treatment, activities, exercise/sporting equipment, education, access to TV, radio and newspapers, were all of a much lower standard, as were visitor access and phone and fax availability.

Addressing the Terms of Reference:

1. The criteria that should be applied in determining how long a person should be held in immigration detention.

I believe that immigration detention should not be mandatory. In Australia during the 1980s when thousands of refugees from Vietnam and Cambodia were successfully accommodated in migrant hostels, there were none of the problems that the supporters of mandatory detention regimes fear. People were simply offered accommodation until they were granted a visa. They were not imprisoned. It is not in the interests of people seeking asylum to abscond: they are not in any bargaining position. If they want a visa, they have to be present. If this is not obvious to our legislators, then I'm sure asylum seekers would consent to mandatory reporting with similar terms and conditions to people released into the community on bail. There are probably many alternatives to custodial sentences offered by correctional services which would be suitable to maintain security.

Hundreds of thousands of people enter Australia each year on business or tourist visas with only scant health and security checks. People who arrive unauthorized should be regarded no differently. Health and security checks are indeed important, and should be carried out upon initial arrival, but should not be an excuse for indefinite detention. At present, health and security checks are carried out at the end of the detention period, thus giving the lie to the argument that the checks necessitate mandatory detention.

During the Howard era I spoke to someone who was an adviser to Gerry Hand, the Immigration Minister in the Keating government at the time of the introduction of mandatory indefinite detention. The adviser said "the (Keating) government was worried by the numbers of refugees coming to Australia: they had to be managed and something had to be done with them." The adviser said that nonetheless the punitive and harsh detention

conditions implemented under Howard had never been intended. I would argue that indefinite mandatory detention is, by its very definition, punitive and harsh.

Later, it was always claimed by Prime Minister Howard, Minister Ruddock and others in government at the time that indefinite mandatory detention was necessary because refugees “could be terrorists”. This theme was worked consistently after the 9/11 attacks in the US. I don’t know of any terrorist who was discovered hiding out in a detention centre, but I’m sure we would have heard about it if it happened. The act of detaining people “in case they might be undesirable” seems to have about the same logic as needing to detain all men “in case some of them turn out to be rapists”. A social pre-emptive strike of mammoth proportions.

Another justification of mandatory detention under Howard is that it would deter asylum seekers, (which directly contradicts Australia’s obligations under the U.N. refugee convention) and later, that it was a deterrence against the dangerous practice of people smuggling. Both Labor and Liberal governments have made much of this argument. Yet without people smugglers, most people would be unable to leave their homelands. This is as true today for people fleeing persecution in Afghanistan, Iraq or Sudan as it was for Jews fleeing the Nazis in Germany or Poland. The argument about people smugglers preying on the desperate and vulnerable could equally apply to Private Prison Contractors, who aim to make a profit from their service.

It is *legal* under the U.N. refugee convention, for people suffering persecution to leave their country and apply elsewhere for protection. Australia is a signatory to that convention. There is often not time, nor is it practical for refugees to leave with relevant papers or authorized travel arrangements. Australia spends a lot of time, money and effort in preventing people-smuggling activities, with the result that many would-be refugees just cannot escape their homelands or move between countries. The focus on people-smuggling as reason for mandatory detention is thus a back-door way of undermining people’s right to flee persecution. It secretly undermines Australia’s obligations under the refugee convention.

It is unethical to detain a group of innocent people in order to deter other refugees, or to deter the activities of people smugglers. Imprisonment is a serious punishment after all, and in our society should only be imposed on the perpetrator of a crime.

2. The criteria that should be applied in determining when a person should be released from immigration detention following health and security checks

As stated above, asylum seekers should be accommodated in migrant hostels, not Detention centres. There should be an obligation on the part of Australian authorities to complete health and security checks within a short time, or else the person be allowed to live in the community, unless a good reason against this option be provided to a suitable independent ombudsman or the like, with rights of appeal allowed for the asylum seeker. I would hope that such an arrangement would ensure that the usual interminable delays by the Immigration Department were kept to an absolute minimum.

3. Options to expand the transparency and visibility of immigration detention centres

Helen Lewers

The practice of employing commercial businesses (ACM, GSL) from running centres must cease. To me it seems immoral to employ companies who profit by locking up innocent people. The ubiquitous “commercial in confidence” excuse manages to prevent accountability and transparency, so sorely needed in this area where there has been so much abuse. Private detention operators have a poor record overseas: there is much documented evidence of this in the UK and the US, for instance. If, as I suggest above, people are accommodated in migrant hostels, where people are genuinely looked after and offered appropriate services, then the problems of transparency and accountability will diminish markedly.

Conclusion

Vietnamese and Cambodian refugees were offered genuine assistance during the 1980s, and the fear that people would “just take advantage” of our generosity to the detriment of Australian workers, did not eventuate. Instead, these refugees worked hard, educated their children and gratefully took their place in our society with much benefit all round.

On first arriving in Australia, all groups of migrants, whether refugees or not, have been treated with suspicion. Despite the considerable consternation their arrival evoked in the Australian community, all groups have eventually been accepted and even admired for their many and various contributions. I believe this fear of the “other”, the unknown stranger, has been used as a political expedient. That expediency must stop. We must stop locking up refugees simply because they arrive by boat. The better we treat our new arrivals, especially those who are refugees, the better and the sooner they will lead fruitful and fulfilling lives, to the benefit of us all.