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JOINT STANDING COMMITTEE ON MIGRATION

INQUIRY INTO IMMIGRATION DETENTION IN AUSTRALIA:

SUBMISSION BY

THE ASYLUM SEEKER RESOURCE CENTRE

29 August 2008

## **SUMMARY**

1. The Asylum Seeker Resource Centre (ASRC) believes that Mandatory Detention as a policy of general application should be abolished. This submission is focused upon this and related issues.
2. We propose that for people who arrive as unauthorized arrivals and seek asylum, hostel accommodation be provided until a residential address in the community is secured (e.g., with friends, family or through a community organisation).
3. The ASRC supports the policy of allowing asylum seekers to live in the community on bridging visas pending lodgement of a protection visa application and subsequently while awaiting resolution of their cases. We consider this to be the most appropriate and least restrictive of the community based alternatives to detention.

## **1. Introduction**

This submission is made in light of the speech delivered by Senator Evans, Minister for Immigration and Citizenship, on 29 July 2008 to the Centre for International and Public Law, Australian National University.

We commend the government's commitment to restore integrity to Australia's immigration system, however the Asylum Seeker Resource Centre (ASRC) believes that Mandatory Detention as a policy of general application should be abolished. This submission seeks the abolition of mandatory detention as recommended by the Committee Against Torture Report by the United Nations Office of the High Commissioner for Human Rights (OHCHR) on 16 May 2008.<sup>1</sup>

## **2. Background of Organisation**

The Asylum Seeker Resource Centre (ASRC) is a Victorian incorporated organisation and registered charity which was established after identifying a need for support services for asylum seekers living in the community. The ASRC is Australia's largest asylum seeker aid, health and advocacy organisation, and the recipient of the 2003 HREOC Human Rights Award for Community Organisations and the 2005 National Australia Bank State and National Volunteers Award (Community Service and Development).

We are an independent, non-Federal government funded agency caring for over 5000 asylum seekers. We provide over 20 direct aid and advocacy programs including: legal aid, ESL classes, health service, counselling, casework, food bank, daily lunch, employment program and social support. Our services are operated by a team of over 470 volunteers, nine full-time

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<sup>1</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR), Committee Against Torture Report dated 16 May 2008. The report states in its concluding observation at paragraph 11 that Australia should "consider abolishing its policy of mandatory immigration detention for those entering irregularly the State party's territory. Detention should be used as a measure of last resort only and a reasonable time limit for detention should be set; furthermore, non-custodial measures and alternatives to detention should be made available to persons in immigration detention."

and sixteen part-time paid staff. ASRC liaise and work with other organisations in service provision.

### 3. Ending mandatory detention

Our concern is that while the legislation and regulations underpinning the system of mandatory detention remain in place, detention will *not* be “a last resort”.

#### ***Case study 1***

One month ago, a young woman with a valid entry visa and with all health and security checks in order arrived at Melbourne airport, passed through Immigration and was then detained because a Customs officer, in searching her bags, read her diary and decided that she might seek a protection visa. She clearly presented no threat to the community and yet she was taken to detention. In detention she was given legal assistance but was alone and isolated from any support services until a nun who was visiting other detainees heard about her. This is not “detention as a last resort”.

In our submission mandatory detention is a fundamental violation of human rights and of our obligations under international law. Australia is the only western democratic country to have legislated mandatory detention for unauthorized arrivals. We are signatory to the 1951 Refugee Convention which states at Article 31:

*1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.*

*2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.*

Mandatory detention operates as a punishment for asylum seekers and as such is contrary to Article 31(1) of the Refugee Convention. Asylum seekers should not be punished on account of how they arrive in Australia by being placed in immigration detention.

**Recommendation**

Abolish Mandatory Detention as recommended by the Committee Against Torture report dated 16 May 2008.

**4. Health and Character Checks as Detention Determinants**

The ASRC believes that health and character checks do not require or justify mandatory detention of asylum seekers. There is current evidence that newly arrived asylum seekers in Australia, who live in the general community comply with Department of Immigration and Citizenship (DIAC) direction whilst health and character checks are pending. Based upon this experience, of which DIAC is well aware, it is clear that Mandatory Detention in the model proposed is not required and serves no good purpose during the period in which health and character checks are obtained.

**5. Current Practice**

Asylum seekers who are immigration cleared, but who subsequently disclose some irregularity with travel documentation, remain in the community after lodging protection visa applications. Health and character checks are immediately requested and asylum seekers are extremely anxious to comply with all Departmental directions and timelines. Asylum seekers have fled countries for their survival and in the experience of the ASRC are highly compliant with required procedures. If this were not the case DIAC would not have continued with this policy of not detaining people who are immigration cleared despite irregularity and who then subsequently lodge protection visa applications. Given the traumatic history of most asylum seekers and the proven damage of mandatory detention, there is clearly no justification for its use even for the purpose of health and character checks. Current DIAC policy and practice as described supports this contention.

## **6. Time Taken To Establish Health and Security**

We are concerned at the time taken in many cases to confirm identity and satisfy character requirements. Asylum seekers who flee without valid travel documents generally do so in situations of desperation and often come from countries, or travel through countries, where conflict or political oppression results in administrative chaos.

### ***Case study 2***

A young girl arrived in 2007 as an unaccompanied minor without a valid visa. She had become separated from family during major conflict. Identity issues took 12 months to resolve while she lived safely in the community. Under the proposed new detention policy, had she been intercepted at the airport she could have been placed in detention, waiting on the outcome of these checks for almost one year. This would have compounded the trauma of the violence from which she had fled. This is not an acceptable situation.

It is the experience of the Asylum Seeker Resource Centre that identity and character issues in these situations may take long periods of time to resolve, in some cases up to 12 months. At the same time, these asylum seekers do not pose any risk to the community. The chaos of the countries from which they have come, and their personal history, should not be a cause for placing them in long periods of detention. These asylum seekers are often the people who require the most intensive supports to assist with trauma recovery.

## **7. Mandatory Detention as Deterrent to Lawfulness**

A policy of Mandatory Detention in the view of the ASRC encourages unlawfulness. Those entering Australia without a valid visa are less likely to draw attention to their situation at the early stage (i.e. at the airport) when faced with the prospect of detention. Asylum seekers would be more likely to disclose their situation early if there were a more humane, initial response and this would also serve the public interest.

## **8. International Experience**

International experience as detailed below demonstrates that there is no need for asylum seekers and refugees to be subject to mandatory detention.

## *Canada*

- No mandatory detention
- Asylum seekers to locate their own accommodation in the community
- There is no restriction on asylum seekers' freedom of movement
- NGO's provide support with housing
- Entitled to work rights (if welfare dependant)
- Access health services
- Government reserve right to detain individuals under exceptional circumstances according to a series of guidelines<sup>2</sup>

## *Sweden*

- No Mandatory Detention
- Housing provided for asylum seekers by the National Immigration Board (SIV)
- Asylum seekers free to apply to reside with family or friends instead
- No work rights unless processing expected to exceed 4 months
- Extensive allowances are supplied to cover daily needs
- Detention is only used in exceptional circumstances subject to strict criteria<sup>3</sup>
- Detention is limited to 48 hours and extensions from this point are subject to judicial review.

## *New Zealand*

- No mandatory detention
- According to policy “in all cases, a decision to detain a refugee claimant is considered only after all alternatives are excluded.”<sup>4</sup>

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<sup>2</sup> The Immigration and Refugee Protection Act 2001 ('IRPA') <http://laws.justice.gc.ca/en/i-2.5/245769.html>

<sup>3</sup> The Aliens Act (Chapter 6, Section 2) states that an alien may be detained when his or her identity cannot be verified or when he or she will most likely be rejected or expelled according to provisions contained in Chapter 4. <http://www.immi.se/asyl/asyleng.htm>

<sup>4</sup> New Zealand A16.2 Operational instruction: exercise of discretionary powers under the immigration act 1987 in response (at the time of their arrival and subsequently) to persons claiming refugee status at the border Section 2.1. [http://www.immigration.govt.nz/nzis/operations\\_manual/6686.htm](http://www.immigration.govt.nz/nzis/operations_manual/6686.htm)

- The decision to detain must be reviewed by the Immigration officer within 14 days. A judicial review is mandatory after 28 days and every seven days thereafter.
- All asylum seekers are informed of their right to contact the UNHCR and are appointed a legal aid lawyer.
- Many asylum seekers free to live in the community on conditional or unconditional release.
- Mangere Accommodation Centre houses some asylum seekers and is run by the New Zealand Immigration Service (NZIS) and NGOs (Average stay - 6 weeks)
- Access to medical staff, mental health workers, English classes and other vocational programs.
- UNHCR report considered Mangere to be ‘a highly successful and innovative model’<sup>5</sup>.

### **9. Mental Health Consequences of Mandatory Detention**

The mental health consequences of mandatory detention have been well documented by experienced psychiatrists and psychologists. Agencies such as the ASRC are working with people who were detained and who are now living in the community on permanent and temporary visas. We are witness to the long term harmful effects of detention. In our experience the detention of asylum seekers and refugees has led to serious mental health issues from which some former detainees will never recover. We provide services to ameliorate the mental health sequelae of long term detention. We believe that the psychological damage caused by the mandatory detention policy on vulnerable asylum seekers cannot be justified. The experience of the people below provides examples of mental health issues in detention.

#### ***Case study 3 - Cornelia Rau***

In February 2005, Cornelia Rau was removed from the Baxter detention centre to a psychiatric hospital in Adelaide when it was discovered that she was an Australian resident suffering from a mental illness and that she had Australian family. Ms Rau was not taken to hospital despite evidence that she was severely mentally ill, until her

<sup>5</sup> Above n. UNHCR report pp 163.



identity as an Australian resident was established. While it was believed by the DIAC that she was a non-citizen, she was detained in the Management Unit in an isolation room for 23 hours a day. Her release was not as a result of her mental health but rather her status as an Australian resident. As a result of these events an investigation was made into DIAC and its practices. However even after these events, an application to the court by a South Australian lawyer was required to get the same medical treatment as that given to Ms Rau to over 20 non-citizens mandatorily detained in Baxter Detention Centre.

#### *Case study 4*

A 19 year old boy in Baxter detention center suffered severe mental and physical trauma as a result of torture in his country of origin. The DIAC case officer in his interview acknowledged that this boy had been tortured. He was thin and in an obviously disturbed mental state. It took 8 weeks of advocacy to get him released to the care of a cousin in Sydney. Three months later he remained so traumatized that he could not sleep at night because of his fear that DIAC would come and get him and take him back to detention.

#### *Case study 5*

In 2007, a man was discharged from a hospital in Brisbane and flown to Sydney to be re-interred in the Villawood Residential Housing Project. The man had been treated for severe depression as a result of long term detention. He was given a week's packet of medications. At 1 am he took all of his medication in a suicide attempt. He was found unconscious the next morning and taken to hospital for resuscitation.

Following his return to the housing project after hospital treatment, he was security searched, placed in a transport vehicle and driven fifty metres to the medical centre in Villawood twice a day where he was security searched again and then given his tablets before being bussed fifty metres back to the housing project – all this in order to receive his medication. This process is for administration of medications to those considered too ill to self-administer. The Villawood Housing Project (unlike the Perth Community Housing) does not present an alternative to detention.

The purpose of these examples is to illustrate how mandatory detention overrides other considerations such as duty of care, particularly in instances of deteriorating mental health. Judgments as to whether a person is mentally ill or has “behavioural problems” are made by non-medical staff and treated accordingly. In the past, mental illness was treated by placing a person in an isolation room, sometimes for weeks. There are no safeguards in place to stop this practice.

#### **10. Alternatives to mandatory detention**

In this part of our submission, we have suggested a number of improvements and changes to the current community based alternatives that are being used by the Department of Immigration and Citizenship. We also explore briefly, a number of ways that the Government can expand its support for asylum seekers in the community.

Currently, ss189 and 196 of the *Migration Act* 1958 (Cth) (the *Migration Act*) (together) provide that “unlawful non-citizens” will remain in detention until (a) they are granted a visa, (b) they are deported, or (c) they are removed from Australia at their own request or upon the rejection of their attempts to secure a visa.

The ASRC is fundamentally opposed to mandatory detention. The ASRC recommend that people who arrive as unauthorized arrivals and seek asylum should not be mandatorily detained. The ASRC supports the policy of allowing asylum seekers to live in the community

on bridging visas while awaiting resolution of their cases. We consider this to be the most appropriate and least restrictive of the community based alternatives to detention.

We propose that for people who arrive as unauthorized arrivals and seek asylum, hostel accommodation is provided until a residential address in the community is secured (e.g., with friends, family or through a community organisation). We believe asylum seekers should have the option of staying in this hostel accommodation for the duration of the protection visa process if they so wish, or to reside in the community if they have secure accommodation options. The advantages of such a scheme would include setting newly arrived asylum seekers up with support structures to ensure they comply with visa conditions and to access services that they need, including legal and welfare. This would ensure that asylum seekers promptly declare their intention to lodge a protection visa and lodge their applications for protection in a timely manner.

*a. Bridging visas*

The Government currently relies on a framework of bridging visas, which allow asylum seekers to remain in the community lawfully while their case is being determined. Some of these bridging visas do not have work rights or Medicare attached to them.

The consequences of placing an asylum seeker on these bridging visas in the community include the following:

- Without the ability to earn an income or access any form of government income support asylum seekers are left without any financial means to survive;
- Without any form of income support, they are unable to afford private housing. They are ineligible for public housing. Many are faced with some form of homelessness;
- If they do not have the right to work, they cannot access the Medicare system. They must pay, in full, the cost of any health service required;

- They are unable to afford food or other material items such as clothing. They rely solely on handouts from organizations such as the ASRC's Foodbank;
- They become socially excluded and increasingly vulnerable, unable to afford to purchase a public transport ticket to travel to access services such as lawyers, counselling and health offered by charitable organizations.

The consequences of placing an asylum seeker on a bridging visa without work rights or access to social services in the community, as an alternative to detention, have clearly undesirable consequences. For further information on the effects of the bridging visa regime, we direct the Committee to the report by Anne McNevin, "*Seeking Safety Not Charity*."<sup>6</sup>

Furthermore the conditions imposed by bridging visas without work rights place Australia in clear breach of its international obligations under the *International Covenant on Social, Economic and Cultural Rights* (ICESCR) to which Australia is a signatory. The right to work (Article 6), the right to social security (Article 9) and the right to an adequate standard of living (Article 11) irrespective of immigration status are all clearly breached.

***b. Increased supports for community based asylum seekers***

It is important that the Government undertake a comprehensive review of community support for asylum seekers. To date, it has been not-for-profit charitable organizations such as the ASRC, the Red Cross, Hotham Mission and the Foundation for the Victims and Survivors of Torture in Victoria that provide all essential services to asylum seekers. These include securing accommodation, providing free medical assistance, legal representation and the provision of food and material aid.

The ASRC submits that the Government has the opportunity to implement changes which will allow asylum seekers to access mainstream health and support services or alternatively, provide funding to establish supports that are specific to asylum seekers.

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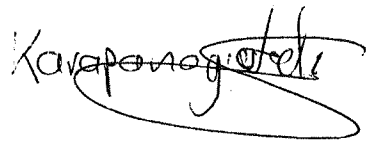
<sup>6</sup> Anne McNevin, "Seeking Safety, Not Charity: A Report in support of work-rights for asylum-seekers living in the community on Bridging Visa E," Prepared for the Network of Asylum Seeker Agencies Victoria (NASA-Vic) March 2005.  
by Anne McNevin  
March 2005

**Recommendation:**

That the Government allow asylum seekers to access mainstream support services or alternatively, provide funding to non governmental organization to increase their assistance to asylum seekers.

The ASRC would welcome the opportunity to discuss this submission further.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Konstandinos Karapanagiotidis', written in a cursive style with a large loop at the end.

Konstandinos Karapanagiotidis  
CEO  
Asylum Seeker Resource Centre