

Mandatory Detention is not the Answer

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Former US President Abraham Lincoln once said a democracy is a system of 'government of the people, by the people, for the people'. An Australian Government receives a mandate from the people through elections and it is the government's responsibility to act on behalf of the people. One of the many ways, the government represents the people is through formulating and implementing public policy. Formulating and implementing any public policy isn't a simple process. It becomes even more complex when that public policy relates to human lives. Refugee and asylum seeker policy in Australia has become one of the most politicized issues in contemporary social discourse.

Immigration is a large key policy area dealing with range of issues including skilled migration, visa applications and citizenship. Within this area, Australia's humanitarian program administers refugee and asylum seeker policy as part of the Department of Immigration and Citizenship. With increased conflict around the world today, more and more people are fleeing torture and persecution, in the hope of a new life in Australia. Part of Australia's policy to process people seeking asylum in Australia is mandatory detention. Australia's immigration detention policy was introduced in 1992 by the Keating Government with bipartisan support and has been maintained by successive governments. Australia's *Migration Act 1958* requires people who are not Australian citizens and who are unlawfully in Australia to be detained. This legislation ensures that asylum seekers arriving in Australia can be detained for unspecified and prolonged periods of time.

As of 15 April 2011, there were 6872 people in immigration detention in Australia, including 5047 in immigration detention on the mainland and 1825 in immigration detention on Christmas Island. There were 1048 children (aged under 18 years) in immigration detention.¹ 2849 of all the people currently in immigration detention arrived by boat² As shown, not all asylum seekers arrive in Australia by boat, despite the media focus on 'boat people', many people arrive via plane, seek a visa and overstay their visa.

The Universal Declaration of Human Rights is the most widely accepted international convention in human history. Most countries in the world are signatories to it and Australia had an instrumental role in seeing it created. Article 14 of the Declaration provides that 'every person has a right to seek asylum in any territory to which they gain access.'³ Yet, when desperate people fleeing war-torn countries and persecution arrive in Australia, we lock them up indefinitely in conditions not dissimilar to prisons. The United Nations Human Rights Commission has described conditions in Australia's detention centres as 'offensive to human dignity'.⁴ The UN Human Rights Committee on Refugees has consistently found the mandatory detention regime to be breach basic human rights

¹ Chilout (Children out of Detention), Detention Statistics and Facts, http://www.chilout.org/index.php?p=1_15 [Accessed 6/7/2011]

² Boat Arrivals in Australia since 1976, 2010 and 2011 Statistics, http://www.aph.gov.au/library/pubs/bn/sp/boatarrivals.htm#_Toc285178607 [Accessed 6/7/2011]

³ United Nations, The Universal Declaration of Human Rights, <http://www.un.org/en/documents/udhr/> [Accessed 6/7/2011]

⁴ Burnside, Julian (2008), *Watching Brief*, Scribe, Melbourne, Page 23

standards. Other international and Australian agencies and authorities have also consistently expressed grave concern about a number of aspects of Australia's mandatory detention scheme.⁵

The psychological effects of prolonged detention on men, women and children are severe. Factors such as increased processing time, risk of deportation and bewildering legal processes all contribute to mental health problems including anxiety and depression. These conditions lead to self-harming, protest and behavioural breakdowns.⁶ Of the women that gave birth in detention centres around Australia from Villawood to Christmas Island, all were found to have post natal depression.⁷ Even the most vulnerable members of society, children are not exempt from the effects of long periods of detention. In 2001, a ten year old Iranian girl arrived in Australia with her parents after fleeing terrible suffering. The family languished in a detention centre for 3 years. This young girl stopped caring for herself; she stopped eating and one night alone in a small room, while her parents ate dinner, she hanged herself.⁸ This young girl is just one of the countless victims of Australia's mandatory, indefinite detention of asylum seekers.

Yet, the suffering of these asylum seekers is a matter of indifference to most Australians. The media and the Opposition have been heavily influential in the formulation, implementation and continuation of mandatory detention policy in Australia. Since the 2001 Tampa Incident under the Howard Government, refugees and asylum seekers have been reduced to numbers and labels in an effort by political parties and media outlets to dehumanise them. These labels include 'illegal immigrants', 'boat people', 'queue jumpers' and even 'terrorists'. Instead of being seen and understood as what they are- desperate people fleeing persecution and torture seeking asylum in Australia, as is their right under the Article 14 of the Universal Declaration of Human Rights. The myths surrounding asylum seekers as people who are 'economic refugees' or 'terrorists' are endorsed by media outlets, rather than dispelled for what they are- myths. 92.5% of asylum seekers that arrive in Australia are found to be genuine refugees.⁹ Not a single asylum has been found to be terrorist.¹⁰ The media fear mongering campaigns suggest asylum seekers 'are coming in floods' and that 'Australia has the largest number of refugees in the world'. In 2009, 8427 people sought asylum in Australia, in comparison to 45,197 people who sought asylum in UK.¹¹ Australia takes in around 13,750 refugees annually. This is 0.1% of the world's population of approximately 15 million refugees.¹² Yet, Australia is ranked as the 10th wealthiest country in the world.¹³ Paradoxically, it

⁵ Amnesty International, Factsheet on Mandatory Detention in Australia http://www.amnesty.org.au/images/uploads/ref/Mandatory_detention-March09.pdf [Accessed 6/7/2011]

⁶ Professor Louise Newman, Australia's Harsh Policies demean us all, <http://blogs.crikey.com.au/croakey/2011/03/29/mandatory-detention-of-asylum-seekers-is-harming-people-and-demeans-us-all-leading-psychiatrist/> [Accessed 7/7/2011]

⁷ Professor Louise Newman, Research paper into Trauma, Loss and Immigration Detention, <http://www.refugeeaction.org/rac/forum.htm> [Accessed 7/7/2011]

⁸ Tyler, Heather (2003) Lothian Pty Ltd, Melbourne, Foreword: Page xi

⁹ Amnesty International -Rethink Refugees, The Main Facts, <http://www.rethinkrefugees.com.au/the-facts/> [Accessed 7/7/2011]

¹⁰ Amnesty International -Rethink Refugees, Fact 5, <http://www.rethinkrefugees.com.au/the-facts/fact-5/> [Accessed 7/7/2011]

¹¹ Amnesty International- Rethink Refugees, Fact 6, <http://www.rethinkrefugees.com.au/the-facts/fact-6/> [Accessed 7/7/2011]

¹² Refugee Council of Australia Statistics of Refugees and asylum seekers in Australia, <http://www.refugeecouncil.org.au/asylum/stats.php> [Accessed 7/7/2011]

¹³ International Monetary Fund Organisation, World Economic Outlook Database, <http://www.imf.org/external/pubs/ft/weo/2011/01/weodata/weorept.aspx> [Accessed 9/7/2011]

has been noted that poorer countries are held responsible for supporting 80 per cent of the world's refugees.

These myths endorsed by the media and the opposition, and responded to by the government, have led to harsher and more strict policies to 'protect our borders'. By failing to report the facts and pandering to fear mongering reporting, the media has had considerable influence in the shaping of immigration public policy as the media informs the public, thus media and public opinion can often be aligned. The most recent refugee and asylum seeker related policy is the 'Malaysia Solution' introduced by the Gillard Government to deter asylum seekers from arriving in Australia by boat and protect our national borders. Under this new federal government policy, 800 asylum seekers who arrive in Australia by boat will be sent to Malaysia to have their refugee status determined. In exchange, Australia will resettle 4000 asylum seekers, now in Malaysia who have been assessed as being genuine refugees by the United Nations High Commissioner for Refugees (UNHCR). This reactive policy raises serious concerns as Malaysia is not a signatory to the UN Refugee Convention and has a poor record for inhumane treatment of refugees and asylum seekers in its detention centres.

The lack of communication and education from the Federal Government and the media to inform about and explain the plight of asylum seekers has led these harsh and inhumane policies of mandatory detention to be maintained, despite indications that things might change under the ALP, such as the suggested removal of all children from detention, which has not occurred. Recent television programs like SBS's reality program 'Go Back to Where You Came From' and ABC's 'Leaky Boat' have aimed to inform viewers of the truth about refugees and asylum seekers. Campaigns run by pressure groups such as Amnesty International's 'Rethink Refugees' and Getup's 'Get Children Out' also work to educate the Australian public about the asylum seeker facts. However, these programs, organisations and refugee advocates including the Refugee Council of Australia, Chilout, Amnesty International and Barrister Julian Burnside have had little influence in the formulation of this public policy despite voicing their opinions. In a recent article in *The Australian*, Human Rights advocate and barrister Julian Burnside QC said: 'So now it has come to this: the two major parties are bickering about whether it is better to send asylum seekers to Malaysia or to Nauru. In this miserable state of things, the questions which really matter have been studiously ignored.'¹⁴

Instead of focusing on political posturing, the Federal Government and the Opposition needs to confront the real issue: Mandatory detention isn't a long term solution. It is inhumane. It threatens the mental health of thousands of vulnerable asylum seekers. And it is unnecessary.

There are alternatives. Recently an English research group carried out a study on bail system for refugees in the UK. The group called Bail in Detention (BID) arranged bail for 100 of 'high risk' asylum seekers and performed a longitudinal study to monitor their compliance with bail conditions. Bail worked in 93 percent of the cases.¹⁵ Other countries around the world also have alternatives. Sweden uses a community detention method, only detained asylums for security checks before integrating them into the community. This method has been labelled by the UN as 'successful in building a functioning reception process that allows for a just and humane treatment of asylum seekers while they await a decision'.¹⁶

¹⁴ Burnside, Julian, *The Australian*-Let's focus on what matters, June 6, 2011, <http://www.theaustralian.com.au/national-affairs/no-longer-land-of-the-fair-go/story-fn59niix-1226069668282> [Accessed 9/7/2011]

¹⁵ Burnside, Julian, *Watching Brief*, Scribe, Melbourne, Page 48

¹⁶ Refugee Action Committee, *Alternatives to Detention*, <http://www.refugeeaction.org/policy/alternatives.htm> [Accessed 7/7/2011]

In a recent article in the *The Age* by Former Prime Minister of Australia Malcolm Fraser, Fraser listed ten points he believed Australia's approach and treatment of refugees and asylum seekers should encompass: 'Mandatory detention for the purpose of health, identity and security check alone should be permissible'.¹⁷ Australia could detain asylum seekers for a maximum of a month to complete health, identity and security checks before releasing them into the community. It costs \$1600 a day per asylum seeker detained in Christmas Island. Suppose we allow asylum seekers into the community after brief initial screening and Centrelink benefits to enable them to live - this would cost Australia taxpayers six cents per week.¹⁸ Detention centres cost more financially and morally. United Nations research continues to show that allowing people to live in the community until their refugee claims have been finalised is more humane, less expensive, and very few people do not comply with release conditions.¹⁹ A policy that releasing asylum seekers into the community has a number of advantages: it would quickly solve the problem of overcrowding in detention centres; it would avoid the needless infliction of psychiatric harm on people who are already traumatised by the circumstances they have fled; it would cost far less than the present system or the proposed people trafficking solutions proposed by Prime Minister Julia Gillard and Opposition Leader Tony Abbott; and it would bring us back into conformity with our human rights obligations.

As Malcolm Fraser suggests 'Our political leaders need to lift themselves off the bottom and take the debate in a different direction - based on fact not hyperbole, based on humanitarian rather than punitive considerations; to make meaningful contributions to complex global challenges'²⁰

It is time policy on refugees and asylum seekers was based upon the facts and evidence. It is time the Government denounces fear-mongering campaigns, educates the general public, listens to the mental health experts' reports into detention centres and forms a braver policy. A humane policy that protects vulnerable asylum seekers who have suffered enough. A policy which represents what Australians pride themselves on, being the 'land of the fair go' - decent, generous and compassionate people. A decent refugee and asylum policy 'of the people, by the people, for the people'.

Word count- 1825

¹⁷ Fraser, Malcolm, *The Age* - How Australia can solve its asylum seeker 'problem'
<http://www.theage.com.au/opinion/politics/how-australia-can-solve-its-asylum-seeker-problem-20110624-1gjlt.html> [Accessed 7/7/2011]

¹⁸ Burnside, Julian, *Watching Brief*, Scribe, Melbourne, Page 43

¹⁹ UN High Commissioner for Refugees, *Alternatives to Detention of Refugees, Asylum Seekers and other migrants*, <http://www.unhcr.org/refworld/docid/4dc935fd2.html> [Accessed 9/7/2011]

²⁰ Fraser, Malcolm, *The Age* - How Australia can solve its asylum seeker 'problem'
<http://www.theage.com.au/opinion/politics/how-australia-can-solve-its-asylum-seeker-problem-20110624-1gjlt.html> [Accessed 7/7/2011]