

NOVEMBER 2014

ADVOCACY BRIEF

Children in Detention

Key Messages

The detention of children breaches our international obligations under the Convention on the Rights of the Child and other international treaties to which we are a party.

Detaining children in immigration detention centres causes life-long harm.

All children and their families and unaccompanied minors in detention in mainland centres must be released into community detention programs.

All children and their families and unaccompanied minors in detention on Christmas Island and in Nauru must be returned to the mainland and placed into community detention.

The Uniting Church in Australia has offered to take all unaccompanied minors into its care.¹

The conditions for all children must be immediately improved with access to high level medical care, good quality education, protection from violence and the ability to play and develop in a safe and loving environment.

An independent guardian must be appointed as the legal guardian of unaccompanied asylum seeker and refugee children.

Background

In 2005, Australia's Migration Act was amended to include the principle that children should only be detained 'as a measure of last resort' which reflects article 37(b) of the United Nations Convention on the Rights of the Child (CROC)². Following this amendment, many asylum seeker children were moved from secure detention facilities into what is known as 'community detention'.

This positive move was short lived, however, and by 2007 large numbers of children were being held in reclassified detention facilities on Christmas Island and on the mainland called Alternative Places of Detention (APODs).

By May 2013, children were once again detained in high security facilities at Christmas Island, Curtin in Western Australia, and Wickham Point in the Northern Territory. Children were—and remain—under guard with their movements restricted and access to educational and recreational activities severely limited.

Current policy

In July 2013, the then-Labor Government implemented a policy that meant all asylum seekers arriving by boat—including children—would never be permanently resettled in Australia, regardless of the outcome of their claims for refugee protection.

One of the first policy announcements of the Coalition after their election in September 2013 was 'Operation Sovereign Borders', a military-style campaign to intercept and return any boats carrying asylum seekers from Indonesia seeking to make their way to Australia. Another key aspect of the policies of deterrence is that all those who do arrive by boat are sent to off-shore detention centres, regardless of their age.

The Minister for Immigration and Border Protection, Scott Morrison MP, has stated clearly that all asylum seekers—including children—are to be subjected to the Government's policy of indefinite offshore detention³:

“It doesn't matter whether you're a child, it doesn't matter whether you're pregnant, it doesn't matter whether you're a woman, it doesn't matter whether you're an unaccompanied minor, it doesn't matter if you have a health condition. If you're fit enough to get on a boat, then you can expect you're fit enough to end up in offshore processing.”

FACTS & FIGURES NO 1⁹

There are currently over 600 children held in secure facilities in Australia's immigration detention network.

FACTS & FIGURES NO 2

There are 186 children on Nauru, more than 140 on Christmas Island and 1586 children in community detention.

Conditions in which children are detained

FACTS & FIGURES Nº 3

An Alternative Place of Detention (APOD) is a low-security detention facility for children and families. Many facilities used as APODs were previously hospitals, correctional centres, defence bases and private hotels. People detained in APODs do not have freedom of movement and are kept under constant guard. Children aged 5–15 years are meant to attend local schools however access to education is inconsistent between centres. Many APODs also lack recreational facilities, shade and space suitable for the needs of children.

The Department of Immigration and Border Protection's (DIBP) website notes that 'it is government policy that children will not be held in immigration detention centres',⁴ and describes services and facilities that children and families have access to in detention.

These include adequate health care, cultural and lifestyle classes, sporting activities, recreational excursions, art and craft supplies, a library with a variety of reading material and adequate food and drink.

These statements are inconsistent with testimony from the recent National Inquiry into Children in Immigration Detention and reports from agencies including the United Nations High Commission for Refugees (UNHCR), the Australian Human Rights Commission, ChilOut and Amnesty International Australia. First-hand accounts also reveal glaring disparities.

In a 2011 report⁵, the Australian Children's Commissioners and Guardians raised numerous concerns including:

- dark, unstimulating and uninviting play areas at the Inverbrackie detention facility;
- inadequate health services at Inverbrackie APOD, that appeared to be primarily catered toward adults;
- a lack of social and recreational activities at Leonora APOD, which contributed to the stress and anxiety of all detainees;
- limited access to mental health services with specialist expertise;
- children in the Nauru detention centre inadequately screened for disease, with no paediatricians and no paediatric life support available;
- no clear child protection framework for children inside Nauru, placing them at significant risk of sexual abuse; and,
- hot and crowded living conditions on Nauru with an apparent significant risk of groundwater contamination as a result of poor waste management.

Impacts of detention on children

FACTS & FIGURES N° 4

Community detention is the only form of detention where there is some freedom of movement. It permits asylum seekers to live in the community (in specific locations) as long as they adhere to supervision arrangements set by DIBP. Unaccompanied minors, families and vulnerable adults are given priority to move from closed detention facilities into community detention. People in community detention do not have visas and cannot work but they are provided care by Government-contracted service agencies.

The impacts of detention on children are well documented in both Australian and international studies. There is compelling evidence that immigration detention has a detrimental impact on the mental and physical health of children. While all detainees are vulnerable to the physical, emotional and psychological impacts of Australia's immigration detention system, children and young people are particularly at risk of serious long-term damage.

The stress of indefinite detention and the inappropriate living conditions may aggravate pre-existing traumas and other psychological conditions, as well as directly contribute to the development of new disorders in children and young people. Children without parents or guardians ('unaccompanied minors') are particularly vulnerable as they are forced to navigate the challenge of the refugee journey alone, without a consistent support network⁶.

For the majority of children, the detention experience includes a loss of control, enforced separation from the outside world, detachment from community, culture, religion and the inability to experience life as predictable, meaningful and safe. Feelings of isolation, detachment and loss of confidence are commonplace within the detention environment. These feelings, when amplified, can subsequently lead to further mental health conditions like depression that can in turn result in suicidal thoughts. Child detainees can also bear witness to incidents of self-harm by adults while in detention, which affects their own mental health and stability. Psychological stress can translate in many ways including nightmares and night terrors, as well as bed-wetting and anxiety attacks.

There is a clear link between the length of time that children are detained and the psychological and developmental issues they confront⁷. The longer children are detained the more likely they are to be exposed to traumatic events.

The lack of educational opportunities and recreational activities in the detention setting may also reverse psychosocial and cognitive development as well as impairing the development of fine and gross motor skills.⁸

Why is the Uniting Church Concerned?

FACTS & FIGURES Nº 5

Of the 3076 people currently in community detention, including children, 72.5% have been detained for one year or more.

The Uniting Church in Australia (UCA) believes that the indefinite mandatory detention of children is morally wrong and a gross violation of multiple international human rights statutes, including:

- The Convention on the Rights of the Child (CRoC),
- The International Covenant on Civil and Political Rights (ICCPR),
- The International Covenant on Economic, Social and Cultural Rights (ICESCR), and
- The Convention Relating to the Status of Refugees and the Protocol Relating to the Status of Refugees.

The UN Convention on the Rights of the Child (CRoC) asserts that any action must prioritise the child's best interests. The Uniting Church believes that detention is never in a child's best interests. The conditions in immigration detention centres are an abuse of the rights of children to adequate health and medical care, an acceptable standard of living, access to quality education and protection from violence.

The role of the Minister for Immigration and Border Protection as legal guardian of unaccompanied minors is also highly inappropriate. The Minister may—and routinely does—delegate guardianship powers to the Department of Immigration and Border Protection (DIBP). The best interests of the unaccompanied child are compromised by the DIBP's competing responsibilities.

The Australian Churches Refugee Taskforce (ACRT), of which the Uniting Church is a member, released a report in July 2014 highlighting the gross inadequacies of the guardianship arrangements for children in detention. The paper noted that¹⁰:

“guardianship of these vulnerable children and young people is not merely a legislative function to be discharged. It is a multifaceted responsibility that encompasses statutory duties, duties under common law, the fulfilment of Australia's international obligations and a serious moral and ethical concern for the wellbeing of a child that flows from such responsibility.”

UnitingJustice is also concerned with the lack of transparency about detention centres and the extremely limited oversight of conditions, with a political culture of secrecy instead being used to keep detainees out of sight and out of mind.

References

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