

An open letter to the refugee rights movement in Australia

The humanitarian alternative to mandatory detention is...



No detention

AS the movement for refugee rights has grown dramatically over the past year, so has the discussion around alternatives to the government's policy of mandatory detention of asylum seekers who have entered the country without authorisation.

All lobby and welfare organisations have been promoting alternatives which emphasise the need for respect for asylum seekers, consideration for the trauma and hurt they have suffered, the provision of services, permanent residency and the right to live in the community while their applications are considered.

Most alternative models also include a provision for short-term detention while identity, character and health checks are made. Many argue for "minimal detention" on the grounds that this is acceptable under international human rights treaties — unlike the current Australian system — and see this as a strong position to argue from.

The danger is that this leaves in place the basic premise of the government's regime — that asylum seekers are hostile aliens and a threat to society — which is used to justify detention, the "Pacific solution" and the discriminatory nature of temporary protection visas. It also justifies screening out, using the navy to turn back refugee boats, and the locking up of children. It also leads some in the community to embrace extreme ideas, such as "shoot them all", "sink the boats", etc.

Unless this premise is challenged, the damaging social consequences of mandatory detention cannot be adequately addressed. The acceptance of minimal detention has allowed the Federal Parliamentary Labor Party (the alternative government) to accept the government's framework of "border protection" and to insist that any alternative policy will include some form of mandatory detention.

WE, the undersigned, are asking the refugee rights community to shift to advocating alternatives which involve no detention of asylum seekers, simply because their entry to Australia was unauthorised. These are our reasons:

1. Any detention is harmful to people; and its effects are most severe on those who have suffered most. It violates the intent of the UN Refugee Convention.
2. Advocating "minimal" detention sends a message to the community that the people locked up are a possible threat to the community. This is untrue, except in the trivial sense that every plane, every bus, every train may contain people who are a threat to the wider community. All proposals for initial detention tend to reinforce the lie that Australia's borders are threatened by asylum seekers, and leave in place the mythology that has been used to demonise asylum seekers as hostile aliens, criminals, potential terrorists and people bringing dangerous diseases. Advocacy of "minimal" detention therefore contradicts the basic message of our movement and weakens our ability to win the argument for any more humanitarian model.
3. It is a fundamental democratic right, bitterly fought for over the centuries, that no-one should be locked up without being charged, and without recourse to judicial oversight. It is this right that the government has so seriously rolled back, and we should not be advocating a small measure of "administrative detention" in preference to a large measure; we should be demanding it be got rid of altogether.
4. Detention is not necessary to check that asylum seekers are free of illness. On the contrary, detention is perhaps the most effective way of spreading infectious disease.
5. Detention allows the government to "screen out" genuine refugees, and once screened out there is no avenue of appeal. It also allows the government to delay processing (including by requiring arbitrary and impossible security checks with foreign security forces), and to physically and psychologically abuse asylum seekers as part of its policy of deterrence. Asylum seekers need to be allowed to live in the community from the time of arrival to minimise abuses and ensure they receive procedural fairness.
6. Many of the "minimal" detention models actually allow quite long periods of detention. For example, the

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Refugee Council model allows detention of up to three months in order to establish identity and check a person's health; and allows continued detention if five conditions have not been met, viz: if there are doubts about identity, health, "threat to national security", the possibility of the individual "absconding" or if they fail to make a valid application for asylum.

The problem is that many of these are based on entirely subjective judgments. For instance, what is sufficient to establish a person's identity? How does an official or a court decide if there is a likelihood of an individual absconding? Even the business of making a valid application for protection is not always simple. Asylum seekers who have suffered torture and rape are often unwilling to fully describe the circumstances, and this has often led to them being denied protection — the very people who need and deserve it the most. This model potentially continues that travesty. Moreover, while continued detention beyond three months is subject to appeal, there is no obligation to review detention more than once every three months.

7. Indo-Chinese "boat people" did not face minimal detention and our society was not harmed. Indeed, for a period of nearly 15 years, they were taken from their boats, housed in open centres such as Villawood, and allowed to get jobs and leave whenever they could find and pay for their own accommodation. After two years, they had the right to apply for citizenship. Our movement should demand nothing less for the current generation of asylum seekers.

8. Asylum seekers who enter the country using student, tourist or business visas are not detained, despite many having lied about the reason for their desire to enter Australia. There is no justification for treating "boat people" less sympathetically.

THERE is no doubt some concern at counter-arguments our movement faces now along the lines that some people may abscond. To this we should respond:

1. That this a concern based on the fear-mongering about asylum seekers in general and is out of all proportion to any problems created by the fact that a small number of people may not proceed with their official applications. There is no comparable concern for the large numbers of backpackers and tourists who do "abscond" by violating their visa condition to stay illegally in this country. People seeking asylum have an enormous incentive to go through the formal process of refugee determination because that is the only way they can gain a secure right to live here. People who abscond risk permanent deportation. The biggest single reason that people may not proceed with their official applications is that there is little trust that their applications will be treated fairly.

2. No legal or judicial system can guarantee that people will not abscond; and every attempt to do this produces police-state conditions, such as our detention centres represent. We need to face up to this issue: our civil liberties are being eroded across a broad front on the

basis of panics about "crime", with no consideration of the price we are paying for being "tough" on crime. Basing the treatment of asylum seekers on deterrence not only inflicts greater suffering on the asylum seekers themselves, it fosters racist divisions in the community and diminishes the values of compassion and justice in our society.

3. We need to re-emphasise that people on leaky boats are not a threat to Australians. International terrorists travel on regular plane services with false passports that allow them to freely enter countries like the United States and Australia. Locking up asylum seekers does not protect our freedom; it undermines it.

In other words, the humane alternative to mandatory detention is to return to a system similar to that which applied before 1989, in which asylum seekers who arrive without authorisation are offered support and accommodation in the community, and allowed to choose where they live while their claims are being assessed.

We ask you and your organisation to consider these points and look forward to your response. Contributions to the debate on these issues will be published on our website: www.geocities.com/nodetention.

We finally wish to restate our commitment to building a broad movement that brings together people with different views on this and other issues, to fight against the inhumanity and injustice of mandatory detention and the Pacific solution.

Please add my signature to the No Detention statement

Name

Organisation/position

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tel.....

email/address

Signature

Please post to 24 Bourne St, Cook, ACT 2614

Signatories so far include

William Boag (Balmain for Refugees group), Penny Carosi (Multicultural Officer, NSW Teachers Federation), Phil Griffiths (Refugee Action Committee, Canberra), Judy McVey (Refugee Action Collective, Melbourne), Bishop Pat Power (Catholic Archdiocese of Canberra and Goulburn), Ian Rintoul (Refugee Action Coalition, Sydney)

Full list of signatories is at www.geocities.com/nodetention. For further details email nodetention@hotmail.com