

**RESPONSE TO THE INQUIRY INTO IMMIGRATION DETENTION NETWORK IN AUSTRALIA BY THE NETWORK OF IMMIGRANT AND REFUGEE WOMEN OF AUSTRALIA INC., (NIRWA) LEAD AGENCY FOR THE AUSTRALIAN IMMIGRANT AND REFUGEE WOMEN'S ALLIANCE (AIRWA) PREPARED BY VIVI GERMANOS-KOUTSOUNADIS, CHAIR. AUGUST 2011.**

The Network of Immigrant and Refugee Women of Australia Inc (NIRWA) is a national non-government not-for profit women's organisation with membership in eight states and territories and represents the interests and issues of immigrant and refugee women in Australia to ensure that their voices are heard and their issues are included in all government policies and deliberations. NIRWA is the lead agency for the Australian Immigrant and Refugee Women's Alliance which is one of the six Alliances funded by the Federal government.

NIRWA believes that there should not be mandatory detention as it is a breach of basic human rights, it should never be indefinite, must be reviewable and should be used as a last resort. Children and unaccompanied minors and women the two most vulnerable groups should not be placed in detention centres but in community based reception centres which allow for community living on the mainland of Australia to allow access to basic support services while their claims are being processed.

Recent statistics on the issue of detention show that there are approximately some 6,000 asylum seekers in various on shore and off shore detention facilities in Australia. Some 1,750 have been hospitalised for mental health, physical health due to self harm and other ailments.

Although the government is endeavouring to place children in community detention on shore, there are still some 400 children in detention centres.

The Human Rights and Equal Opportunities Commission (HREOC) Report "A last Resort?", National Inquiry into Children in Immigration Detention in April 2004, recommended to the government that children should never be detained and only as a last resort and that the government should replace mandatory detention with a more compassionate and humane system which operates within the framework of the international instruments which safeguard the rights of unaccounted asylum seekers and refugees.

The harsh, punitive, inhumane treatment of unaccounted asylum seekers and refugees, by the previous government which passed immigration laws to deter asylum seekers and boat people from coming to Australia, the Tampa affair, children overboard, the off shore Pacific Solution, and more recently the planned transfer of asylum seekers to Malaysia and proposal to re-establish ex-territorial processing in Papua and New Guinea or the Pacific Region, the mandatory detention of children, women and adults for long periods of time before their claims for refugee status were determined saw Australia breaching many international Conventions and Covenants such as the Rights of the Child, International Covenant on Civil and Political Rights, Covenant on Economic, Social and Cultural Rights, Human Rights, UNHCR revised guidelines on Applicable Criteria Standards relating to the Detention of Asylum seekers, CEDAW, CAT and others of which it is signatory.

NIRWA will endeavour to address some of the terms of reference of this Inquiry.

**NIRWA recommends that the government that they use the criteria specified by various international UN Conventions, Covenants and Guidelines when determining the status of asylum seekers.**

The criteria to determine how long a person is to be held in immigration detention should be the ones specified in the various international UN Conventions, Covenants and Guidelines and these need to be adopted in legislation by the government in order for them to operate.

The most relevant are the UNHCR Detention Guidelines. Guideline 3 for example indicates detention of asylum seekers may only be resorted to, if necessary to

- (a) verify identity,
- (b) determine the elements on which the claim for refugee status or asylum is based.
- (c) in cases where asylum seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intended to claim asylum and
- (d) to protect national security and public order. 1.

The UNHCR Guidelines characterised health, security and identity checks as “exceptional grounds” for detention which should not be routinely applied to all asylum seekers and detention for these reasons should only occur after an individual assessment reveals the need to detain in order to achieve those purposes. 2

- The Guidelines also state that independent assessment of the need to detain for these or any other purposes should occur within 72 hours and not as the current Australian Migration Act specifies during the duration of the determination process for refugee status which could take up to five years as has been the case with many asylum seekers in detention.
- Countries such as Canada permits detention for identity and other checks but this is reviewed within 48 hours. Sweden likewise permits detention for the purposes of identity check but reviewed within 48 hours. The UK permits detention for identity check but must be reviewed within 24 hours.
- The US does not have a mandatory detention system.

**NIRWA recommends that the government look at some options to expand the transparency and visibility of immigration detention networks which are:**

- Detention centres should not be based in remote and isolated and off shore areas where the asylum seekers do not have access to legal and other services in the community as well as NGO organisations of their country of origin which would provided emotional, social and other support.

- The culture of the centres should be a humane one where the detainees are treated with dignity, respect and according to the principles of human rights, social justice, compassion and should be accorded all the assistance which is available to Australian residents.
- The management of the detention centres if they are to remain, should be with the government as was before, and not with private providers. In this way the department will be responsible for monitoring, operations, reviewing, hiring of appropriately qualified staff, supervision, compliance with international instruments of human rights, UNHCR Guidelines on Detention of Asylum Seekers and other relevant national and international regulations.
- There should be outside independent bodies such as HREOC with community representation to inspect and review the centres on regular intervals to ensure that standards are maintained and ensure that legal, health, psychological, religious, cultural, linguistic and other factors are provided for the detainees.
- There must be genuine oversight by welfare and human rights bodies who should have access to the detainees to advocate on their behalf with the legal rights and procedures for them to appeal against their internment and seeking of refugee status.
- The Minister should not be the only person to have discretion and decide on the case of an asylum seeker. There should be a Committee of legal, health, welfare, human rights, community representatives, NGO organisations ethnic and generalist to assist the Minister to make a final decision for each case.
- There should be monitoring by the department to ensure that the quality of services provided in the centres are of high standard and comply with the various occupational health and safety regulations.
- The NGO's from the various countries of origins of the detainees should be allowed to make contact with the detainees to provide cultural, religious, social, welfare and moral support and when the detainees are given refugee status for these organisations to assist them with settlement needs and cushioning of the culture shock.
- The residents of these centres to have the freedom to interact with the community and be free to come and go according to the times imposed by the centre.
- The centres should be open ones and not enclosed with barbed wire and high security unless it is established beyond doubt that the detainee is a danger to the community then they would be housed in security prison like environment away from the other residents.
- The detention centres should have different security levels appropriate to the types of detainees and not house all types in one centre. This model of having all types of detainees in one place is inappropriate as it places vulnerable asylum seekers, women, children, those who overstay their visas with dangerous violent criminal deportees in a vulnerable situation.

As stated in other sections of this paper the preferred infrastructure is one of an open reception centre in the community rather than a detention centre, managed and

operated by the government with qualified, efficient staff, with no barbed wire, where asylum seekers have freedom of movement, are treated with dignity, compassion and respect, their human rights are upheld and with the minimum of time spent in the facility waiting for their cases to be processed. Such an option is cost effective, humane and does not breach the various international instruments of human rights and protection of refugees and asylum seekers.

**NIRWA recommends that the government should look at various options for the provision of detention services. The options are:**

- The detention services should be provided by the government and not private providers and all detainees in all the different types of facilities should have access to all the services which are available in the community to the population of Australia.
- The asylum seekers should have high quality medical, mental, health services, welfare, social, educational and other services that are available irrespective at what facility they are being housed.
- These services should be free as the asylum seekers do not have funds to pay for them
- The services should be culturally and linguistically relevant to meet their needs
- The teaching of English language should be provided to the asylum seekers free of charge
- Provision should be made in the facilities or the community close to the facility for asylum seekers to be able to practice their religious, cultural observances
- The family unit should be preserved and assistance provided to the families to maintain their parental roles, child caring and rearing practices and maintenance of home language by the children.
- Children should attend the local schools and participate in local community activities and play with other children.
- Close liaison and collaboration between the management of the detention facilities with settlement and other services in the local communities be established and maintained to enable the asylum seekers to benefit from the programs provided by these services as well as establishing contacts with their respective ethnic community groups for social and cultural support which will lessen the culture shock and assist in the integration of the asylum seekers into the community when their case is determined and they are granted permanent residence.
- Local services could also visit the centres and provide sessional services to the residents.
- Caseworkers could be assigned to individuals to deal with their cases and other needs, In this way there is monitoring of the situations of the detainees with options for advocacy with and for them if there are issues which need to be addressed.

**NIRWA recommends that the government look at options for additional community based alternatives to immigration detention by looking at the international experience.**

There are many alternatives to immigration detention which are practiced by many countries.

- In 1997 the European Council on Refugees and Exiles (ECRE) issued a research paper on the practical alternatives to the detention of asylum applicants and rejected asylum seekers. In the case of children various options were discussed including supervised release to local child welfare agencies, supervised release to community organisations and individual citizens and other general restrictions on the place of residence, reporting requirements and open centres. ECRE maintained that the conditions attached to these non-custodial measures be guided by the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules) whose guiding principle is that the human rights of the individual should be weighed up against the overall concerns of society. 3
- Many European countries have implemented the options mentioned in the ECRE research paper.
- In the UK asylum seekers are routinely released on bail. They are also housed in open detention centres.
- In Denmark asylum seekers are first referred to reception centres run by the Danish Red Cross and later housed at accommodation centres. In both cases, people are free to leave the centre but must return in the evening.
- In Sweden, families and children are initially taken to a Refugee Reception Centre where they are free to come and go but are subjected to reporting requirements. After a short period of time they are offered housing and social support in the community. They must visit the reception office monthly. The Swedish Migration Board assigns each asylum seeker a Caseworker to make assessments and refer clients to medical care, counselling and other services.
- In Greece, after the initial assessment the asylum seekers are released in the community and they are given welfare benefits, permission to seek work and other support.

**NIRWA recommends that the government consider the manner in which such alternatives may be utilised in Australia to broaden the options available within the current immigration detention framework in Australia.**

The choice of an alternative would depend on the individual assessment of the personal circumstances of the asylum seeker. Alternatives to detention which should be considered within the current immigration detention framework are:

- Monitoring requirements
- Provision of a Guarantor/Surety
- Release on bail

- Open Centres 4

Also other suggestions is to release the asylum seekers into the care of community agencies or Australian families.

These alternatives are being used by countries overseas and seem to be working well. The above alternatives to detention need to be considered as the present model of the release of asylum seekers to the community is an alternative form of detention as they do not have freedom of movement and are subjected to stringent conditions in order to maintain “immigration detention”. These attempts to alternative to detention are not appropriate as they continue to propagate the mandatory detention outside the detention centres.

The government needs to consider the alternative forms of detention which are not breaching the human rights and restrict freedom of movement of asylum seekers. These alternatives operate successfully in other countries and with changes to the Migration Act could be incorporated in the current framework of immigration detention.

### **Comparison of the cost effectiveness of these alternatives with current situation.**

The alternatives mentioned above are more cost effective as they do not require high security purpose built detention centres which have to be manned, maintained and operated with security guards for 24 hours. Further, the off shore detention facilities such as Christmas Island and other Pacific Solution sites cost millions of dollars to build and operate to guard a small number of asylum seekers most of whom eventually are granted refugee status.

However, the fundamental flaw in the present mandatory detention is the unnecessary suffering, hardship, callous, merciless treatment inflicted on human beings who were seeking asylum for them and their families to escape from different forms of repression and persecution.

The Network of Immigrant and Refugee Women of Australian Inc., is against mandatory detention as it is inhumane and causes unnecessary hardship and trauma to people who are seeking a haven to escape from war, political, religious, ethnic and other persecutions and find a place in the sun.

NIRWA urges the government to release all children and women and families from detention centres and placed in supportive community based reception centres in the mainland of Australia to have their status processed in an environment where there are support services available.

### References.

1. HREOC A last resort? National Inquiry into Children in Immigration Detention, page 862. UNHCR Detention Guideline 3
2. Ibid. Page 863
3. Ibid. Page 870
4. Ibid. Page 868. UNHCR Detention Guideline 4

