

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
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Balwyn, Victoria

I am grateful for the opportunity to put a submission to your inquiry.

I have been concerned with the issue of asylum seekers since 2001 and consequently have established contact with many asylum seekers in Nauru.

Over the time I have had many correspondents, most of them, but not all, are from the Hazara minority in Afghanistan. Their plight have affected me deeply. I have become familiar with their daily routines, their problems and their despair.

Life in Nauru detention was harsh. Some of the problems included overcrowding, shortage of drinkable water, oppressive heat and mosquitoes, lack of contact with the world outside. With time, some of these difficulties were alleviated.

It was not their physical confinement however, oppressive as it was, that proved to be their biggest problem. Many would write in their letters that they had been through much worse in their lives. It was the loss of dignity, the feeling of being trapped, of being useless to their families, of time wasted but above all, the uncertainty about future that drove them to despair.

Nauru, one of the offshore places of detention, is outside Australian jurisdiction. For most of the time it was closed to public scrutiny. Michael Gordon, the Age editor, was the first journalist allowed to visit Nauru in April 2005. Following the visit, his article enabled the Age readers for the first time to see the human faces behind the anonymous facade of "illegal arrivals" locked away in Nauru; the implication being that they were devious, unsavoury, perhaps even dangerous characters, trying to get to Australia through the back door.

The asylum seekers in Nauru were mostly young people, including women and children (in May 2002 there were 351 children in camps of Nauru and Manus!) who did not commit any crime who were condemned to indefinite detention, without being charged. It was not knowing when, if ever, they were going to be released.

Yet, all of the asylum seekers were already traumatized by their situation back in Iran, Iraq and Afghanistan and by the perilous journey they had made, as well as the harsh treatment meted out by our government and those acting on its behalf. The very people who were running for shelter, away from war, massacres, ethnic cleansing were punished by indefinite detention.

The two Nauru camps were out of reach from lawyers, journalist, doctors, psychiatrist, refugee advocates and politicians most of the time. The public remained ignorant of their youth and their suffering.

Here are some specific examples of the problems encountered.

The "Tampa people" were transferred by HMAS Manoora to Nauru, where camps were hastily constructed. The government defended the arrangements by promising

prompt processing of the asylum seekers. In fact, the government didn't keep its promise, DIMIA took a long time in conducting the process of verification of identity and claims. There was a presumption of guilt of deception, and many Hazara people were presumed to be from Pakistan. There were many incidents of incompetence, if not of ill will. To quote M. N., one of the ex detainees:

"...one of the problem in Nauru was that most the interpreters and employees (Australian-Afghans) working either for IOM, UNHCR or DIMIA were relatives of each other and they were people who are strongly holding those hatreds from Afghanistan. Afghanistan is a tribal country; to say something bad about someone's tribe means an offence to them, therefore interpreters and others working there (all of them Pashtuns) had a problem with mostly Hazara detention center's population. There were complains to UNHCR and DIMIA about this but nothing happend to solve this. I can't even describe how you would feel if you complain about someone in front a person who holds the hatred? And DIMIA expect impartiality from those interpreters to find if the claimant is a genuine refugee".

"...the medical situation was also horrible as so many people was suffering depression, and so many problems in hot Nauru weather, that one can not even imagine. Only one doctor 2-3 days a week, few weeks a month couldn't help hundreds of asylum seekers who are lining up to the door of little clinic in detention center everyday."

There is a strong belief that the major predicament was a deliberate procrastination of the processing by DIMIA. Many cases involved numerous interviews, followed by months and years of cases not being looked into.

Legal procedures on the mainland are different to those offshore. In Australia, asylum seekers are assigned an independent lawyer, there are several levels of the appeal processes and there are multiple resources available for accessing information about the country of origin. Asylum seekers applying from Nauru did not have access to the same processes and independent legal representation was not normally available. So while an Afghan in Australia was granted a TPV, his family on Nauru, were not. A well known case where this occurred was that of Ali Sarwari who was a TPV holder living in Melbourne, while his wife, daughter and brother were detained in Nauru. In the end, it was New Zealand's government which offered reunion and residency to the family in question.

It was the diligence and perseverance of the Migration Agent, Marion Le in reviewing case by case applications, finding mistakes, inconsistencies and misinterpretations, which eventually brought about the recognition of many asylum seekers claims.

To date, all but two of the asylum seekers from the camps in Nauru were recognized as genuine. Some obtained residency in NZ, some in Australia, many are TPV holders. With the exception of some elderly and sick, all of them work, study English, pay taxes, send money to their families, integrate well into Australian community. They work commonly as tilers, bricklayers, construction workers and farmhands. They take jobs which are not wanted or where a shortage of labour exists. As well as that, dozens are doing post-secondary courses at TAFE and Universities. They are the people with enormous potential to make something of their own lives and to contribute to Australia.

In conclusion. if the Pacific Solution is continued and expanded, one has to ask: to what end? Must people suffer endless agonies first?

The new asylum seekers would not have access to Australian jurisdiction. They would suffer from isolation, mental anguish and the processes would be outside public scrutiny. It is well known that seclusion and secrecy lead to neglect and

even abuse. Australia owes a duty of care to those that seek protection because they are powerless. To do otherwise contravenes our international obligations and is morally reprehensible.

Yours sincerely,

Halina Rubin

Below are letters which attest to some of my statements. I have hundreds of letters and selecting the most representative is difficult. I will be happy to provide more material, if necessary.

8 November 2004

Dear mum

The lucky free man lives with good health, peace, and security. He lives under a law which grants his freedom and justice.

In contrary, those who are living in a compulsory detention in Nauru are deprived from their freedom. Uncertainty about the security and peace in their country of origin make a person sick and tired.

It is almost three years that I kept myself calm in the hope that one day I will pick up my stuff and run away from here. At this moment, my lucks are hiding behind the dark clouds and dust of Nauru.

I am waiting for a day that a redeemer appears in my life. If it happens one day, I will welcome him with all my love and excitement. I will hug him hard in my arms and I will not let it go. I will cry from happiness in such extent that all my shirt get wet from my tears.

I am a 20 years old man. I have suffered for 17 years of wars in my country. I faced many dangerous and depriving situations, which was threatening my life. I tried to escape in a safer place like Australia from the danger I was facing, but I ended in Australia with 3 years compulsory detention in Nauru and it will uphold for indefinite of time.

I want to thank you for sending me the Camera and money. I don't think they reach me. As you know that the post in Nauru is not very good. I hope that you don't worry about any of us but for sure that if you can help. Please don't hesitate.

I am going now and if any things happen I will let you know that is it
My good wishes be with you as always
Arif

2 August 2004

My dear Mom

Thank you very much for your email. It is really good to hear from you after ages. The camp looks empty and very quite nowadays and we all feel even more sad and loneliness than before. Now we are only 51 Afghans in Nauru, 22 from Tampa

supposed to go to NZ on September and you know I am one of them, but 29 others are those who have been rejected by DIMIA and I really hope and pray to God that they soon find a good solution for their situation.

I haven't received any parcel or letter from you. They steal the parcels in Nauru post office, so please don't send anything, but phone card will be really useful. I have to make lots of phone calls to Afghanistan, because as I asked my cousin to go to Pakistan and look for my family, he went to Pakistan, found my family and got them back to Afghanistan. Now my family are living with my cousin. I haven't talked to any one of my family yet, but soon I will call and talke to them.

Lots of love,

Best regards, Your son Hamzaie

Ali R. in his room in Nauru, 2004