MODERN-DAY TORTURE: GOVERNMENT-SPONSORED NEGLECT OF ASYLUM SEEKER CHILDREN UNDER THE AUSTRALIAN MANDATORY IMMIGRATION DETENTION REGIME.[*]

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A six-year old child lies across his father's shoulder [1] His eyes lack purposeful expression and his skin is pale. His number is LEE 67. Shayan Badraie's parents brought him from Iran to Australia in their quest for refugee status. But they came by boat and they arrived without visas. The world may have never known about Shayan's plight, were it not for a hidden camera inside the Villawood detention centre that secretly recorded the damage Shayan suffered as the result of his detention. When the television documentary went to air in August 2001, Shayan had been inside immigration detention for fifteen months. One day Shayan stopped talking. As time went by he also stopped eating and drinking. During a cycle of nine admissions for 'rehydration and drip feeding' to the Westmead Children's Hospital in Sydney, the child recovered, but became ill again when he returned to detention. [2]

In October of 2001 Shayan was one of 663 children in immigration detention, including 73 unaccompanied minors.[3] Their detention is mandatory and is not the result of judicial process. A Commonwealth Ombudsman report in March 2001 reveals that:

> Of the population still in detention at [2 Feburary 2001] seven children were born in detention and remained in detention, the oldest having been some 19 months in detention. ... I am aware of a child born in detention in July 1996 and still in detention in April 2000.[4]

Australian legislation stipulates that such detention is for administrative purposes, to assess if individuals qualify as refugees under the 1951 Convention. The terms of imprisonment appear excessive for travelling to Australia without valid documents, particularly as there is no upper limit on the length of detention.

Some Australian politicians say that such detention is necessary for Australia to safeguard her borders and exercise her national sovereignty. The author argues that mandatory detention damages children, and that the government's refusal to prevent this, and to enforce child protection laws, makes it culpable of torture of children.

The number of asylum seekers en route to Australia began to decline during the 2000/2001 financial year. Such decline was due to an agreement between Indonesia and the United Nations, whereby Australia intercepted the boats at sea, and returned the asylum seekers to Indonesia. [5] It was an outcome of this agreement that resulted in the South Pacific's involvement in Australia's detention of refugees. In August 2001, the Norwegian freighter HMAS Tampa picked up 434 survivors from the sunken vessel Palapa in

the Indian Ocean. In a subsequent 'shock decision by the government',[6] Australian Navy commandos stormed the Tampa and prevented her from entering Australian waters. This incident gave rise to the 'Pacific Solution.'

Under the 'Pacific Solution' Australia's navy intercepts asylum seekers at sea, and forcibly moves them to detention centres on Nauru and Manus Island, Papua New Guinea. In exchange for a '$20 million assistance package,' which not only included payment for providing the detention services, but also measures to improve the living conditions for the local population of the cash-strapped nation, Australia persuaded Nauru to accept and process asylum seekers to ensure their refugee claims would not be heard in Australia.[7] One month later, a deal with Papua New Guinea resulted in a detention centre on Manus Island.[8] In February 2002 there were 1,159 detainees in the Nauru camp and 356 detainees on Manus Island.[9]

The 'Pacific Solution' incorporates major legislative and policy changes that contribute to further the pain and suffering of asylum seeker children. Apart from the stress of surviving a hazardous voyage at sea, the forcible removal to an unknown and unwanted destination by the military, can only add to the trauma. The conditions in the Pacific Island camps also leave a lot to be desired. The Head of the Federal Government's advisory group on detention informs the Senate that Nauru is 'easily the worst' of all detention centers, where interruptions to fresh water supplies and electricity failures contribute to physical hardship.[10]

Government policy places children into these conditions of pain and suffering. Systematic government involvement in such practices could amount to torture, as defined by the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Australia is a signatory to this convention, but Australian domestic law ensures that prosecution for the crime of torture may occur only in very limited circumstances.

OF PRIVATE PAIN AND PUBLIC SCRUTINY

Effects of detention on mental health

Life in detention centres is sad. Australia has put in place an impersonal system. Harm does not result from the deliberate action of individuals, but from a bureaucratic and mechanistic process. Dr Sultan, a medical practitioner from Baghdad who himself was detained at the Villawood centre for over two years, coined the term 'detention syndrome.' The detention syndrome is a clinical condition that arises directly as the result of being a detainee inside an immigration detention centre.

> The experience of detention leads to a day-to-day mounting of stress caused by the environment of the facility where several factors — residential, administrative, and judicial — converge to undermine an individual's mental state .[11]

As described by Dr Sultan and Dr. O'Sullivan, the detention syndrome evolves in four stages. Initially detainees enter into a 'non symptomatic stage', where the dismay of detention is mitigated by hope that they will soon have a successful claim. As hope disappears and the prospect of forcible repatriation or indefinite detention becomes more apparent detainees enter into increasingly more severe depressive stages. The most severe is the 'tertiary depressive stage', which is characterised by 'hopelessness, passive acceptance and an overwhelming fear of being targeted or punished by the managing authorities'. [12]

Accordingly, the initial euphoria of surviving the voyage to Australia (or at least near to Australia, for

detainees taken to Nauru or Manus Island) is replaced by passive numbness and distrust. This attitudinal change is nurtured by the indefinite incarceration, by the fear of being sent back to a country that persecuted and possibly tortured them, and by harsh and traumatic conditions within detention.

Sultan and O'Sullivan also found that in this environment children are particularly at risk of developing psychological disturbances, as parents are unable to provide the expected parental support.[13] In another clinical study, twenty-one out of twenty-two detained children in Australia either developed or increased their psychiatric problems. The researcher summarises the findings as a 'nightmare' and 'systemic child abuse'.[14]

Evidence of systematic psychological damage is also emerging from camps in the Pacific. The head of psychiatric services at Nauru resigned in protest over a 'mental health nightmare.' His observations also confirm worsening of psychiatric problems, as the direct result of ongoing detention.[15]

Intentional neglect: A form of torture

Child neglect, even with resulting mental illness does not, by itself, constitute torture. But systematic involvement of a government in this process may amount to torture.

Within the framework of human rights, the agreed definition of torture comes from the Convention against Torture:

> ... 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.[16]

This definition sets torture apart from other cruel, inhuman or degrading treatment and punishment, which are also addressed by the Convention against Torture. To establish torture, four criteria must be met. There must be

1) severe pain or suffering, (physical or mental);

2) intentionally inflicted for the purpose of obtaining information/confession or to punish or intimidate "him" or a third person;

3) with consent or acquiescence of a public official or person acting in an official capacity;

4) which is not pain or suffering from lawful sanctions.

I will now go on to argue that the incarceration of children under the policy of mandatory detention satisfies all four conditions.

1) Severe pain or suffering, (physical or mental)

The European Court of Human Rights[17] establishes that inhuman and degrading treatment becomes torture when suffering is intense. Such a severity criterion intimately relates to the personal attributes of victims, such as age, sex, state of health and resilience. Children, because of their age and developmental needs, are especially vulnerable.

Various references cited in this article describe the damage that detention inflicts on some children. Children who have suffered or witnessed pain and suffering before they arrive in detention, are likely to reach torture threshold very quickly within the prison environment. It is therefore crucial that children from refugee populations are not exposed to the harsh realities of mandatory detention.

Even an 'innocent' decision, such as room allocation, can have a detrimental effect. A 15-year-old felt terrorised when he was housed with men from the ethnic group which had persecuted him and his family in his homeland.[18] Routine awakening by guards during random night patrols, the use of flashlight beams and the repeating of detainee names can lead to children developing fears about sleeping. One child resisted being put to bed, only to wake later exhausted, screaming with nightmares.[19] Waking detainees and shining a torch in their faces during hourly watch rounds possibly contributes to security. But systematic sleep deprivation is also a widely recognised form of torture.

In Nauru, not even basic physical needs are met. An Australian artist gained access to the camp by posing as a tourist, and took photos and recordings with hidden camera and sound equipment. 'She said detainees were physically and mentally ill from living in filthy conditions caused by a permanent water shortage. Contagious stomach and skin infections were rife and many detainees were very depressed'. [20]

2) Intentionally inflicted for the purpose of obtaining information/confession or to punish or intimidate 'him' or a third person

If children are knowingly placed into conditions of neglect, the damage that inevitably follows is foreseeable. Criminal law stipulates that the knowledge that an act will lead to an outcome equates to intention to create that outcome. Knowing the predictable outcome of the policy of mandatory detention, and nevertheless persisting with it, makes the Australian government culpable of torture of children.

The government has made it clear that, apart from protecting Australia's borders, the policy of mandatory detention is also intended to deter people smugglers from bringing asylum seekers to Australia.[21] Children are incarcerated for the purpose of influencing the actions of 'third persons,' the people smugglers. Implementation of the Pacific Solution also prevents people from claiming refugee entitlements in Australia, as stipulated in international law, and can be considered a punishment.

3) Consent or acquiescence of a public official or person acting in an official capacity

Torture comes about by the continued refusal of the government to stop the neglect. Government involvement is systematic, because immigration policy precludes any legal means of allowing child refugee applicants without a visa to live in an environment that fosters normal growth and development.

Detained children are not actively mistreated on specific orders from the Australian government. There is no official torturer in the traditional sense, who beats a screaming child. But where children are concerned, passive withholding of developmental requirements causes as much damage as active violence. Neglect by policy is just as cruel, unjust, and inhumane as if there were a personal perpetrator. Therefore, the definition of torture needs to be interpreted in a way that challenges mechanistic, systematic, and

impersonal neglect. Perfecting torture by a method that dispenses with the necessity of personal interaction during the torture process must not be rewarded.

Once the above argument is accepted, it is easy to establish that there has been consent to torture by a public official. DIMIA, the Department of Immigration and Multicultural and Indigenous Affairs, has responsibility for Immigration Detention Centres, despite a contract with Australasian Correctional Management that indemnifies the government from damages incurred as the result of day-to-day operation of detention services. Ultimately, the duty of care for safety and security of detained asylum seekers rests with DIMIA and cannot be delegated to a private operator. This is a position that DIMIA accepts. [22] Personnel of Australasian Correctional Management, therefore, act in the capacity of 'public official', as they are operating under the non-delegable duty of DIMIA

4) Does not include pain or suffering from lawful sanctions

Mandatory detention has its legislative basis in the *Migration Act 1958*. The Convention against Torture assumes that some pain and suffering always occurs, purely because a person is placed in detention. Such pain and suffering is 'inherent in or incidental to lawful sanctions,' and therefore does not amount to torture.

But systematic child neglect inside the detention centres outweighs the pain and suffering expected from any form of legal detention, and is therefore outside the spirit of the Convention against Torture. Detention under Australian law does not give license to introduce further pain and suffering. Immigration laws should not be extended to the point where they disregard other basic laws, and accept child neglect under the guise of lawfulness.

Torture as a social process

Whilst it may be difficult to identify individual instances of torture occurring in detention centres, if torture is conceptualised as a social process happening over a period of time then its occurrence becomes much more clear. Shayan Badraie's experience of detention illustrates how the seemingly passive role of the government equates to torture of a child. For three months, six-year old Shayan's cycle of treatment and relapse continued as he oscillated between clinical indicators of health and illness. Then the media arrested the cycle. But Shayan's recovery came at a price. After the screening of the television documentary in August 2001, the family was split up. Shayan was re-admitted to hospital and then released into the care of a foster family in Sydney. He was re-united with his mother when she was set free in January 2002,[23] but his father remained in detention for another seven months. Eventually, the whole family was granted a Temporary Protection Visa, after appealing to the Federal Court.[24]

The clue to Shayan's torture is the interplay of medical treatment and detention imperatives, where eating and drinking during hospital admission meant he was well enough to return to detention. Inside the detention centre, the six-year old would stop eating and would then be re-admitted to hospital. Government policy of the mandatory detention of children ensured that Shayan would receive treatment without ever getting well, because detention re-activated his condition.

Shayan's repeat hospitalisations render the institution of medicine a tool of immigration politics. Health professionals in detention centres always face a potential clash between ethical considerations and the objective of detaining people.[25] Treatment efficacy is compromised, because treatment interventions occur inside an environment that causes ill health, or because affected individuals are released from hospital into the conditions that caused the problem in the first place. Treatment outcome therefore is sub-

optimal, and this occurs as the logical result of the policy of mandatory detention.

The structure of wire fences, of daunting routine, and of medical treatment driven by detention imperatives maintain a backdrop of unrest and unpredictability. Children are aware that batons, riot shields, water canons or gas missiles can always be directed at them, even if friendly medical personnel patch up injuries. An environment where tension, suicide attempts, riots and hunger strikes are routine means constant fear.
Children learn quickly that no adult inside the detention centre has the power to stop this fear. The government initiative of keeping children locked inside these conditions, instead of moving them to safety, constitutes a breach of various provisions of the Convention against Torture.

There are uniforms, ID badges and head counts. Food is eaten when given out, usually after standing in a queue, followed by a scan for concealed metal cutlery. Less visible, but just as orderly, is the dismantling of family structure where traditional patterns of food preparation, eating and parental role modelling are replaced by the life of the institution.

Refugee applicants at the Woomera detention centre used to be called by a number, until this dehumanising practice was stopped when media publicity alerted the public to these conditions. People in the concentration camps of Nazi Germany were also called by a number. A submission to the Human Rights Commissioner about current practices in Australia reports that '...children have begun to identify themselves by numbers instead of by names and families'.[26]

The detention syndrome locates the causal factors that produce ill health 'in the environment of the facility'.[27] The following is how the mere physical layout impacts on parliamentary delegates:

> As a general comment, some members were shocked by the harsh picture presented by the exterior of some of the centres: double gates, large spaces between high fences topped with barbed razor wire. The physical impact of the centres, and the psychological impact on the detainees, are among the lasting impressions of the visits.[28]

But physical conditions can be easily improved without changing the plight of the children. Planting flowers inside the cage would only provide a decorative canvas that makes the mechanistic neglect and resulting torture even more grotesque. At the modern Baxter facility in South Australia, the offensive razor wire fence is replaced with an electric fence. Detainees have access to courtyards within the compounds. But they are on 24-hour camera surveillance, and all 'outside views are blocked.' Many detainees would prefer to be back at the notorious Woomera facility. [29]

In detention centres of the Pacific Solution, isolation is even greater, due to the difficulty for refugee advocates and journalists to obtain visas and to travel to the islands. Until May 2003, lawyers were not allowed to visit their clients at the Manus Island detention centre. [30] Torture as a social process is an ongoing layering of indignities and ill treatment, leading to psychological damage. Isolation, and the resulting invisibility of detainees provides yet another layer of the social process.

THE RIGHTS OF THE CHILD

As a signatory nation to the Convention on the Rights of the Child (the CRC), Australia gives a formal undertaking to 'protect the child from all forms of physical or mental violence' while in care [31] and thereby guarantees a child's physical integrity. The CRC article 39 calls for 'physiological and social recovery' to be initiated immediately after neglect has occurred. Article 37 also protects children from violence and neglect, and prohibits torture. Yet violence and neglect are ongoing and continue throughout detention.

The spirit of the CRC is to protect the best interests of children. While the CRC does not define 'best interests', one can readily see how separation from social life undermines the child's growth and development. Detention also takes away parental discretionary powers and leaves the child in limbo between government policies and the guards who implement the policy.

The Convention on the Rights of the Child also guarantees education.[32] But for education to be effective, children need to be happy, secure and emotionally safe. These are absolute prerequisites for the learning process. The opportunity and encouragement to explore their own creativity and the freedom for imagination to flourish are essential. Education in detention is not compulsory, and is below the standard offered to Australian children. Some children attend state schools in the community, under escort by detention guards. But for most, education is effectively interrupted for the duration of detention. In a developed Western country, withholding of formal education from young refugee applicants who are detained for long periods is inexcusable. The resultant neglect also puts Australia at odds with several UN conventions.[33]

An investigation by the Human Rights Commissioner into breaches of rights of children in detention, due to be printed in August 2003, did not include children on Nauru and Manus Island, because 'the inquiry's jurisdiction does not cover these places'.[34] This exempts the Australian government from scrutiny by the Human Rights Commissioner of potential human rights violations under the Pacific Solution. But occasionally conditions of detainees in even the most inaccessible centres are made public. Four weeks after a riot at Nauru, a journalist[35] secretly gained access to the detention camp. Seven detained women have husbands who live in Australia on refugee visas. A three-year-old boy, whose father lives on a Temporary Protection Visa in Sydney, has no memory of his father.

One father at the camp reported the following:

> My big son lost his brain. Now crazy. My wife also crazy. My small daughter, she forget our language. She don't know how to speak. My son, another one, his hand broken about 10 month. No-one take him to hospital.[36]

A mother said:

> My daughter was sick yesterday and she was vomiting, but all the APS (Australian Protective Services)[37] gave her was a syrup, and only a small amount.[38]

Australian Federal Police began investigating Australasian Correctional Management (ACM) in May 2003, for allegedly charging for education services it did not provide.[39] Only five years earlier, ACM enjoyed a good introduction to immigration detention services. After privatisation of detention services, the Human Rights Commissioner began an investigation.[40] The report commended ACM for its good relationship with detainees. But things changed quickly. In September 1999, the same year that the favourable report by the Human Rights Commissioner was published, the Federal Ombudsman began an investigation '...following complaints and a number of reported incidents including escapes and allegations of assaults on detainees.'[41] Eighteen months later, the ombudsman presented his findings.

> ...there were a worrying number of reports of indecent assault and threats toward unattached women and children who represent the groups at highest risk. In my view, the accommodation and monitoring/care arrangements at IDCs (Immigration Detention Centres) did not come up to what I would regard as a minimum acceptable standard to ensure that those at greatest risk

> are not exposed to harm.[42]

Results of a Parliamentary Inquiry[43] were released almost concurrently with the Ombudsman report. Again, there was evidence of inhumane treatment directed at women and children. Both reports question the mandatory detention of children. The government insists that mandatory detention is in Australia's national interests. Logic dictates that the systematic incarceration of children destroys, rather than enhances, Australia's interests.

> These children arrive through no fault of their own. They arrive because adults bring them here. Yet they are held accountable for problems created by grown-ups. The indiscriminate detention of children, therefore, is a reflection of how this nation treats those who are innocent. A legal and political framework that scapegoats children and uses them as a deterrent to stop others from arriving, is offensive to Australians.[44]

While the children are in immigration detention, special considerations apply in addition to the CRC. The UN Rules for the Protection of Juveniles Deprived of their Liberty (Rules) identify guidelines for the detention of minors under the Juvenile Justice system, including developmental needs such as leisure, education, vocational training, and access to the library. These needs are not provided in immigration detention.

An entire section of Rules sets criteria for the selection of personnel. Professional training is not enough. The Rules[45] also stipulate the personal qualities of 'integrity, humanity, ability and professional capacity'. Australia falls short of delivering these standards. The Flood Report recommended that the training of detention staff be upgraded, because some staff lacked awareness of company policy and also needed 'guidance to deal with issues of racism, sexism and religious intolerance.'[46]

Children have special rights and special protection in detention because they are especially vulnerable to abuse and damage. The protections are designed to minimise pain and suffering. By consistently denying these rights the Australian authorities are inflicting pain and suffering, which in turn ties the denial of rights to torture, as defined by convention (above).

POLITICS OF DECENCY

Mandatory immigration detention is a disturbing chapter in the history of Australia. Complaints, inhumane conditions, human rights violations, heavy-handed detention staff, and inadequate medical care are repeated throughout several investigations.[47] These problems occur consistently over time, because they are systemic to the detention process, and the logical outcome of government policy. A government official is available at all times, because each detention centre has a DIMIA manager on site. The presence of the DIMIA manager strengthens the link between events in detention centres and the government's policy of neglect.

It is of concern how, from among seventeen applicants for the tender to administer detention services, DIMIA chose a company experienced in the running of jails. The working culture of Australasian Correctional Management (ACM) seems inappropriate for facilities where children are detained for administrative purposes. ACM's American parent company, Wackenhut, originated from the traditions of the Federal Bureau of Investigation and also from prison work. Wackenhut now operates correctional facilities in seven countries. Had DIMIA intended to provide processing services rather than prisons, it would have employed social workers, teachers, and specialist counsellors with trauma and torture

experience.

Another cause for alarm is that ACM obtained the contract without first producing a Child Protection Policy that effectively deals with sexual abuse of minors. In February 2001 the Flood inquiry documented that no such policy was implemented.[48] This seems indefensible, because the company has been the sole operator of immigration detention facilities across Australia since 1998.[49]

Community opposition to mandatory detention grows. After an asylum seeker jumped to his death at the Maribyrnong detention centre in December 2000, sympathetic activists occupied rooftops at the centre until police intervened. Protesters demonstrate at detention centres in the cities and in remote areas. Interest groups such as Amnesty International, refugee, charity, church and political groups continually stage protests, rallies and vigils. The number of protesting groups has increased dramatically since the beginning of 2001, as prominent people in society use their influence to condemn the inhumanity of mandatory detention.

People speak against the backdrop of hot political debate. Words such as 'illegal immigrants' and 'queue jumpers' are now in colloquial use. The Immigration Minister conjures images of 'illegals' who 'steal' places from Australia's refugee and humanitarian program, and dismisses individuals who criticise his policies as 'malicious' or 'naïve'. A new vocabulary also emerges at the other end of the political spectrum. Detention centres are interchangeably called 'refugee prisons,' 'gulags', 'concentration camps' or a 'hell hole'.

Official DIMIA correspondence during the 'children overboard affair' refers to people on the stricken boat as SUNCs (Suspected Unauthorised Non-Citizens).[50] The diabolical humour inherent in this neologism trivialises the danger of drowning, deflects from the fact that there were real people on the boat, and dishonours our national and human responsibilities toward individuals in distress.

Aboriginal elder Ms Wadjularbinna Nulyarimma calls white Australians 'descendants of the First Fleet of illegal boat people.'[51] Fears that the current generation of boat people intend to steal the land from us, just as their British predecessors who also came by boat two hundred years ago and subsequently stole the land from the Aborigines, may reflect a collective paranoia of the Australian psyche that explains anti-refugee sentiment.

The public is aware of abuse and neglect behind razor wire through media reports and findings from official investigations. But many Australians do not welcome refugees. Popular antagonism toward detained asylum seekers allows the government to operate outside of accepted accountability and transparency practices.

In November 2000 a daily newspaper, The Australian, reported that child abuse was 'rampant'[52] at the Woomera detention centre, that a child was raped and sold for cigarettes, and that Australasian Correctional Management suppressed an investigation at the time.[53] The response was unique. A government official confirmed previous sexual abuse investigations, but summarised these as instances of faulty 'parenting skills.'[54] The Immigration Minister claimed the rape allegations 'were being pushed by advocacy groups opposed to the mandatory detention of asylum seekers with children.'[55] But within days, the Minister 'was forced to admit that evidence may have been suppressed'[56] and ordered a Parliamentary Inquiry.[57]

During a two-week hunger strike of 250 people that spread from Woomera to other detention centres, tensions escalated when eighteen people were treated for dehydration on the seventh day of the hunger

strike.[58] The Immigration Minister further inflamed matters by accusing parents of forcibly stitching the lips of their children to prevent the children from eating, and threatened to remove children from their parents.[59] A Senior Advisor to the Immigration Minister resigned amid the controversy because 'every time a humanitarian issue is raised in relation to the asylum seekers, their deviousness and even criminal intent is proclaimed.'[60]

In an earlier incident, during the "children overboard affair," Australian Navy rescued survivors from a sinking boat at high sea. 'The Federal Government' claimed that passengers threw their children overboard 'in a premeditated attempt to force their way into the country.'[61] Although it was known at the time that these allegations were incorrect, the Prime Minister, the Immigration Minster and the Defence Minister used the 'children overboard affair' to warn the public that asylum seekers who arrive by boat lack human qualities and are therefore unfit to live in Australia. Political commentators speculated that this antirefugee stance was crucial to the re-election of the Howard government.[62]

Further evidence of attempts to dehumanise asylum seekers came to light during a court case, more than one year after the Tampa incident. 'Authorities gave Tampa asylum seekers a pot of jam and filmed them diving for it to portray them as wild people during a hunger strike aboard HMAS Manoora.'[63] An eyewitness reports the footage was obtained after people had not eaten for ten days.[64]

The prevalent ideology demonises asylum seekers and is cultivated by the Australian Government. This ideology serves to rationalise the denial of protection guaranteed by Human Rights conventions and national legislation. Detention centres which operate under the policy of mandatory detention conform to a policy where child neglect is the logical outcome. But neglect becomes torture when the government fails to engage laws that should prevent such neglect.

Despite mounting international criticism,[65] Australian government propaganda portrays asylum seekers as repugnant, as people whose values are incompatible with perceived Anglo-Saxon tendencies to love and protect children. Consistent with this ideology, nurtured by a language that strips incarcerated asylum seekers of their humanity, is the myth that Australians must protect themselves from people who flee persecution and arrive by self-initiated travel arrangements. People fleeing terror are depicted as terrorists. Our national response is incarceration of all such persons, including their newborn.

Since the suicide missions of four hijacked planes in America caused the world to convulse with change, the Australian government has increasingly promoted another rationale for mandatory detention. Arguments that Australia must protect its borders have become louder and point to refugee boats as the preferred means for terrorists to enter the country. A backlash against individuals with dark hair and olive skin is in progress at the time of writing, although some such individuals were born in Australia.

There is no domestic law that prohibits torture inside Australia, as defined by the Convention against Torture. Section 6(1) of the *Crimes (Torture) Act 1988* only recognises torture if a government official commits the crime outside of Australia. The same 'disclaimer' appears in the 2001 amendment of the Act. Individuals may be charged under other relevant Australian legislation, for instance, assault. But torture is a crime against humanity, and being charged with assault or child neglect does not address the intent that is inherent in an allegation of torture. Culpability for torture extends beyond the individual perpetrator and holds governments accountable. It would seem that the *Crimes (Torture) Act 1988*, by excluding Australia from its jurisdiction, paves the way to impunity for Australian officials committing torture within their own territory. However, the Act may apply to Australian officials acting in camps in Papua New Guinea and Nauru.

More recent legislation, section 7(1) of the *Border Protection (Validation and Enforcement of Powers) Act*

200 removes the right to sue for criminal and civil offences committed against asylum seekers who arrive without visas. Accordingly, the Commonwealth, its officers, or 'any other person who acted on behalf of the Commonwealth' are exempt from legal proceedings against them. The legislation applies 'whether or not the action was taken while the person was on board the vessel'.[66] Future case law needs to test if the *Border Protection (Validation and Enforcement of Powers) Act 2001* paves the way to impunity for breaches of criminal and civil law not only on board of ships, but also within immigration detention centres in Australia, Nauru, and Manus Island.

Indeterminate length of immigration detention is not a legal necessity but a matter of government policy, with virtually no scope for judicial intervention. This places the detention of asylum seekers at odds with traditional notions of crime and punishment. Some asylum seekers, including children, are detained for years. No crime has been committed that warrants such lengthy imprisonment, or such inhumane treatment and neglect. In contrast with other prisoners who are detained after a court case, there is no hope for leniency or early release on parole. Australian legislation is unable to protect asylum seeker children from the damage they suffer as the result of their systematic incarceration.

CONCLUSION

The physical and mental wellbeing of detained children is in jeopardy. The institutions of law and medicine have been hijacked for the purpose of political gains, with the result that Australian domestic law has removed protection and justice as a realistic outcome for child refugee applicants.

Children in immigration detention are exposed to breaches of several human rights instruments, such as the Convention against Torture, the Convention on the Rights of the Child and the United Nations Rules for the Protection of Juveniles deprived of their Liberty. Australian law, such as the *Crimes (Torture) Act 1988*, the *Migration Act 1958*, the *Border Protection (Validation and Enforcement of Powers) Act 2001*, effectively do not stop the ongoing abuse and neglect of children behind razor wire and electric fences. In practice, this means that investigations, prevention and punishment of child abuse and neglect are not carried out with the full force of child protection laws that apply elsewhere in Australia. This makes the Australian government responsible for the torture of children.

Against the backdrop of ongoing torture of children, the insistence by the government that detention is humane becomes an intellectual exercise that distorts semantic meaning in the war of words between the Department of Immigration and Multicultural and Indigenous Affairs and refugee supporters.

Isolation from mainstream society, the remote location of most camps within Australia and in the Pacific Islands, prevention of access by the media, the secrecy clauses that prevent public scrutiny of commercial contracts between the Immigration Department and the prison firms who operate these detention centres, all provide an ideal environment for torture to occur. Whilst torture of detained children is in progress, many Australians perceive asylum seekers as a threat. Public perception of such threat is generated by the manipulation of language, as a racist ideology strips asylum seekers of their humanity.

The institution of medicine, traditionally renowned for its ethos to provide medical treatment regardless of social, political or legal status of the patient, has been transformed into a tool of immigration politics. Medicine is practiced within the framework of mandatory immigration detention, a framework that undermines the wellbeing of detained children. For many, a prison environment becomes their sole experience. This environment causes the detention syndrome, a phenomenon that destroys the fabric of a person's being.

Neglect, as the logical consequence of government policies, compromises the mental, social, and

developmental profiles of detained children. Future research needs to explore if the detention syndrome constitutes a new diagnostic entity. Future research also needs to explore the relationship between the length of detention and the amount of damage inflicted, and potential causal links between immigration detention and intergenerational damage.

Australia's response to unwanted and uninvited refugees is to keep people out by military means, and to incarcerate those who make it alive to our shores, including families with their newborn babies. Such response is morally wrong as well as indefensible, because it causes untold damage, especially to children, and compounds the pain and suffering already experienced before their arrival. To prevent further damage from being inflicted in the name of Australia, children should be released from detention, together with both parents. Sadly, it seems that most Australians support the government's stance on refugees. At the time of writing, community opinions remain polarised and a humane outcome for detained children is uncertain. It is therefore crucial that the press, individuals and refugee advocacy groups remain vigilant and demand that the government work in an accountable and morally responsible manner.

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[#] Barbara Rogalla is currently a commonwealth scholar at RMIT University in Melbourne, Australia. She has worked as a Registered Nurse at the Woomera Immigration Detention Centre, and subsequently became a Human Rights Activist for refugees. She initiated media interest by alleging that Woomera management of Australasian Correctional Management suppressed an investigation into allegations of child sexual abuse at that centre. A parliamentary inquiry later confirmed a cover-up by the company.

[1] Whitmont, D., 'The inside story: Continuing turmoil in migrant detention centres is projecting an Australia that is unsympathetic to the needs of people who fled their homeland to seek shelter here.' *(Four Corners TV broadcas*t) 13.08.01 http://www.abc.net.au/4corners/stories/s344246.htm

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