



Australian Children's Rights News

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Border Protection Australian Style: A modern form of torture

DCI-A member Barbara Rogalla is a Registered Nurse with first hand experience both of working in immigration detention centres and “blowing the whistle” on their conditions. This is a shortened form version of a paper co-written with DCI-A member and Child Care Worker Trish Highfield for the World Organisation Against Torture (OMCT) international conference ‘Children, torture and other forms of violence: Facing the facts, forging the future’ held in Finland between 27 November and 2 December 2001.

A six-year old child lies across his father's shoulder.¹ His eyes lack purposeful expression and his skin is pale. This picture is the aftermath of eighteen months of mandatory immigration detention.

Shayan's number is LEE 67. One day Shayan stopped talking. As time went by he also stopped eating and drinking. “At least seven times”² he went to hospital, recovered but became ill again when he returned to the Villawood detention centre. At the time, there were 662 other children locked up in immigration detention.³

The Ombudsman identified one nineteen-month old child who has been detained since birth, and another child who was detained for four years.⁴ Surely such terms of imprisonment are excessive for travelling without valid documents. There is no upper limit on the length of detention.

Canberra politicians say that such detention is necessary for Australia to safeguard her borders and exercise her national sovereignty.

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Lastly, I look forward to working with the new and continuing members of the National Committee on what promises to be some challenging issues in relation to: children in detention centres, the Federal Government's next report on Australia to the United Nations Committee on the Rights of the Child, and the optional protocols on child prostitution and child soldiers which Australia is yet to ratify.

Producing a non-government response or an alternative report to the UN Committee should be high on our list of priorities for the next year. Let's see what we can do!

Dr Judy Cashmore

New e-mail addresses for DCI Headquarters in Geneva are effective 1 November 2001



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Call for Articles

Australian Children's Rights News depends on the input of members affiliates and subscribers to keep providing you with a wide-ranging and informative update on children's rights issues. Other with a viewpoint on children and young people's rights are also invited to submit.



We are now seeking articles to be considered for the first edition of 2002. Contributions of between 700 and 1500 words are preferred and should be e-mailed with full author details to judycash@nsw.bigpond.net.au

Suggested graphics or photos to accompany the article are most welcome. The closing date for receipt of material is 15 February 2002 however authors should advise the editors as soon as possible if they are planning to submit.

If you have an idea which you would like to discuss, please phone Judy Cashmore 02 9880 2286

Articles published in Australian Children's Rights News may also be placed on the DCI-Australia Website: www.dci-au.org/.

What the politicians do not tell the public is that child neglect is the logical consequence of the incarceration of children. The systematic way in which such damage is inflicted means that detained children are tortured inside the immigration lock-ups.

Several UN documents⁵ attest that the world abhors all forms of torture. It therefore is an indictment of Australia that its treatment of children fits the definition of Article 1 of the Convention against Torture (CAT):

“ ... “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.”⁶

Detained children are subjected to “severe pain and suffering ...based on discrimination ... inflicted ... with the consent or acquiescence” of the Australian government. The Department of Immigration (DIMA) and the private company Australasian Correctional Management (ACM) jointly administer detention centres. But company employees, rather than “public officials”, generally interact with detainees. CAT was written in 1987. It would then have been difficult to predict the full extent of privatisation and that ACM employees inside immigration detention centres function as public officials.

A child does not care about terms of employment. But a child will remember waking startled by a person in prison guard uniform. 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. Waking detainees and shining a torch in their faces during half hourly watch rounds possibly contributes to security. But systematic sleep deprivation is also a form of torture.

Even an “innocent” decision such as room allocation can have a detrimental effect and activate previous trauma. Memories of previous terror were re-activated for a 15-year-old when he was housed with men from the ethnic group which had persecuted him and his family in his homeland.

Detention-style torture is a passive but relentless process. Torture occurs by the mechanism of child neglect, by omission of care rather than active commission. There is no grim faced torturer who systematically maltreats a screaming and frightened victim.

CAT stipulates intent and therefore excludes “*suffering incidental to lawful sanctions*” from its torture criteria. Yet the mandatory character of government policy, the relentless detention without thought for individual circumstance, and the unhealthy environment that re-traumatises children plot a very thin dividing line between suffering by intent and suffering by chance.

Torture presupposes the innocence of its victims. Such innocence becomes most obvious where the victims are children.

Shayan Badraie’s experience of detention illustrates how the seemingly passive role of the government causes a child to become ill. 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. After screening of a documentary, the family was separated. Shayan was released. His parents remained in detention.

The clue to Shayan’s torture is the interplay of medical treatment and detention imperatives, where the detention of children ensures that Shayan would receive treatment without ever

getting well. The re-activation of his condition demonstrates the logical result of the policy of incarcerating children.

The relationship between detention and health illustrates how the institution of medicine is a tool of immigration politics. Health professionals in detention centres always face a potential clash between ethical considerations and the objective of detaining people, because the goals of promoting health and keeping people locked up are fundamentally different.⁷

A death in custody carries heavy financial penalties for ACM, but there are no financial incentives for promoting wellbeing. Neither does suboptimal wellbeing incur a penalty. Treatment that is financed and authorised by DIMA for the purpose of maintaining minimum standards occurs in an environment that causes ill health.

Children are aware that batons, riot shields, water canons or gas that causes nosebleed can always be directed at them, even if friendly medical personnel patch up injuries. Suicide attempts and other acts of self harm among detainees drive thoughts of death and self mutilation into the minds of children. Living in a wire cage where tension, riots and hunger strikes are routine means torture, because children constantly live in fear.

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. The locked enclosure, the relative inaccessibility to advocacy and legal services, and the practice of calling people by numbers make the camps an ideal environment for torture.

Mandatory detention breaches the Convention of the Rights of the Child (CROC). Australia gave a formal undertaking to “protect the child from all forms of physical or mental violence” while in care.⁸ Article 39 calls for immediate measures toward “physiological and social recovery” after neglect has occurred. But detention constantly re-exposes children to such violence. Therefore, detention compromises the CROC principles of Best Interest⁹ and Survival and Development.¹⁰

Detention denies access to the social justice policies of the welfare state.¹¹ But selective access to health care contravenes the CROC principle of non-discrimination.¹² Non-discrimination means that children in detention should not be treated differently from other children, regardless of their mode of transport to Australia.

Not only is CROC breached.

The UN Rules for the Protection of Juveniles Deprived of their Liberty stipulate that teenagers have leisure, education, vocational training, and use of the library.¹³ These socialisation needs are not met in immigration detention, even though they ought to be in all facilities without discrimination.¹⁴ Neither do “integrity, humanity, ability and professional capacity”¹⁵ feature highly among ACM personnel. A parliamentary inquiry revealed that staff needed “guidance to deal with issues of racism, sexism and religious intolerance.”¹⁶

Indeterminate mandatory immigration detention in Australia is not a legal necessity but a matter of government policy, with virtually no apparent scope for judicial intervention. To the extent that keeping children inside immigration detention amounts to torture, such torture is systematic because the legal process is unable to protect these children.

There is no domestic law that prohibits torture in Australia. Instead of making torture illegal, Foreign Minister Alexander Downer supported strip search legislation for children as young as ten¹⁷ and also denounced UN Human Rights Committees as not “sufficiently professional.”¹⁸ Concerns by Amnesty over legislation that prohibits the Human Rights Commissioner and the Ombudsman from initiating contact with detained asylum seekers are also documented.¹⁹

The safety of detained children is in jeopardy. The institutions of law and medicine have become hijacked for the purpose of political gains with the result that Australia has institutionalised inhumanity.

Mandatory immigration detention undermines the wellbeing of children. The detention centre becomes their sole experience, because they are locked inside. Neglect, as the logical consequence of mandatory detention, systematically compromises the mental, social, and developmental profiles of children, and thereby tortures them.

Children should be released from detention immediately, together with both parents, and the mandatory detention of unaccompanied minors is inexcusable.

It sadly seems that most Australians support the incarceration of asylum seekers. At the time of writing, a humane outcome for detained children is uncertain.

Footnotes

1. ABC television Documentary "4 corners": 13-8-01. The documentary was filmed with a hidden camera inside the Villawood detention centre in Sydney.
2. ABC television, "7.30 Report": 14-8-01, comment by Immigration Minister Phillip Ruddock.
3. The Age, newspaper. "Refugees or Pawns?" 12-10-01
4. Commonwealth Ombudsman. "Report of an Own Motion Investigation into The Department of Immigration and Multicultural Affairs' Immigration Detention Centres." Page 21: 2001
5. Universal Declaration of Human Rights, article 5: 1948; International Covenant on Civil and Political Rights, article 7: 1976; Convention of Rights of the Child, article 37: 1990. Links to these instruments can be found at <http://www.dci-au.org/html/links.html>
6. Convention Against Torture or other Forms of Cruel, Inhuman, or Degrading Treatment and Punishment, article 1: 1987
7. B. Rogalla, "Nursing behind razor wire: A question of ethics." Australian Nursing Journal, April 2001, Vol 8, No 9, p 21: 2001
8. Convention of the Rights of the Child, article 19: 1990
9. *ibid*, Article 3
10. *ibid*, Article 6
11. P. Mares. *Borderline. Australia's Treatment of Refugees and Asylum Seekers.* Pages 170-171. UNSW Press: 2001
12. Convention of the Rights of the Child, Article 2: 1990
13. United Nations Rules for the Protection of Juveniles deprived of their Liberty, articles 38-43: 1990
14. *ibid*, article 4
15. *ibid*, articles 81-87
16. P. Flood, AO. "Report of Inquiry into Immigration Detention Procedures." Parliament of Australia, page 42: February 2001
17. Sydney Morning Herald, Newspaper. "Strip Searches at Detention Centres get nod from Labor.": 10-8-01
18. ABC Radio, PM. "Australia to tackle International Human Rights": 5-4-01
19. Amnesty International. Annual Report 2000. Australia.

The International Conference on Children, Torture and Other Forms of Violence held in Tampere Finland issued a concluding Declaration. To see it, visit DCI-Australia's website News and Events page at: www.dci-au.org/html/news.html

Human Rights and Equal Opportunity Commission Inquiry into Children in Immigration Detention

The Human Rights Commissioner, Dr Sev Ozdowski, will conduct an Inquiry into children in immigration detention on behalf of the Commission assisted by a team that will be announced at a later date.

Terms of reference

The Commissioner will inquire into the adequacy and appropriateness of Australia's treatment of child asylum seekers and other children who are, or have been, held in immigration detention, including:

1. The provisions made by Australia to implement its international human rights obligations regarding child asylum seekers, including unaccompanied minors.
2. The mandatory detention of child asylum seekers and other children arriving in Australia without visas, and alternatives to their detention.
3. The adequacy and effectiveness of the policies, agreements, laws, rules and practices governing children in immigration detention or child asylum seekers and refugees residing in the community after a period of detention, with particular reference to:
 - the conditions under which children are detained;
 - health, including mental health, development and disability;
 - education;
 - culture;
 - guardianship issues; and
 - security practices in detention.
4. The impact of detention on the well-being and healthy development of children, including their long-term development.
5. The additional measures and safeguards which may be required in detention facilities to protect the human rights and best interests of all detained children.