

Contemporary Comments

Systems of Exclusion: The Rudd Government and the 'End' of the Pacific Solution

Abstract

The closure of the immigration detention facility on Nauru by Australia's new Labor government marked the end of one of the most abusive symbols of the Howard government's 'Pacific Solution'. However, this decision did not mark the end of the institutional exclusion of unauthorised migrants by the Australian state. The Rudd government is committed to maintaining the purpose built detention centre on Christmas Island; the excision of key landfalls such as Christmas Island from Australia's migration zone; the off-shore processing of asylum applications and the mandatory detention of 'unauthorised non-citizens'. This comment briefly examines each of these dimensions of the Labor government's border control policies and highlights their role in sustaining the alienation, criminalisation and abuse of unauthorised migrants.

From Pacific Solution to Indian Ocean Solution

The decision to close the immigration detention centre on Nauru in December 2007 highlighted one of the few differences between the border policing policies of the Labor and Coalition parties in the run-up to the November 2007 federal election. In contrast to 2001, little was made of the border policing issue during the 2007 campaign, reflecting both the close consensus between the main parties and the damaging impact on the government of episodes such as the 'children overboard' affair. This did not make the decision to close Nauru trivial. While it reflected the new government's desire to operate an off-shore detention system more directly controlled from Canberra, rather than any substantial differences of principle, the closure of the centre at least ended the indefinite detention of those stranded on Nauru, which the Howard government was determined to maintain.

In July 2007, the then foreign affairs minister, Alexander Downer, had signed a memorandum of understanding with the Nauru government pledging ongoing financial aid to Nauru in exchange for the continued operation of the Nauru detention centre. The details of the deal were not disclosed but concerns were raised about the continued 'blowout' of funding from 17.7 million to 29 million dollars during the 2005-2006 financial year, bringing the total of such tied aid payments to over \$100 million dollars since 2001. A former Ausaid official, who was responsible for the agency's Nauru program, 'described the aid payments as an "unmitigated bribe" to retain the centre', which at the time held 90 Sri Lankan Tamil and Burmese refugees (Skehan 2007).

In September 2007, the then immigration minister, Kevin Andrews, announced that 72 of the Sri Lankans detained since February 2007 had been granted refugee status. Indefinite detention on Nauru had taken its toll on this group. In July, concerns had been raised about the possible deterioration of their mental health (PSC 2007) and on 1 September, 50 of the

group had commenced a hunger strike demanding that decision be made on their claims and venting their frustration that they had been 'reduced to walking zombies' (ASRC 2007; Topsfield 2007b).

The hunger strike was called off after six days, after the immigration department indicated that decisions on the applications would be made within a week. However, those who were granted refugee status were told that they would remain detained on Nauru while the Australian government explored other resettlement options. Returning to the well worked theme of deterrence, minister Andrews declared '[t]he successful reduction in the number of people seeking to enter Australia unlawfully has been a direct result of the Howard government's policy that persons who seek to enter Australia illegally will not be settled' (MIC 2007). While the Howard government had previously announced a special arrangement with the United States government to exchange up to 200 refugees per year (Topsfield 2007a), there was no indication this would be activated for the Tamils.

Labor's decision to shut-down Nauru, grant refugee status to the remaining detainees and resettle them all in Australia¹ therefore ended the indefinite state of limbo to which they had been condemned by the previous government. But it did not signal a fundamentally different approach to unauthorised migrants, or dismantle the systems that exclude and abuse them. Instead, the focus of the off-shore border policing regime has shifted to the Christmas Island detention centre.

This state-of-the-art, privately operated facility, due to open in April 2008, forms part of a network of purpose-built or upgraded centres in Darwin, Perth, Adelaide, Melbourne, Sydney and Brisbane. This network constitutes a national prison estate for immigration detainees, who are quarantined from the outside world and reduced to mere objects within a wider bureaucratic process. With the Australian state bestowing upon itself the automatic right to detain, maintaining the integrity of that process, rather than claims to liberty and protection by individual detainees has been the enduring managerial concern. This has led to an increasing emphasis on security and physical containment.

The new Christmas Island centre exemplifies this. It has electric fences and microwave probes for detecting movement; there are camera systems posted under eaves, on roofs and in every room; and the whole camp is linked by CCTV to a remote control room in Canberra. The detainees will wear electronic identification tags which identify them wherever they are in the centre by locator beacons. There are cameras and microphones in every room, wall mounted behind heavy metal grilles. The doors to the rooms are electric and centrally controlled, requiring detainees to use 'request to exit' buttons. Cars accessing the centre must go through airlock systems and electric doors. Between the multi-layered fence systems there are checkpoints for human guards on patrol and outdoor security cubicles for them to sit, sited at short intervals all around the perimeter of the centre. Each of these security cubicles is wired with duress buttons and microwave probes (Black 2007).²

The new centre will hold up to 800 detainees, which invites the question: who is the government proposing to detain? The renewed incarceration of children cannot be ruled out given that the centre houses 'a compound with an eight cot nursery, childcare centre, play area and class rooms' (Black 2007). But even within the terms of the detention policy, the

1 The last of the detained Sri Lankan refugees arrived in Australia on 8 February 2008.

2 The plans for the Christmas Island centre were first published on the Crikey.com website and were subsequently picked up by the mainstream media. The plans can be found at: <http://www.crikey.com.au/Politics/20070328-Christmas-Island-the-full-plans.html>

broader issue remains of whether or not such a large new facility is needed. The number of detainees has dropped considerably in recent years; as at 18 January 2008, 521 people were in immigration detention, of whom only two were detained in the existing Christmas Island centre (DIAC 2008).

This suggests that Labor's commitment to maintaining an external border policing infrastructure over-rides more basic financial considerations. Even if empty, the Christmas Island centre will operate as a symbol of the government's ongoing adherence to Howard's policy of forward deterrence. This is complemented by Labor's refusal to rescind the excision of Christmas Island from Australia's migration zone and its commitment to the off-shore processing of refugees attempting unauthorised entry. Instead of a Pacific Solution, we have an Indian Ocean solution, devoid of the complexities of neo-colonial aid arrangements with vulnerable Pacific states, but offering the prospect of a Guantanamo Bay type installation, where unauthorised migrants can be kept isolated from the wider Australian community, quietly operating out of public view.³

The implications of this for unauthorised migrants are profound. Refugees excluded in this manner will continue to be denied access to a full refugee determination process and will have no guarantee of resettlement in Australia, while all detainees risk the damaging impact of detention and the prospect of forced, often violent removal. These latter consequences have received little public recognition from the new government, despite ongoing revelations about the abusive impact of detention and the culture of control within the immigration department that is driven by government policy.

The Culture of Containment

In a previous comment in this journal (Grewcock 2005), I argued that the unlawful detention of Cornelia Rau and the unlawful removal of Vivian Alvarez Solon reflected a deeply rooted organisational culture within the immigration department that made such 'mistakes' inevitable and that a criminological framework for attributing responsibility to government policy makers for the actions of individual immigration officers ought to be developed.

Since that time, the appalling scale of the department's unlawful actions has become much clearer. The Rau and Solon cases triggered a series of investigations that revealed the unlawful detention of 247 people between 1993 and 2007.⁴ Some of these decisions had severe consequences: Cornelia Rau was detained for ten months; after being wrongly detained and peremptorily removed, Australian citizen Vivian Alvarez Solon was stranded in the Philippines for four years; Australian citizen Mr T was detained on three separate occasions for a total of 253 days (CO 2006a); and East Timorese refugee Mr G, who was entitled to a form of permanent residence, was detained for 43 days having legally lived in Australia for over 25 years (CO 2006b).

Only two weeks before the 2007 federal election, the ABC's *Lateline* programme revealed the case of Tony Tran, who 'was wrongfully locked-up for five and a half years ... separated from his wife, who went back overseas and now can't be found ... [who] lost his home and his livelihood and [whose] Australian-born son was put into foster care while an attempt was made to deport the boy without his father's knowledge'. Moreover, 'while in

3 It should be noted that a separate part of the Guantanamo Bay complex has been used for the detention of refugees seeking entry to the United States from states such as Haiti (McBride 1999). Officials from the US Homeland Security Department also inspected the Christmas Island centre in November 2006 (Black 2007).

4 See Palmer (2005); Comrie (2005); and CO (2006a, 2006b, 2006c, 2006d, 2007a, 2007b, 2007c and 2007d).

detention, Tony Tran was stabbed and bashed by another inmate and now suffers a range of chronic health problems' (O'Neill 2007). The day after the story broke, the Commonwealth Ombudsman revealed that 'more serious detention cases are yet to be made public' (Stewart 2007).

Tran was subsequently granted permanent residence by the new immigration minister, Chris Evans, but there is no likelihood that the mandatory detention policy, which was introduced by a previous Labor government and remains the cornerstone of the government's border policing policy, will be revoked. Instead, the immigration department will quietly try and resolve individual cases, where it has clearly made decisions that are wrong in law, while maintaining a detention policy that not only promises to leave some people in detention for years,⁵ but also offers little prospect that the damaging effects of detention highlighted by the Rau case and bodies such as the Human Rights and Equal Opportunities Commission⁶ will cease.

It is not possible to predict how many people will be detained during the life of the Rudd government. We can be certain that those who are currently detained tend not to be asylum seekers but overstayers or people caught working or fishing illegally.⁷ In general, this cohort of detainees does not attract the publicity associated with boats carrying refugees and may not have particular claims to protection that might help legitimise their actions. However, the vast majority of the departmental 'errors' highlighted by the Ombudsman have been made in relation to these migrants.

The operation of the mandatory detention policy should therefore continue as a focus for criminology. The elaborate security complex constructed to exclude refugees and restrict free movement; the routine use of detention; and the profound lack of accountability that operates in relation to immigration officers combine to enable the ongoing, daily criminalisation of hundreds of people, who are denied even the minimal protections of criminal justice process. Whatever eventuates with the Christmas Island detention centre or the numbers of unauthorised refugees seeking entry, the various systems of border policing enforced by the Australian state require ongoing examination and challenge.

Mike Grewcock

Faculty of Law, University of New South Wales

References

ASRC (Asylum Seeker Resource Centre) 2007 'Open letter to the Minister for Immigration and Citizenship' <<http://www.asrc.org.au/uploads/File/Nauru%20Asylum%20Seekers.doc>> accessed 19 September 2007.

5 Reports table by the Commonwealth Ombudsman in Federal Parliament by July 2007 included four investigations into people detained for six years; 12 for five years; 31 for four years; 37 for three years; and 60 for two years or more (CO 2007e).

6 For example HREOC (1998) and (2004). See also Dudley (2003); Silove and Steel (1998); Silove et al (2000); Steel et al (2004); and Sultan and O'Sullivan (2001).

7 For example, as at 18 January 2008, of the 521 people in immigration detention, 8 were unauthorised boat arrivals, 34 were unauthorised air arrivals and 314 had overstayed or breached their visa conditions (DIAC 2008).

Black S 2007 'Christmas Island – building our own private Guantanamo' *Crikey* 28 March <<http://www.crikey.com.au/Politics/20070328-Christmas-Island-the-full-plans.html>> accessed 5 June 2007.

CO (Commonwealth Ombudsman) 2006a *Report on Referred Immigration Cases: Mr T* Report No 04/2006 Canberra

CO 2006b *Report Into Referred Immigration Cases: Mr G* Report No 06/2006 Canberra

CO 2006c *Report Into Referred Immigration Cases: Mental Health and Incapacity* Report No 07/2006, Canberra

CO 2006d *Report Into Referred Immigration Cases: Children in Detention* Report No 08/2006 Canberra

CO 2007a *Report Into Referred Immigration Cases: Detention Process Issues* Report No 07/2007 Canberra

CO 2007b *Report Into Referred Immigration Cases: Data Problems* Report No 08/2007 Canberra

CO 2007c *Report Into Referred Immigration Cases: Notification Issues* Report No 09/2007 Canberra.

CO 2007d *Report Into Referred Immigration Cases: Other Legal Issues* Report No 10/2007 Canberra

CO 2007e *Immigration reports tabled in Parliament by number* Canberra

Comrie N 2005 *Inquiry into the Circumstances of the Vivian Alvarez Matter* Commonwealth Ombudsman Canberra

DIAC (Department of Immigration and Citizenship) *Detention Statistics Summary as at 18 January 2008* <http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-18-01-08.pdf> accessed 30 January 2008

Dudley M 2003 'Contradictory Australian national policies on self-harm and suicide: the case of asylum seekers in mandatory detention' *Australasian Psychiatry* Volume 11 Supplement

Grewcock M 2005 'Slipping through the net? Some thoughts on the Cornelia Rau and Vivian Alvarez Inquiry' *Current Issues in Criminal Justice* vol 17 no 2

HREOC (Human Rights and Equal Opportunities Commission) 1998 *Those Who've Come Across the Seas: Detention of Unauthorised Arrivals* Sydney

HREOC (Human Rights and Equal Opportunities Commission) 2004 *A last resort? National Inquiry into Children in Immigration Detention* Sydney

McBride M 1999 *The evolution of US immigration and refugee policy: public opinion, domestic politics and UNHCR* New Issues in Refugee Research Working Paper Number 3 UNHCR Geneva

MIC (Minister for Immigration and Citizenship) 2007 'Status of Sri Lankan Asylum Seekers' *Media Release* 12 September

O'Neill M 2007 'Wrongfully detained for 5 years – the tragic story of Tony Tran' *Lateline* ABC television 12 November <<http://abc.net.au/lateline/content/2007/s088867.htm>> accessed 13 January 2008

Palmer, M 2005 *Report of the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau* DIMIA Canberra

PSC (Project SafeCom) 2007 'Nauru Sri Lankans show first signs of mental health deterioration' *Media Release* 5 July

Silove, D & Steel Z 1998 *The Mental Health and Well-Being of Onshore Asylum Seekers in Australia* Psychiatric Research and Teaching Unit University of New South Wales Sydney

Silove D, Steel Z & Watters C 2000 'Policies of deterrence and the mental health of asylum seekers in Western countries' *JAMA* no 284

Skehan C 2007 'Canberra silent on Nauru aid' *Sydney Morning Herald* 18 July

Steel Z, Momartin S, Bateman C, Hafshegani A, Silove D, Everson N, Roy K, Dudley M, Newman L, Blick B & Mares S 2004 'Psychiatric status of asylum seekers families held for a protracted period in a remote detention centre in Australia' *Australia and New Zealand Journal of Public Health* vol 28

Stewart J 2007 'Ombudsman says more serious detention cases yet to be made public' *Lateline* ABC television 13 November <<http://www.abc.net.au/lateline/content/2007/s2089991.htm>> accessed 13 January 2008

Sultan A & O'Sullivan K 2001 'Psychological disturbances in asylum seekers held in long term detention: a participant-observer account' *Medical Journal of Australia* vol 175 no 4

Topsfield J 2007a 'Refugees: Now for the US Solution' *The Age* 19 April

Topsfield J 2007b 'Nauru detainees "walking zombies"' *The Age* 4 September