

Paying Their Debt to Society?

Billing Asylum-Seekers for Their Time in Detention

By Katie Mitchell and Azadeh Dastyari

Australia's policy requiring the mandatory detention of "unlawful non citizens" including asylum seekers, has attracted worldwide condemnation. International human rights bodies have found the policy to violate human rights and many individuals and groups, both here and overseas, have expressed their disapproval. But for many detainees the nightmare of mandatory detention doesn't stop with their release, it simply takes a new form, as the government presents them with a hefty bill for their time spent in detention.

The concept of charging detainees for their detention was introduced in 1992 under the Migration Reform Act. Section 209 states that detainees must repay the Commonwealth for the cost of their accommodation, food and other requisites of daily life, as well as the costs associated with locking them up. This is a policy unique to Australia, and the only historical precedent is in Nazi Germany where the family of a person detained and executed in a concentration camp was billed for his detention and execution.

Although the responsibility for the well being and care of detainees falls squarely on the shoulders of the Australian Government, it has chosen to contract private companies to operate and manage the centres. These contracts are very profitable: statistics supplied to a Parliamentary Estimates Committee in February 2004 suggest that the total costs of running mainland detention centres in 2003 were \$87 million and in 1994 the minimum cost of detaining an asylum seeker was \$111 per day. However these exorbitant costs do not reflect a high standard of care for detainees, for example it was estimated that the daily food allowance at a Perth Immigration Detention Centre was approximately four dollars per person per day. When they are billed for their detention, detainees are being asked to fund—at very high rates—the work of private companies supplying sub-standard services.

Under s215 of the Migration Act the Commonwealth is awarded specific powers to recover the debt, with potentially devastating consequences for debtors. These include the power to restrain dealings with property, to prevent a bank or financial institution from processing any transactions in any account held by the debtor, to attach the debt to specific forms of income of the debtor and to enter a premise in order to seize and sell valuables belonging to the debtor. Further, the debt may prevent an individual from being able to re-enter Australia should they leave and then wish to re-

turn. In the case of individuals wishing to obtain another form of immigration visa such as a permanent spouse visa, the debt may be used to prevent the visa

being granted to them.

Detainees are the only group within the Australian community who are charged for their detention. Individuals detained in prisons, mental hospitals or in quarantine, for example, are not billed for the cost of their detention. The policy therefore chalks up yet another black mark against Australia in its compliance with its obligations under international law, violating the prohibition on discrimination. This prohibition exists in numerous international law documents, including the International Covenant on Civil and Political Rights (ICCPR) which Australia has ratified. Article 2(1) of the ICCPR imposes a general prohibition on discrimination and article 26 affirms all individuals' rights to equal treatment before the law. The UN Human Rights Committee has explicitly stated that the ICCPR applies to all people in a state's territory, "irrespective of his or her nationality or statelessness." The singling out of non citizen detainees to pay detention debts is a blatant violation of this prohibition.

Mandatory detention in Australia has been strongly linked with a rapid deterioration in the mental health of detainees. Suicide rates in immigration detention facilities are estimated to be three to 17 times higher than the rate in the Australia community. Refugees who have spent time in detention have twice the risk of depression and three times the risk of post-traumatic stress disorder than those who have not been in detention. The burden of a debt, which can be as high as \$200,000, places these individuals under extreme financial and emotional pressure and can exacerbate mental health issues developed in detention. Thus the imposition of this debt could be considered to violate the right to health under the International Covenant on Economic, Social and Cultural Rights, which Australia ratified in 1975.

Charging certain detainees for their detention could be interpreted as a punishment meted out by the government. Individuals and families who arrive in Australia without the requisite paperwork do not commit an unlawful act and therefore cannot and should not be punished. Further, under the Australian Constitution, punishment can only be imposed on people by the courts. Any punishment inflicted by the government therefore violates the Australian Constitution. The question that proponents of this law still need to answer is: if charging someone, in a discriminatory manner, for the costs of detention which has been shown to cause harm to them is not a punishment, then what is it?

The human rights implications of this policy were recently addressed in a submission prepared by Azadeh Dastyari on behalf of the Castan Centre. This submission highlights the way in which the policy breaches international human rights law. The submission calls upon the Department of Immigration and Citizenship and the Minister for Finance and Administration "to grant debt waivers to individuals charged for their immigration detention" and to meet their human rights obligations by "abolish[ing] this practice."

A referenced version of this article is available on request.

