3. Advocacy in the dark: Seeking justice for asylum seekers

ABSTRACT

Two members of the Australian refugee support NGO 'ChilOut' detail the lack of public access to Immigration Detention Centres (IDCs), to the detainees within them and to the policies and procedures governing such centres. ChilOut organises visits to IDCs so ordinary Australians can know and befriend detainees. However, stringent and sometimes arbitary control of IDC visitors mean their visits cannot ensure transparency. More formal written attempts to establish accountability such as ChilOut's submission to the Human Rights and Equal Opportunity Commission (HREOC) inquiry into children in detention and ChilOut's report on contractual compliance within IDCs have been dismissed or refuted by the Australian Government. Unaccountability also arises from confidentiality clauses in the 1998 contract between the Government and ACM (the private company which ran IDCs), the Government's shielding of ACM from adverse publicity, contractual incentives to cover up negative incidences, and 'commercial-in-confidence' deletions from publicly available versions of the contract. This article argues that the lack of access to detention centres reaches its zenith on Nauru offering further proof that Australia's current refugee policy is deliberately structured to hinder transparency and accountability.

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Children out of Detention ('ChilOut')

CURRENT Australian immigration legislation requires that anyone arriving without authorisation be detained until their application for refugee status is approved. The longest a child has been held in immigration detention in Australia is five years, five months. In April 2003, 50

children had been detained for more than two years (Gallagher, 2003). By now that figure would have grown.

Advocates for asylum seekers have found it difficult to challenge this policy of mandatory, indefinite detention because of a general lack of access to immigration detention facilities, policies and procedures governing these facilities and the detainees themselves.

In 2001, the then Minister for Immigration, Phillip Ruddock, insisted that 'Claims that a "veil of secrecy" surrounds immigration detention are simply not true' (*Hansard*, Australian House of Representatives, 27 February 2001). However, this article contends that the opposite is the case. It is this article's contention that Australia's current refugee policy is surrounded by a higher degree of secrecy than any other (non-intelligence) Government policy. In some ways it seems deliberately structured so as to hinder transparency and accountability.

This article does not attempt to list all the ways in which the Government makes it difficult for ordinary Australians to really understand what is going on in detention centres or about the experiences of people who ask Australia for asylum. Instead, it will outline ways in which the Australian public's right to know about immigration detention centres (IDCs) and asylum seekers has been obscured by the Australian Government. .

The experience of ChilOut

One refugee advocacy group that has regularly encountered these obstacles to transparency and accountability in the current system is ChilOut. ChilOut is an apolitical group of about 1500 concerned citizens. It was started in 2000 by a group of friends watching an ABC *Four Corners* programme on children detained in Australian immigration detention centres. They were appalled at what they witnessed and began a campaign to get children out of immigration detention centres (hence 'ChilOut'). Since then ChilOut's activities have included public information nights, a visiting and support program for families living in detention and support for asylum seekers on release. This article is about the obstacles presented to ChilOut supporters; ordinary Australians not trained in immigration law who wish to know what is going on in their own country with regard to refugees.

The importance of a visiting programme

There is no public roll of who is in immigration detention centres. The

Department of Immigration publishes current overall numbers on the Minister for Immigration's website. ChilOut helps convert these figures into human beings by organising people to visit detainees. In this way, at least, ordinary Australians can see for themselves what is being done in their name in detention centres. They can see that these people the Government and certain sections of the popular media have tried to dehumanise are not deviants or terrorists, but vulnerable people, who despite the horrors they have been through, are real and hurting. Through ChilOut visits, people are able to glean a sense of what detention is like – to walk in another's shoes.

But ChilOut's visiting programme, and visiting by other organisations and individuals, is in no way a substitute for a proper system of accountability. Various factors mean ChilOut visitors cannot make the system fully transparent. These include:

- fear of being refused further visits stops public criticism of detention centres;
- non-lawyers being unsure of their legal rights in detention centres;
- fear of jepordising detainees' chances of staying in Australia also stops visitors from publicising individual cases;
- and finally, there is the fear inspired by the centres themselves, which to a non-lawyer who has never been inside a prison can be quite overwhelming.

The next section will briefly describe the effect these centres can have on the new visitor.

A visitor's experience of immigration detention

The experience of visiting an IDC is quite extraordinary. This article's authors found that the first time they visited, they had to constantly remind themselves that they were Australian citizens, that they were safe and had a right to be there. This fear was not induced by those detained, as one may experience when visiting correctional centres, but of management and the detention centre staff.

One of the authors of this article, Jo Gow, visited Baxter Immigration Reception and Processing Centre (IRPC) Detention Centre (IDC) in late 2003 with her friend and collegue, Kate Gauthier, a seasoned refugee advocate who has a first-hand experience of detention conditions around the Country. Baxter is located about ten minutes outside Port Augusta, South Australia, on the edge of the South Australian desert. Kate organised the visiting programme a week

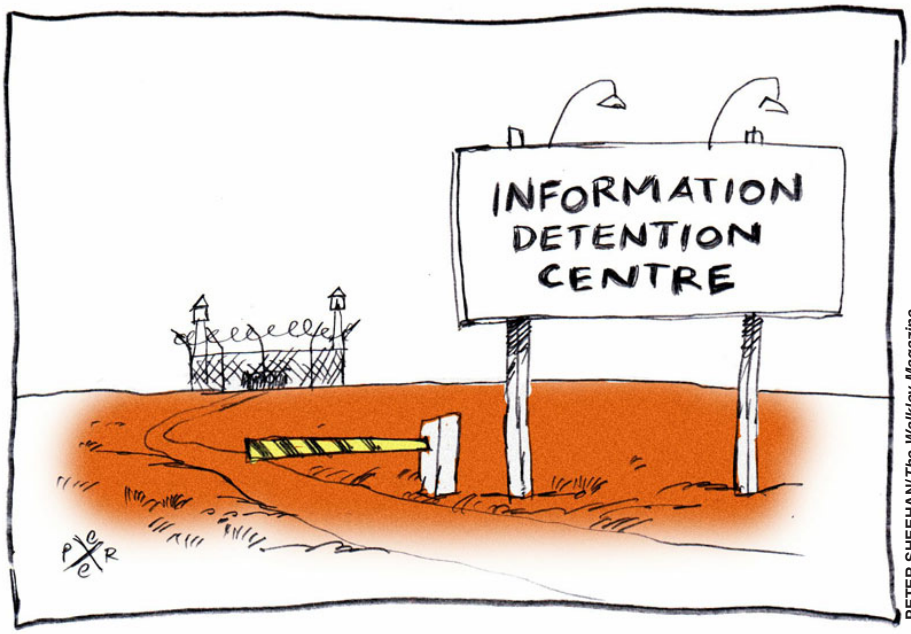
in advance in accordance with Baxter IRPC policy. There is no doubt Baxter is state-of-the-art: To enter the visitors' area they were processed through five locked stages. They were able to take in a limited amount of food to be eaten while they were there. Gifts had to be left behind for guards to check and distribute at a later time.

The visitors' area is monitored by cameras and guards through a large window. Guards also intermittently patrol the out-door area. It is surrounded by corrugated walls high enough to ensure that the horizon cannot be seen. This is also the case for the men's quarters, where most detainees are held for months and sometimes even years on end. You could literally be anywhere in the world and you would not know where.

On day three, Kate and Jo drove two hours north to the Woomera Housing Project. The Project consists of two houses built in the Woomera township for a small number of women and children. Husbands and sons over the age of 14 must remain in Baxter. Although otherwise known as 'community housing', the only real relationship the project has with the local community is that the children are allowed to attend the local school (as were some of the children in Baxter) and the women can shop for food once a fortnight accompanied and directed by guards. They are confined at all other times.

At the time of their visit, there was much talk of imminent deportations of Iranian detainees. Iranian women in the housing project with husbands and sons in Baxter expressed their anxiety at the possible deportations during Kate and Jo's visit. Kate and Jo assured them that if their applications were 'in process' they could not be deported and this gave them some comfort. Kate and Jo were careful not to talk about individual cases as a guard sat in the next-door room and could overhear everything they discussed. One young woman who had been in detention nearly three years was bright and perceptive. She was desperate to study, but without clear legal status in Australia she had been told by detention management that she would be unable to access university courses in Australia. Kate and Jo discussed a number of ways she might be able to circumvent this, perhaps by applying to a university in New Zealand as a foreign student.

They drove the two hours back to Baxter for their afternoon visiting session. But when they buzzed at the outer gate and announced themselves they were told that they had been 'blacklisted' and that all their remaining sessions had been cancelled. Jo and Kate refused to move from the car park, demanding management provide an explanation. Eventually staff emerged to



PETER SHEEHAN/*The Walkley Magazine*

inform them that they had had 'inappropriate conversations' with the women at the housing project.When they asked how the conversations were inappropiate, the staff alleged they had discussed 'numbers', that is, the way individual detainees are identified (each has a number). When Kate and Jo strongly refuted this, the staff then claimed they had discussed issues around applications for asylum. Kate and Jo made the point that they were refugee advocates, a fact the staff were well aware of, and if management had a problem with them discussing general aspects of cases, then they would need to stop all advocates attending the centre. Kate and Jo asked the staff to produce the policy which prohibits visitors from discussing asylum cases with detainees. It was not forthcoming.

After four hours of calls to refugee organisations and sympathetic politicians and the resulting faxes, just as visiting hours closed for the day, Kate and Jo were informed that their schedule had been reinstated. It was an excellent lesson in the power of persistence and the importance of knowing one's rights as an advocate. Perhaps too, this experience is an analogy of the bigger picture; that the Government believes that if it can keep the lid on the issue – release as little information as possible, deny access, control information flow – that

as a movement refugee advocates will eventually tire, pack up their bags and move on to the next cause.

Villawood is marginally better, but one of the consistent strategies used by the centres is the constant changing of rules – what you can take in, when sessions are run, how many people can be in the pen at one time or how quickly visitors are processed through the several levels of security, or whether visitors can queue in the shade in the middle of summer while awaiting entry. All relatively minor but each acts as a way of keeping visitors on their guard and ensuring that everyone knows who controls access to detainees. There is little point in formally complaining, because centre management controls who goes in an out and being blacklisted helps no one.

But what is crucial to note regarding the above is this: technically it was not the Government denying Australian citizens access to detention centres paid for by their taxes. It was a private American security company (Australasian Correctional Management, ACM, now the European Group 4 Flack).[1] The Government's response to complaints regarding the process of accessing centres is that it monitors the company to ensure it operates within the terms of its contract as it sees fit (*Hansard*, Senate 18 September 2002, 7 July 2002; Senate Estimates 18 May 2003) . However this enables the Government to give a vague, legalistic answer to specific complaints. There are clauses in its contract with detentention centre management that decrease transparency and also, like any contract with a private business, notions of commercial-in-confidence which prevent full disclosure. The Australian Government prepares the contract and sets detention standards. But private companies are required to run an efficient, profitable business – to constantly make efficiency gains. The contract for immigration detention in Australia is lucrative – funded to the tune of about A$90 million by Australian taxpayers each year (Washington, 2003).

In 2002, ChilOut made a submission to the Human Rights and Equal Opportunity Commission (HREOC) on the treatment of children and their parents living in IDCs. The ChilOut submission, based on first hand accounts by detainees and their visitors, told stories of methods of disempowerment and abuse happening in every centre across Australia. Over and over were stories of non-existent educational resources, women birthing alone without translators, children and parents separated, children exposed to violence and inappropriate sexually explicit language and behaviour. The stories were too consistent in fact and told far too often to be wholly untrue. The Government's

response, their own submission to the HREOC inquiry, was little more than a public relations effort. At a glance, the DIMIA website will show that the department believes itself to be engaged in a 'public relations war' with asylum seekers. Unlike other reports into private companies subcontracted by the Government in which flaws are found and addressed, this Government simply dismisses or disputes such findings rather than rectify them.

In 2003, ChilOut published a second report, *Heart of a Nation's Existence,* focusing on alleged breeches of contract, based on the immigration detention standards set out in DIMIA's 1998 tender document for the management of IDCs (www.chilout.org). The report found that more than 50 standards listed in the contract were likely to have been breached, some on a number of occasions, many constantly. ChilOut sent the report to DIMIA privately before we released it nationally at a press conference and had it raised in Parliament by both the Australian Labor Party and the Greens. Both the minister's response in Parliament and DIMIA's private written response (which took them five months to compose) was a 'cut-and-paste' effort from the department's policy documents. Few of the specific breaches were addressed. Our request that the same quality management procedures be instituted in detention centres as those in place in other human services subcontracted out by Government were also inadequately addressed.

Built-in lack of structural accountability

One of the first questions interested media ask about ChilOut's reports is, 'How can these stories be corroborated?' and the answer is most of them cannot be corroborated because of the secrecy that seems to be 'built into' the policy on an official or semi-official basis.

The 1998 contract between the American private prison company, Australasian Correctional Management (ACM) and DIMIA has confidentiality provisions built in. For example clause 9.1.1. binds ACM to:

> ...not release any information relating to any aspect of the Australian immigration Detention and Removal Function... or engage in any public comment or debate on these subjects without the prior written approval of the Contract Administrator (i.e. a DIMIA official).(General Agreement, 1998, p 23).

Non-ACM staff working in detention centres, such as nurses or doctors also

have to sign confidentiality clauses. All staff sign secrecy clauses that prevent them from speaking to the media during or after their employment.

This confidentiality seems to go two ways: it not only binds ACM but also the Government. In the foreword to the 1998 Detention Agreement, the then Acting Secretary of DIMIA notes that the agreement is '... a strategic alliance with a new service provider rather than a strictly contract-driven relationship' (Sullivan, 1998). It is still a strategic alliance, despite ACM not winning the new tender. A recent article in the *Business Review Weekly* says that DIMIA is still covering up ACM inadequacies as a service provider. DIMIA issued a 'default' notice more than two years ago to the company warning that the contract could be cancelled because of ACM's mishandling of an escape. However, the department refused to release the default notice to the *Business Review Weekly,* saying it could damage DIMIA's reputation. It stopped the publication from accessing the document under Freedom of Information, saying if it was made public, it might help others escape. As the article says:

> DIMIA's low-key approach to holding ACM publicly accountable for problems at the detention centres raises questions about how effectively it supervised the company. The secrecy surrounding the default notice also raises the question of how transparently public-sector bureaucrats manage private-sector operators, and whether they become complicit in hiding unpleasant truths under the guise of commercial-in-confidence (Washington, 2003).

The performance measures, benchmarks, penalties and default 'cure' periods (that is the time period in which the fault must be rectified) are all deleted in the publicly available versions of the contract under commercial-in-confidence. Thus there is no opportunity for public comment on whether the penalties are strict enough to provide a financial incentive for ACM to uphold immigration detention standards.

In fact, built into the relationship between DIMIA and ACM are financial incentives for ACM to cover up faults. The contract between the Government and ACM at Woomera Detention Centre, for example, is built on a financial incentive system. For every positive report received by the Government about the Centre, ACM receives a bonus payment. ACM is fined for any negative incidents, like breakouts, assaults, or suicide attempts (or mismanagement of such incidents). Obviously this is an incentive to be unaccountable – not only

to the Government but to the Australian public as well. The contract encourages negative incidents to be hushed up and hidden from the Government as well as the media for fear of financial penalties.

Nauru and the 'Pacific Solution'

This situation has been exacerbated by the 'Pacific Solution'. For two years people who have attempted to approach Australia by boat without the permission of Australian officials have been transferred to detention centres in the Republic of Nauru. Nauru is a Pacific island, physically distant from Australia and geographically remote. It has always been hard to get to because of lack of air flights or boats to the island but now it seems the Australian Government vetoes Australian visa applications to Nauru.

After the sudden reversal of a decision to allow a visa to visit Nauru to Father Frank Brennan, eminent refugee advocate, lawyer and Jesuit priest, one of the authors of this article, Jo Gow, called the Nauruan Consulate in Melbourne. She very simply explained that she would like to visit the country and that the information on the website was inconsistent – in one section Australians did not require a visa for a visit under 30 days with a return ticket, in another section a visa was required by all Australians. Jo was told that the consulate was at that time no longer issuing visas to anyone. She inquired whether this was to any Australian or anyone at all and the answer was simply 'Yes'. She then asked when this might change, and was told, 'When DFAT tell us'. Taken aback by the Embassy staffer's candour, Jo responded, 'That would be...DFAT in Nauru'. The staffer paused, said 'Yes' and hung up. Nauru does not have a Department of Foreign Affairs and Trade.

Prime Minister John Howard once famously said, 'We will decide who comes to this country and the circumstances in which they come' (Kingston, 2001). Australia, it seems, in upholding its right to decide who will enter its country and in what circumstances, is willing to usurp that right from the sovereign Pacific state of Nauru.

As the Labour MP Duncan Kerr pointed out in 2003 in Parliament, lawyers, refugee advocates and even doctors who would like to visit detainees on Nauru are routinely being denied visas on the advice of the Australian Government rather than by any independent decision of the Government of Nauru. Duncan Kerr called it '...an Australian Guantanamo Bay, with people being held in detention without access to lawyers and with no opportunity for independent verification of their circumstances...' (Kerr MP, 2003)

The Taipei Times reported on 7 October 2003 that refugees admitted to Australia after two years on Nauru were warned by an official not to speak out about conditions there. The Taiwanese newspaper quoted former immigration official Frederika Steen who said they were advised not to talk to the media about conditions on Nauru, or it might affect their applications for permanent visas. Steen said she was 'pretty sure it was an immigration official. Not to tell the truth is how they understood it, certainly not to tell the truth about conditions on Nauru' (*Taipei Times*, 2003).

Conclusion

Australia's treatment of asylum seekers has been criticised by the United Nations Refugee Committee, Amnesty International, Human Rights Watch and refugee advocates the world over. This is not a contract for electricity or water. It is for the detention of vulnerable human beings, including small children. Other private institutions providing community services (for example nursing homes) are heavily regulated and constantly monitored. This is not happening in the area of immigration detention and as a community we need to know how this policy is being carried out in practice and its true affect on detainees. We need to know because it is being done in our name and cuts to the core of whether Australia is a nation operating under principles of fairness, natural justice and true compassion or just another human rights abuser.

Notes

1 *Hansard,* Senate, Joint Standing Committee on Foreign Affairs and Trade. Human Rights Subcommittee: Aspects of HREOC's annual report 2000-2001 18/09/2002. Hansard Legal and Constitutional Legislation Committee: Australian Protective Service Amendment Bill 2002: Discussion, 7/06/2002,. See also Senate Estimates, 28 May, 2003, Legal and Constitutional Legislation Committee, Immigration and Multicultural and Indigenous Affairs Portfolio, pp 440-444.

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Johanne Gow and Dr Mary Quilty joined the refugee advocacy group, Children Out of Detention ('ChilOut'), in October 2001 in response to the way the Government and Opposition had handled the Tampa *Affair. Initially part of ChilOut's Visitor Program, their focus has moved to direct lobbying and policy development. They co-authored ChilOut's submission to the Human Rights and Equal Opportunity Commission (HREOC) Inquiry into Children in Immigration Detention. Mary edited the ChilOut report,* Heart of a Nation's Existence*, released in 2003, which examines the contractual relationship between the Federal Government and the private contractor ACM which formerly managed Australia's immigration detention centres. This article was originally presented at the third Public Right to Know (PR2K3) conference at the University of Technology, Sydney, 18 October 2003.*

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