Humanitarian Research Partners

1. IT and communications

IT facilities are of crucial importance in immigration detention. Absent regular access to computers and scanners, asylum seekers are not able to lodge Freedom of Information requests or grants of authority to legal representatives, without the assistance of detention visitors (see below s3).

FOI requests are vital for asylum seekers to prove any claim of mistreatment in detention. This is especially true for cases where lawyers seek an injunction to prevent a transfer to another detention facility on medical grounds, or in causes of action for negligence. FOI requests for personal documents cannot be lodged without a copy of photo ID (such as detention ID).

At onshore detention facilities, access to scanners has been limited. Although in the past it has been standard practice to allow detainees access to scanners, it does not seem to be an enforceable rule. At Wickham Point detention centre, scanners have been out of order for at least the last three months. It has been very difficult to negotiate the arbitrary decisions of staff to deny visitors the opportunity to lodge documents on asylum seekers' behalf due to 'rules' preventing copies of ID cards from being removed from detention. DIBP staff have confirmed no such 'rule' exists, although not in writing.

Regular, secure access to IT facilities is problematic throughout the detention network. Due to the inadequate supply of phones and computers in all facilities, asylum seekers are restricted to one or two 20 minute phone conversations, and one to five internet sessions of 40 minutes per week. These are often scheduled at irregular times, and some people find themselves using the internet exclusively between 3am and 5am for weeks on end. This is not conducive either to communication with their families in their home country, or the maintenance of their mental health. In some designated Places of Detention such as the Toowong Private Psychiatric Hospital, there is no internet access whatsoever.

After the attacks at the Manus Island Offshore Processing Centre (OPC) in February 2014, access to phones and computers was denied for approximately two weeks. This prevention of communication, combined with a policy of refusing to comment from the Department of Immigration and Border Protection, created insurmountable distress for family members who were trying to find out if their loved ones had been injured or killed in the attacks. Similar blockages of internet access have occurred at Christmas Island compounds during periods of heightened tensions such as mass hunger strikes.

Asylum seekers are often scared of revealing too much information via electronic communications, as they report that guards are listening into their conversations or standing behind them monitoring their computer screens. Case managers and other staff at detention centres have told dozens of asylum seekers that making complaints or speaking to media could result in delays to processing their claim for refugee status. Children are more easily scared by standover tactics and will sometimes stop talking altogether if a guard is listening to their conversation.

I note that further restriction of communications facilities led to a peaceful protest on Manus Island in July. Two men identified as 'community leaders' who were negotiating with service provider staff regarding these changes allege they were tortured as a result

of their role in protesting the added restrictions. It is clear from internal documents that I have seen that there was no intention to negotiate about these new restrictions in good faith; they were always intended to be permanent notwithstanding the problems they caused for detainees.

2. Availability of legal advice

It is my understanding that in correctional facilities there are phones with the legal aid hotline and other such services on speed dial, available to all detainees at all times. No such facilities are available to immigration detainees, nor are asylum seekers provided with contact details for potential legal representatives.

The ability of children, particularly unaccompanied minors, to seek independent legal advice is virtually non-existent.

It is usually left to detention visitors to arrange legal representation for asylum seekers. This is done with the assistance of local Law Societies and lawyers who act pro bono in such circumstances.

I regularly receive reports that asylum seekers are told they *must* sign a document that is in front of them, even if they do not understand it. I have received complaints of this in the context of the Behaviour Agreement, the January privacy breach incident, and forced retractions of statements regarding violence at offshore processing centres.

I recommend that if someone does not understand a document, they should write in their own language 'I do not understand this document' instead of signing it. Detention staff often accept this in lieu of a signature, although I do not know whether they understand that they do not, in fact, have acquiescence to the terms of the document at hand.

Were an Australian citizen to be denied access to a lawyer before being required to sign an important document, principles of unconscionability and duress would apply to invalidate the document. There is no apparent reason this should not hold true for immigration detainees. Such principles may also be of use to extend statutory timeframes given to asylum seekers to lodge further documents or to appeal the results of official decisions, where those people have not been provided access to legal advice. Asylum seekers have no way of knowing of the existence of these rights.

Unimpeded access to legal advice would also afford asylum seekers the opportunity to challenge departmental decisions, including decisions to deny FOI requests. Without such access vulnerable groups such as asylum seekers, and children in particular, have little to no chance of achieving procedural fairness.

3. Arbitrary application of visiting rules

Since the election of the Abbott Government, not one media request for access to detention facilities has been approved.[1]

I have been denied access to detention on a number of occasions over the past eighteen months. On all occasions I have appealed and, to date, all appeals have been successful.

In August 2013 I visited Wickham Point IDC. I wrote a short article for *New Matilda* regarding the conditions of detention I witnessed, including the effects prolonged detention had produced in a number of children I had seen. On my next visit request, I was informed that I was a journalist and that my visit had been denied.

After some wrangling, I convinced the Department that I am not, nor have I ever been, a journalist. At that point, restrictions were placed on my visits, including a requirement to notify the Department of an intended visit with at least one week notice.

Since then, the Department has attempted to place additional conditions on my visits, including the purported requirement for someone to request my visit before I lodge a request to visit them. Again, on appeal, this condition was removed as there was no lawful basis to impose it.

In October 2014 I requested a series of visits to asylum seekers in NT detention centres for the purposes of a research study into advocacy needs in detention. All visits were denied, as '*research is inconsistent with [departmental] visiting principles.*' That decision has been appealed.

Tactics such as these are being used to attempt to prevent other visitors from accessing detention to varying success. A recognition by the Department that additional conditions are unlawful has not prevented it from attempting to apply those same additional conditions to other visitors.

I have received multiple complaints from other advocates regarding visit conditions. It seems standard for Serco staff to re-arrange furniture so CCTV cameras can monitor conversations and interactions more closely. This is largely redundant given that Serco staff almost invariably listen into conversations, and asylum seekers are searched before being able to return to their compounds. Such surveillance of visits breach detainees' right to privacy in personal communications.

In some cases Serco staff will look closely at documents discussed during visits, whether or not legal professional privilege or other confidentiality measures apply to them.

Detention visitors are sometimes allowed to take documents in and out of detention, but not always. Sometimes visitors are allowed to take some documents but not others; last week I was told that a visitor had been prevented from taking a copy of an asylum seeker's detention ID out of the centre in order to lodge an FOI request on their behalf. It is better for visitors to lodge official complaints about such incidents, as challenging the authority of staff members would likely result in negative treatment in the future, and could impact interactions between staff and asylum seekers.

In these circumstances, one might analogise that visitors are essentially performing the same function as someone who posts a letter or sends a facsimile on behalf of a friend

[1] Oliver Laughland, 'Trauma, segregation, isolation: Christmas Island, the tropical outpost where asylum seekers are held against their will,' *The Guardian*, 13 October 2014, available at: http://www.theguardian.com/australia-news/2014/oct/13/-sp-segregation-isolation-death-christmas-island-the-hellish-paradise-asylum-seekers-call-home (accessed 13 October 2014).

who cannot. Asylum seekers have agency to decide what details of their lives they wish to share with visitors, and should not be indirectly prevented from exercising their right to information or legal advice. The methodical examination of personal documents constitutes a violation of the right to private communications.

Visitors are sometimes denied entry on their first application, particularly if they list their occupation. If they re-apply without their profession listed they are more likely to be approved. This has been noted as happening more frequently in visits involving detainees under the age of 18.

The inconsistent application of rules (and purported rules) is pervasive across the entire detention network, and is even noticeable between different staff members at individual centres.

The absolute prohibition on visitors taking electronic equipment into detention limits the amount and nature of advocacy that can be done in a single visit. Permission to take a laptop with no internet connectivity and no cameras, or indeed even a dictaphone, would substantially improve access to justice by facilitating verbatim conversation transcripts and verbal grants of authority to legal representatives.

The inconsistent application of visiting rules deters some would-be visitors from stepping into detention, and the risk of reprisals against asylum seekers who have requested outside assistance acts to deter advocates from releasing information. The product is a perpetuation of the secrecy surrounding detention conditions that allows human rights abuses to continue.