



AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

Australian Catholic Migrant and Refugee Office



Australian Catholic Bishops Conference - Australian Catholic Migrant and Refugee Office
submission to

Australian Human Rights Commission

National Inquiry into Children in Immigration Detention 2014

30 May 2014

Summary

The Australian Catholic Migrant and Refugee Office opposes locking up children in immigration detention centres because:

- The detention environment and length of time spent in detention inflicts mental and physical harm, anguish and suffering on Children.
- The detention environment subjects children to violent and distressing incidents, including self-harm and witnessing their parents and other children and adults mentally and physically breakdown.
- The prolonged and mandatory nature of detention inherently treats children as criminals and fails to uphold their human dignity.
- The policy of locking vulnerable groups in detention without trial is fundamentally oppressive and morally corrupt.
- Australia has effective alternatives to held immigration detention which address national concerns and allow asylum seekers to be treated humanely in the community.
- Punishing people for seeking protection ignores the gravity of a global humanitarian crisis and the realities people face when compelled to seek protection through clandestine channels.

1. Introduction

The Australian Catholic Bishops Conference (ACBC) is a permanent institution of the Catholic Church in Australia and the instrumentality used by the Australian Catholic Bishops to act nationally and address issues of national significance. The Australian Catholic Migrant and Refugee Office (ACMRO) was established by the Australian Catholic Bishops' Conference on 1 July 1995. The work of the Office is to advise and serve the Australian Catholic Bishops' Conference at both a national and international level on migrant and refugee issues, including the development of Church policy. ACMRO acts as an official Church voice as approved by the Bishops' Conference on issues relating to migrants and refugees.

The Catholic Church contributes in a wide variety of ways across the spectrum of Australian society. As an integral part of its core mission, the Church seeks to assist people experience

the fullness of life. It is concerned with all that impacts on human wellbeing. The Catholic Church through its various entities provides pastoral care to asylum seekers in detention facilities throughout Australia's detention network, works with asylum seekers in the community and educational facilities, provides pastoral and resettlement services including counselling and specialist care and conducts various research and advocacy campaigns to promote the human dignity of asylum seekers.

2. What the Catholic Church teaches on Asylum and migration

The Catholic Church teaches that all people have the right to live a dignified life in their homeland.¹ Tragically, over 45 million people around the world are displaced.² This festering wound typifies and reveals the imbalances and conflicts of the modern world.³ War, natural calamities, persecution and discrimination of every kind have deprived millions of their home, employment, family and homeland.⁴ The Catholic Church teaches that anyone whose life is threatened has the right to protection.⁵ Whether because of persecution, armed conflicts, natural disasters, or economic conditions that threaten their lives or physical integrity. It is the element of persecution, threat or danger, or being forcibly displaced that gives rise to a right to seek asylum rather than to migrate through ordinary channels.⁶

The Catholic Church teaches that human life is sacred because each person is created in the image and likeness of God⁷. Human dignity is inalienable⁸. The human dignity and human rights of asylum seekers must be respected, regardless of their citizenship, visa status or mode of arrival.⁹ The Catholic Church teaches the demands of human dignity always come before the national interest.¹⁰ All Nations have a right to regulate migration across their borders.¹¹ This right is coupled with the duty to protect and help innocent victims and those fleeing for their lives.¹² The right of nations to regulate their borders is an extension of the right of all persons to live a dignified life in their community. Borders are for the protection of people, not for the exclusion of people seeking protection.¹³

The Catholic Church teaches that the purpose of the law is to serve justice and mercy (c.f. Matthew 23:23). Laws which subject asylum seekers to arbitrary and prolonged immigration detention or banish them from seeking protection, fail to uphold justice and mercy and are immoral. It is not illegal to seek asylum¹⁴. Many asylum seekers are survivors of crimes, torture and trauma. Indefinite detention adds further stress and suffering, impacting on their mental and physical health. The Catholic Church advocates the implementation of just and rapid procedures to determine each person's claim for protection.

The Catholic Church teaches that every nation has a duty to protect the family unit from marginalisation, disintegration and to provide the necessary social services to empower each family to live a peaceful and dignified life together.

3. Background to our submission

This submission is informed by interviews with people who have been held in immigration detention, various pastoral agents who have visited people in immigration detention, the professional experience of members of the Catholic community, various Catholic agencies and the staff of ACMRO. Many people who were interviewed in preparation of this

submission expressed acute feelings of apprehension and fear that speaking out would make conditions worse for people in detention or for pastoral visits.

ACMRO is concerned that the cruel treatment of asylum seekers is eroding Australia's rule of law. Many people are fearful of our own government as it appears to be acting out of a fierce determination to punish asylum seekers and is willing to manoeuvre around the law or disregard it completely. Australia's treatment of asylum seekers reflects the violence and oppression which asylum seekers were subject to in their homeland. There is a real danger that Australia is, even if unintentionally, practicing an oppressive culture by degrading the human dignity of a vulnerable group. How Australia treats asylum seekers speaks volumes about how much we respect diversity and the lives of others in our own society. Asylum seekers should be treated compassionately as an important part of maintaining Australia's social cohesion, cultural respect for human rights and our multicultural integrity.

As a universal organisation the church is witness to the heartbreaking plight of millions of children around the world who have been forcibly displaced. The detention of Children exacerbates a global concern and does nothing to contribute to humanity. In our view the Australian government is failing to uphold the human dignity of children in immigration detention. We are gravely concerned that children are placed in immigration detention solely for political gain and as a deterrent effect on future asylum flows. This is immoral.

4. Children should not be held in immigration detention

It is the view of the ACMRO that children should not be held in immigration detention facilities. The detention environment is a source of trauma, anxiety and apprehension. Australia's immigration detention facilities are characterised by deprivation, anxiety, uncertainty, frustration and hopelessness. The detention environment inflicts physical, mental and spiritual harm and suffering that viciously attacks their childhood and future potential.

Children are spending far too long in detention and this is impacting on their mental, spiritual and physical development. This is particularly true for children who have never known a childhood free from fear, intimidation, violence and persecution. Due to the stage of life, it is vital for children to be in a normal caring and social environment where they can develop as a person with the support of family, friends and the community.

In our view the Australian government should host children seeking asylum in a normal community environment that permits and fosters their physical, cultural, spiritual and moral development. This is ever more important for children living in a foreign land and especially for those who are without the support of their family. Children seeking asylum are entitled to the same legitimate expectations of happiness as all other children.

5. Provisions of education, recreation, maternal and infant health services

It is vitally important children receive an education that will empower them to become productive and socially conscious members of society. Detention facilities exclude children from a normal educational environment and from receiving a comparable standard of education. The low quality and insufficient education received in immigration detention creates future difficulties as children grow into adulthood and are faced with the challenge of adjusting and contributing to a modern society.

6. The separation of families across detention facilities in Australia

The family is a fundamental building block of the community. Each of us has the right to live with our own family and this right should be extended to those seeking asylum. Forced migration is notorious for separating families and loved ones. Often asylum seekers and refugees cannot begin to rebuild their lives while they constantly fear for the safety of their family and those they have left behind. Due to Australia's asylum policies, children in immigration detention are denied access to family reunion opportunities. They cannot access the Refugee Status Determination (RSD) process and cannot obtain a substantive visa which would allow them to sponsor family members. The ACMRO recommends increasing the number of places available under the Special Humanitarian Program (SHP) and allowing Children who arrived by boat access to make a valid application under the SHP.

7. The guardianship of unaccompanied children in detention in Australia

The current asylum policy employs a military style approach to prevent asylum seekers reaching Australia. It places the objective of stopping the boats over the duty to safeguard and protect children. This style of response lacks compassion, empathy and fails to see children well cared for. The responsibility for implementing Operation Sovereign Borders directly conflicts with the responsibility for the legal guardianship of children seeking asylum. In our view the Minister for Immigration and Border Protection should not be the legal guardian for unaccompanied children in detention. The situation demands alternative steps be taken to ensure unaccompanied children in detention are legally protected by a Guardian who is independent of the political environment.

8. Impact of detention on a child's spiritual and human development

The ACMRO is greatly concerned that children in detention are almost completely cut off from their faith, receive little or no spiritual development and are restricted or denied opportunities to worship with the local faith community. It is our opinion, that holding children in immigration detention is failing to support the right to religious practice as defined under Article 8 of the United Nations Human Rights Declaration and Article 18 of the International Covenant on Civil and Political Rights. Detention operators need greater cultural and religious awareness of what is required for each faith community and greater

respect for their religious beliefs. We urge the Australian Human Rights Commission not to overlook the spiritual and human development of each child.

Most detention facilities have a prayer room or a room designated for religious practice. One of the great difficulties with this provision is that various faiths groups are competing for the same space and this needs to be carefully managed and considered. The solution is not to deprive detainees of a prayer room but rather to take more appropriate steps to ensure religious practice is scheduled in consideration of various faith commitments for each religious group. There also needs to be more careful consideration of how religious symbols are cared for and respected by each faith group.

Catholics celebrate their faith by attending Mass, observing special days and receiving sacraments such as baptisms, reconciliation and marriage. These sacraments are intrinsic to the life of a Catholic regardless of whether they are held in immigration detention. The Catholic Church is a faith community and it is important for children to be a part of this community. Detention severely limits and sometimes denies children the opportunity to attend Mass in the community. Various detention centres have made arrangements for activities and opportunities for children to attend mass in the community which are greatly appreciated by both the children in detention and the local faith community. The presence of security guards is embarrassing and causes shame for detained children. However, most children feel this is better than not being allowed out of detention at all. There is capacity for security guards to be discreetly present during church ceremonies and buses should be used to extend the opportunity to several children and their families.

As a faith-based community the Catholic Church has particular expertise in the spiritual and religious component of a child's life. We wish to bring to the Commission's attention the impact detention has on a child's fundamental and primary identity which is based on their relationship with God. It is important to keep in mind that the practice of faith is expressed through a person's heritage, traditions, language and unique cultural experience. While it is difficult to generalise between children and between various religions, such as Christian, Hindu, Buddhist and Islam, pastoral agents, administering in detention, witness several common experiences among children.

Many of the Vietnamese children who have experienced persecution due to their faith often hold firmly to their religious beliefs and practices. It is their faith in God that sustains them as they suffer in immigration detention. It is incredibly important for them to attend Sunday Mass at church. How the Vietnamese practice their faith and what is important to them can be quite different to Australian Catholics. For example in Vietnam many Catholics attend daily morning Mass, pray at midday and many Vietnamese Catholics use statues as part of their religious devotions. Similarly, Tamil Sri Lankan children, mostly who are Hindus, do not get any opportunity to express their religious beliefs and devotional practices due to lack of or at times the complete absence of places of worship where the detention centres are situated. They like to have statues of their deities and other religious articles in order to express their

acts of worship tangibly and more concretely but unfortunately they get little or no assistance in this regard.

Providing pastoral care from a faith perspective can easily be misunderstood or undervalued. It can be difficult to appreciate how each child seeks an intimate and personal relationship with the God who created them. It is to God that they cry out for help. It is not uncommon for children who wait in detention, to start to lose faith because they cannot discern the intervention of God through the actions of the people around them. Hence, these entire unsatisfactory religious experiences of children in detention and appallingly unequipped religious conditions at detention centres point one stark reality, namely, uncondusive atmosphere in detention centres to cater for religious needs and rights of children and a failure to provide a healthy religious formation during their childhood.

9. Conclusion

It is heartbreaking to see children in immigration detention. ACMRO strongly opposes this practice. Detention facilities deprive children of their childhood in a particularly tortuous and cruel manner. Alternatives already exist to held detention facilities. Australia has a substantial capacity and the expertise to care for asylum seeker children in the community.

Children are most vulnerable because they are least able to make their voice heard. We applaud the Australian Human Rights Commission for conducting a national enquiry and giving children a voice. We also wish to express our sincere support for any efforts made in the best interests of the child that the Commission pursues as a result of this national enquiry.

Undoubtedly, the presence of asylum seekers who have arrived by boat on Australian shores over many years has made a significant and compelling contribution to the social fabric of Australia. We cannot forget that each time Australia has granted asylum to somebody arriving by boat, we have saved a human life from persecution. Protecting asylum seekers is a duty that binds us in the name of humanity.

We pray that this enquiry may foster greater justice, mercy, love and kindness for our brothers and sisters in immigration detention. I would be more than happy to give further evidence if required.

Sincerely yours in Christ,



Fr Maurizio Pettena,
National Director
Australian Catholic Migrant and Refugee Office

¹ “No one would exchange his country for a foreign land if his own afforded him the means of living a decent and happy life” (Pope Leo XIII, *Rerum Novarum [On Capital and Labor]* [May 15, 1891], no. 47. Retrieved from Vatican website: www.vatican.va). Pope Pius XII Apostolic Constitution *Exsul Familia Nazarethana* (The Holy Family in Exile), 1 August 1952. Pope John XXIII, *Pacem in Terris (Peace on Earth)* (April 11, 1963) (Washington, D.C.: USCCB, 1963), no. 25.

² UNHCR Global Trends Report 2012.

³ Pope John Paul II, *Sollicitudo Rei Socialis (On Social Concern)* (December 30, 1987) (Washington, D.C.: USCCB, 1988), no. 24.

⁴ Ibid

⁵ Pope John Paul II, Migration with a View to Peace, Message, For the 90th World Day of Migrants and Refugees 2004.

⁶ Welcoming Christ in Refugees and Forcibly Displaced Persons, Pastoral Guidelines Pontifical Council for the Pastoral Care of Migrants and Itinerant People and Pontifical Council Cor Unum, Vatican City, 2013, N 61.

⁷ Compendium of the Social Doctrine of the Church, Pontifical Council for Justice and Peace, 2005, n 108.

⁸ Ibid, n 105.

⁹ Welcoming Christ in Refugees and Forcibly Displaced Persons, Pastoral Guidelines Pontifical Council for the Pastoral Care of Migrants and Itinerant People and Pontifical Council Cor Unum, Vatican City, 2013, N 60-61.

¹⁰ Ibid, N 14. (cf Refugees: A Challenge to Solidarity, Pontifical Council for the Pastoral Care of Migrants and Itinerant People and Pontifical Council Cor Unum, Vatican City 1992, n 9.) Compendium of the Social Doctrine of the Church, Pontifical Council for Justice and Peace, 2005, n 106-7.

¹¹ Pope Benedict XVI *One Human Family*, Message 97th World Day of Migrants & Refugees 2011.

¹² Compendium of the Social Doctrine of the Church, Pontifical Council for Justice and Peace, 2005, n 504-5.

¹³ Welcoming Christ in Refugees and Forcibly Displaced Persons, Pastoral Guidelines Pontifical Council for the Pastoral Care of Migrants and Itinerant People and Pontifical Council Cor Unum, Vatican City, 2013, N 57 and Pope John XXIII, *Pacem in Terris (Peace on Earth)* (April 11, 1963) (Washington, D.C.: USCCB, 1963), no. 103-6.

¹⁴ Pope John Paul II, Migration with a View to Peace, Message, For the 90th World Day of Migrants and Refugees 2004.