Dr Amy Maguire

Lecturer and Program Convenor

Newcastle Law School

University of Newcastle, Australia

Amy.Maguire@newcastle.edu.au

Dear President Triggs,

I commend the Australian Human Rights Commission for demonstrating concern for the wellbeing of children being held in immigration detention.

As a teacher of international law and human rights in a law school, I find it exceptionally challenging to persuade students of the value of human rights in the context of the Australian government’s willingness to abdicate its responsibility to honour the rights of asylum seekers and refugees. Australia’s international reputation and self-perception as a responsible member of the international community are called into question by our treatment of these particularly vulnerable people. I believe that Australia takes advantage of the fact that international law is not automatically absorbed into domestic law in our system, in order to pay lip service to human rights standards at the international level and adhere to them at home only when convenient.

As I write this submission, 1023 children are reportedly held in immigration detention by Australia. Australia’s practice of imprisoning children who have exercised their right under international law to seek asylum from persecution is in violation of numerous human rights standards that Australia is a party to. I wish to particularly highlight violations of the following universal rights:

International Covenant on Civil and Political Rights

*Article 7*

The detention of child asylum seekers is cruel, inhuman and degrading treatment, which is particularly reprehensible considering that the children in question are not in violation of Australian or international law.

*Article 9*

Australia’s mandatory detention policy is arbitrary. This is borne out by the fact that Australia is the only signatory to the Refugee Convention to have a policy of mandatory detention of asylum seekers. The foundation principle of the Convention is protection, and Australia arguably bears a particular obligation of protection towards asylum seeker children.

*Article 10*

Children in detention do not have access to a range of basic features of human dignity, including privacy, adequate health care, access to education and protection for their family life. As such Australia violates their right to be treated with humanity while deprived of their liberty.

*Article 13*

Australia has constructed a legal apparatus which functions to prevent asylum seeker children and their families from having access to the reasons why they may have been expelled from Australia or seeking adequate review of their claims.

*Article 16*

Asylum seeker children are not accorded proper recognition by Australia as persons before Australian law, yet Australia presumes to manoeuvre them to the territory of other states and fund their indefinite detention.

*Article 23*

The circumstances in detention facilities in Australia and offshore are in contravention of Australia’s obligation to protect asylum seeker families.

International Covenant on Economic, Social and Cultural Rights

*Article 10 (3)*

Many child asylum seekers travel towards Australia at the instigation of their parents, and as such are arguably being punished with detention based on their parentage. This contravenes Australia’s obligation to provide special protection and assistance to children without discrimination.

*Articles 11 and 13*

The UNHCR has determined that children in offshore immigration detention facilities face difficult conditions with inadequate access to recreation and education facilities. This violates Australia’s recognition of the right of all people to adequate standards of living.

*Article 12*

It has been firmly established by medical experts that the practice of detaining asylum seeker children is highly damaging to their mental health, particularly considering the indefinite nature of their detention. Australia can only adequately meet its obligations to protect the health of asylum seeker children by ending their detention and providing them with access to onshore health facilities.

Convention on the Rights of the Child

*Article 7*

Visitors to detention centres have reported that children have been observed to refer to each other by their Immigration Department-issued numbers rather than their names. Australia is failing to respect the rights of all children to a name and nationality, in a manner which is dehumanising.

*Article 10*

Detention and other immigration procedures which damage family unity and cohesion violate Australia’s obligation to enable children to remain with their families.

*Article 22*

Children who come into Australia as asylum seekers should have the same rights as children born in Australia. Australia fails to honour this right, not only by denying a wide range of rights to asylum seeker children, but by investing massive resources in preventing asylum seeker children from reaching Australian territory and the legal protections that can be claimed before Australian courts.

*Article 24*

Australia is obliged to assist developing states in ensuring that children have access to adequate health care and quality water, food and environment. However, Australia abdicates its protection responsibilities towards asylum seeker children and forcibly transfers them to detention centres in poorly-resourced developing states where facilities are inadequate.

*Article 31*

The experience of mandatory and indefinite detention is deleterious to the capacity of children to play and enjoy leisure and recreation, which are essential developmental experiences for healthy children.

 I implore the Australian government to immediately cease the practice of mandatory detention of asylum seeker children. This practice violates numerous international legal commitments which Australia has assumed. More crucially, detaining children causes them unconscionable harm and shames Australia as a nation.

Amy Maguire

30 May 2014