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Committee Secretary
Joint Select Committee on Australia's Immigration Detention Network
PO Box 1600
Parliament House
Canberra ACT 2600

Dear Sir/Madam,

Submission to the Inquiry into Australia's Immigration Detention Network

I am a third-year student of Sciences Po Toulouse, which is an Institute of Political Sciences in France. I am currently doing an internship in the New South Wales Council for Civil Liberties (NSW CCL). The NSWCCL is one of Australia's leading human rights and civil liberties organizations. Founded in 1963, NSWCCL is a non-political, non-religious and non-sectarian organization that champions the rights of all to express their views and beliefs without suppression. To this end, NSWCCL attempts to influence public debate and government policy on a range of human rights issues by preparing submissions to Parliament and other relevant bodies.

I would like to thank both NSWCCL and the Committee for the opportunity to make this submission. I am particularly involved in this issue as a weekly visitor to Villawood Immigration Detention Centre with Balmain for Refugees, which assists asylum seekers. This experience including research I have done contributes to a better understanding of the immigration detention issue.

Summary:

I would like to focus on the mandatory and indefinite detention problem. ***This cruel policy is too expensive and useless***. I am convinced that ***other alternatives are viable and can be implemented without triggering a so called "flood" of asylum seekers***.

Furthermore, in a democratic and influential country like Australia, this policy is unacceptable. In spite of the Government's Key Detention Values[1], Australia is breaching some of fundamental Human Rights. The mandatory detention policy is inadequate for people with a trauma background, who are seeking protection. It is inhumane, destructive and unfair: that is why the recent riots occurred.

[1] See http://www.immi.gov.au/managing-australias-borders/detention/about/key-values.htm

Submission:

I) Other alternatives are both viable and desirable

- *The other side of the coin: an expensive policy*

Maintaining the mandatory detention system is extremely expensive for the Government and taxpayer. Since 2000, taxpayers have spent about $ 113,000 to detain *each* asylum seeker. According to John Menadue[2] (who is founding chair and Board member of the Centre for Policy Development), the Government will spend $709 million for 2011-2012 in asylum seeker detention and related costs. This is up $147 million on 2010-2011. ***The abolition of mandatory detention could save between $150 and $425 million per annum.***

- *The community release alternative is viable*

I urge Australia to reform its detention policy, shut down offshore places and put an end to indefinite detention. Asylum seekers should be permitted to reside in the community while their immigration status is resolved. An ASIO security assessment, if necessary, can be done while a person is living in the community.

Releasing asylum seekers in the community while processing their asylum claim or their ASIO assessment neither means that Australia would be not more attractive to, nor accept more refugees. Indeed while in Villawood, I have noticed that numerous asylum seekers have not consciously chosen Australia as an asylum country. They have reached Australia's borders because their lives were in danger and their smuggler has decided to go to Australia. That is why trying to deter asylum seekers by every possible means is not as useful as the Government hopes.

I am convinced that Australia can adopt a similar model to that of Sweden, which has a good human rights reputation. Sweden receives twice as many asylum seekers per capita as Australia and has successfully managed to establish the community release system. Asylum seekers are unlikely to abscond if they believe they have been fairly treated, informed and supported throughout the process.

Asylum seekers are detained only until their identification has been investigated and verified, with a maximum of two months. They are entitled to live freely in the community for the duration of the determination process and report regularly with the authorities. With the expense of government and NGO assisted their accommodation, health and claims' processing, this system is fairer and less expensive than mandatory detention. As an example, a pilot program in Australia has showed that ***a community based alternatives cost 3.5 times less per day than detention.***

- *A policy which tarnishes Australia's reputation*

Australia is highly criticized for violating its obligations under the International Human Rights Law which is regrettable from an influential democracy. Australia has received numerous recommendations from the Universal Periodic Review by the Human Rights Council of the UN. Those

[2] See http://www.abc.net.au/unleashed/2693018.html

recommendations call for Australia to bring its domestic laws into line with international standards in the field of human rights. They also stressed the urgency to review the system of mandatory detention and to limit the time spent in detention which otherwise can lead to arbitrary detention.

Besides the Government's criticism and attempt to bypass the recent High Court decision in *Plaintiff M70* dated 31 August 2011 is shocking in a democratic society such as Australia. Executive power should not prevail over judicial power particularly when an important issue such as human rights is at stake. The High Court decision should be a watershed for reforming the Australia's stance on asylum seeker. Therefore it implies to respect the full implications of this ruling and de-politicize policies about the treatment of asylum seekers.

II) Australia's breach of law and principle of fairness

- *Several Governments' detention values are not being respected. I understand that Australia needs to control its borders as a component of its sovereignty. But it is intolerable that the main immigration policy's goal is to deter asylum seekers by being inhumane.*

The Government is at odds with the Key Immigration Detention Values 4 to 7. Indeed mandatory detention is not used as the last resort: it has become the rule. The goal of the Government's policies as regards asylum seekers is not to help people who are desperately trying to flee persecution and death, as the 1951 *Refugee Convention* requires. Its target is to have the cruelest system possible to prevent asylum seekers from reaching Australia.

A recent example of this situation was when the Government planned to film asylum seekers being flown out of Australia to Malaysia and post the footage on YouTube in an attempt to deter asylum seekers. As a democratic society, such a governmental behaviour is deeply shocking. It shows that Australia is flouting and scorning some human rights and democratic values as well as its obligations under International Law.

- *The immigration policy is synonymous with mandatory, indefinite and unfair detention.*

I understand that mandatory detention might be necessary for the purpose of conducting health, identity and security checks. But detention is automatic under Australian law whereby all non-citizens who arrived irregularly must be detained until granted a visa or removed from Australia. So DIAC must automatically detain offshore entry persons as the result of their mode of entry to Australia and not because of a potential necessity. There is no assessment of the substantive necessity of detention and no Australian courts have jurisdiction to assess the necessity of their detention. That is highly unfair because they are detained without any justification and without a right of review. Moreover this mandatory detention leads to long-term and indefinite detention owing to the length of time for processing of refugee status.

If the State cannot give substantial, legitimate and lawful reasons for the detention then Australia is breaching article 9(1) of the International Covenant on Civil and Political Rights (ICCPR). Indeed the Government has not chosen the less invasive method but has wilfully chosen the harder method which is destroying the individual liberty protected in article 9(1) and 9(4).

I am also concerned about some detainees spending all their life in detention. This is an aberrant situation for detainees who have been found to be refugees (and therefore cannot be removed from Australia) but have been given adverse security assessment (and therefore cannot be granted a visa). Moreover they are denied the right to judicial review because they cannot challenge the ASIO assessment whereas Australian citizens and permanent visa holders are entitled to a review. That is why periodic review and time limits must be created as a safeguard of liberty against arbitrary detention.

Australia has also violated its obligations under the 1951 *Refugee Convention*. Indeed, this harsh policy has a political intent of punishing unlawful entry persons as a deterrent, which is contrary to article 31 of the 1951 *Refugee Convention*. Furthermore offshore entry persons are not granted the same rights as onshore entry persons. People who arrived unlawfully are not allowed to apply for a visa but only for refugee status. They are also denied access to Australian courts while onshore asylum seekers are allowed to seek a merits review of the decision from an independent tribunal. This discrimination and injustice is intolerable and at odds with democratic values.

The reasons why the riots occurred can be partly explained by this unfair and incoherent system. Asylum seekers are deprived of numerous rights. They are demonized as a political goal and treated as criminal non-citizens.

III) The inhumane treatment of asylum seekers has led to the riots' paroxysm:

- *Australia has breached its obligations under article 7 and 10(1) of the ICCPR to treat the detainees with humanity and dignity. The riots are a symptom of this mental distress, acute frustration and despair.*

As the mental health advocate Pat McGorry said, the immigration ***detention centres are "factories for producing mental illness"***[3]**.** Indeed the mental and physical health of asylum seekers appears to deteriorate as the length of time increases. The infrastructure and accommodation is inadequate for people with a trauma or torture background to the extent that the mandatory detention worsens their psychological state instead of helping them. Indeed detainees are treated as criminals whereas most of them are traumatized after having fled their countries for fear of being persecuted. They are deprived of their liberty and confined in high-secured compounds, in a both harsh and punitive environment. The atmosphere is particularly oppressive and unhealthy due to several factors:

- The detention centers are overcrowded which leads to perverse effects such as pressure over number of inmates. The Department was even found to be responsible for tensions between detainees roomed together but who were from different religions or countries with longstanding hostilities.

- The time asylum seekers are spending in detention while waiting for their asylum claims to be processed. In Villawood I have met some inmates who are detained for than two years.

[3] See http://www.theaustralian.com.au/news/nation/call-to-abandon-factories-for-mental-illness/story-e6frg6nf-1225823428382

- DIAC reported 1100 incidents of threatened or actual self-harm in immigration detention facilities in 2010-11[4], which is both revealing and worrying.

- Asylum seekers witness self-harm, suicides and/or violence, which intensifies their suffering.

- Detainees are subjected to cruel, inhumane or degrading treatment.

- High consumption of medicine showing asylum seekers depression, anxiety and acute frustration. Faced with this, they feel powerlessness and hopelessness. Their lack of recognition entails a lack of landmarks and contributes to break down in their normal inhibitions against violence.

For these reasons the detention policy can be held responsible for the distress that asylum seekers feel.

- *The wrong answer by the government is deeply shocking*

The Government would be wise to consider the message asylum seekers expressed by the riots. Indeed in spite of some violent protests, the message was strongly made as some of them remained on the buildings' rooves, refusing to come down, *demanding freedom*.

It is intolerable that the only answer to those protest and claims was the *Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011*, which strengthens the punishment of inmates involved in those riots. Indeed it allows the Minister to refuse or revoke refugee protection on the grounds of a conviction for any criminal offence while in detention. It is incongruous, disproportionate and authoritarian. I note the recent dismissal of a mental health nurse from Darwin IDC[5] for saying that mandatory detention contributes to the mental illness of asylum seekers, which indicates how the Government's policy is deliberately harsh. The Government does not try to make the immigration detention centre less inhumane.

To put it in a nutshell, Australia has to be more respectful of human rights and international obligations under law. That is why the community release alternative is strongly recommended necessary. It is both viable and allows Australia to keep faith with its stated values.

Thank you for your attention to the matters raised in this submission.

Yours sincerely,

[4] See Commonwealth Ombudsman, 'Inquiry to examine suicide and self-harm in immigration detention', 29 July 2011.
[5] See http://www.brisbanetimes.com.au/national/mental-health-nurse-sacked-for-criticism-20110818-1j0aj.html