



**Submission to HREOC inquiry into Children
in Immigration Detention
May 2014**

Plan

About Plan International

Plan International is one of the oldest and largest child rights organisations in the world, founded 75 years ago, working in 50 developing countries across the globe. Plan International's approach to development is rights-based, which means that we use the principles of child rights to plan, manage, implement and monitor programs with a view to improving children's access to their rights and also with the aim of supporting communities to acknowledge and respect children's rights. Plan also works at the state and the international level with duty bearers to advocate for the rights of children within national policy and legislative frameworks and in international human rights processes and mechanisms. Plan's vision is of a world in which all children realise their full potential in societies that respect people's rights and dignity.

Plan International's experience in working with asylum seeker children in immigration detention settings

While Plan International does not deliver services in immigration detention facilities in Australia, we have considerable global experience delivering education, protection, and recreational programs to children seeking asylum. This includes direct service delivery and capacity building for governments processing asylum seeker claims and hosting refugees.¹

Many of the challenges that exist in refugee camp settings elsewhere also appear to exist in the Australian context in both the offshore, and the onshore context. These include movement restrictions, indefinite timeframes of detention, relatively high levels of trauma and mental illness, language barriers, varying religious ethnic and cultural backgrounds, and tensions between asylum seeker and hosting communities. This submission draws on our global experience delivering services in these contexts and the international guidelines and frameworks that exist to govern that service delivery. We also draw on the *United Nations Convention on the Rights of the Child* (CRC) in our submissions and recommendations.

We note that as signatory to this convention, Australia is bound to carry out its obligations under this convention in good faith.² These obligations apply to children in detention in both Australia and Nauru. Relevant to the case of Nauru, *General Comment 6* of the Committee on the Rights of the Child provides that 'State obligations under the Convention apply within the borders of a State, including with respect to those children who come under the State's jurisdiction while attempting to enter the country's territory.'³

Immigration Detention is a Human Rights Violation

It is important to make clear, that while this submission makes recommendations for possible improvements to immigration detention, Plan International's view is that immigration detention of children is prima face an unjustifiable violation of their human rights. The CRC makes it clear that any detention of a child should only be used as a measure of last resort and for the shortest appropriate period of time.⁴ The Committee on the Rights of the Child in its general comments⁵ has said that all

¹ For example, Plan has worked in South Sudan, Pakistan, Egypt, Cameroon, Niger.

² Malcolm Shaw, *International Law* (6th ed, 2008) 94.

³ Committee on the Rights of the Child, *General Comment No. 6* (2005), [12].

⁴ *United Nations Convention on the Rights of the Child*, Article 37. See also Committee on the Rights of the Child, *General Comment No. 6* (2005) *Treatment of Unaccompanied and Separated Children Outside the Country of Origin* [61].

⁵ General comments, published by the Committee on the Rights of the Child are regarded under international law as an authoritative interpretation of CRC: Malcolm Shaw, *International Law* (6th ed, 2008) 333.

efforts, including acceleration of relevant processes, should be made to allow for the immediate release of unaccompanied or separated children from detention and for their placement in other forms of appropriate accommodation.⁶

The Office of the United Nations High Commissioner for Refugees (UNHCR) also makes clear in its detention guidelines that the detention of children should be a last resort and that '[a]ll appropriate alternatives to detention should be considered in the case of children accompanying their parents' as well as for unaccompanied or separated minors.⁷ UNHCR's report, detailing its monitoring visit to Nauru at the end of 2013, clearly states that the harsh and unsuitable environment in the processing centres means that no child, unaccompanied or not, should be in detention on Nauru.⁸

Recommendation 1: All children be removed from Immigration Detention in both offshore and onshore settings

There are a range of workable alternatives to closed immigration detention in Australia. These should be properly funded and developed to ensure that they can accommodate children and their families in a safe and appropriate manner while their asylum claims are processed. Plan notes various Australian-based and multilateral organisations have made a variety of recommendations proposing alternatives to mandatory detention, including HREOC itself.⁹

Recognising that the current policy context makes it unlikely that the above recommendation will be adopted, Plan has a number of key recommendations aimed at addressing issues in relation to the current framework which are operating to exacerbate the harm to children.

Impact of immigration detention on health, well being and development of children

It is not possible to ensure the health, well-being or proper development of children within the current immigration detention framework. This is particularly so in the case of offshore detention, although the indefinite nature of immigration detention in both offshore and onshore settings inherently has an extremely detrimental impact on the health and well-being of children in all detention settings, something which has been commented on extensively by child psychiatrists and international organisations.¹⁰

The harm that such settings do to children is further exacerbated in offshore settings by the lack of regular independent monitoring or best interests guardian for unaccompanied minors and the secrecy imposed on current contractual arrangements for service delivery in detention centres. Such a climate of secrecy is in direct conflict with the best interests and safety of children. Not only does the current service delivery model and lack of independent monitoring affect safety, it makes it

⁶ Ibid, 61.

⁷ UNHCR Detention Guidelines, guideline 6. See also: Human Rights and Equal Opportunity Commission (HREOC), 'A Last Resort? National Inquiry into Children in Immigration Detention' (2004), 175.

⁸ UNHCR (2013) *UNHCR monitoring visit to the Republic of Nauru 7 to 9 October 2013*, UNHCR Regional Office, Australia

⁹ The Committee on the Rights of the Child noted in 2005 '[t]here is no regular system of independent monitoring of detention conditions' in Australian immigration detention centres and called on Australia to 'Consider creating speedily an independent guardianship/support institution

for unaccompanied immigrant children': 'Consideration of Reports Submitted by State Parties under article 44 of CRC, Concluding Observations: Australia', UN doc CRC/C/15/Add.268 (20 Oct 2005), [16],[62](c) and [64](f). see also para 16.

¹⁰ K O'Brien and K Wild, 'Doctors condemn delays in freeing refugee children', ABC News

(Australia, 4 July 2011), <<http://www.abc.net.au/news/2011-07-04/doctors-condemn-delays-in-freeing-refugee-children/2781534>> accessed 25 Oct 2011. See also, Human Rights and Equal Opportunity Commission (HREOC), 'A Last Resort? National Inquiry into Children in Immigration Detention' (2004), 13; Steel, Zachary, Shakeh Momartin, Catherine Bateman, Atena Hafshejani, Derrick M. Silove, Naleya Everson, Konya Roy et al. "Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia." *Australian and New Zealand journal of public health* 28, no. 6 (2004): 527-536; and Lorek, Ann, Kimberly Ehntholt, Anne Nesbitt, Emmanuel Wey, Chipso Githinji, Eve Rossor, and Rush Wickramasinghe. "The mental and physical health difficulties of children held within a British immigration detention center: A pilot study." *Child Abuse & Neglect* 33, no. 9 (2009): 573-585.

difficult to see how effective services can be provided in a way that actually enables children to access their rights while in immigration detention.

Impact on Safety

Children have the right to protection, to be safe and feel protected at all times. Plan International's experience working in refugee camps has highlighted that asylum seekers living in cramped conditions are reluctant to report cases of abuse, particularly sexual abuse, for fear that fellow community members will find out and the survivor will be further victimised and the notifier at risk of retaliation. Fear about the implications of complaining while individuals are waiting to hear about the outcomes of their applications for asylum will clearly have an impact on how safe it is to make complaints or notifications related to the well-being of children.

Without full transparency about current child protection systems operating in the processing centres, it is not possible to make accurate assessments or recommendations on ways to strengthen current policies and practices. However, we believe it appropriate to make the following observations. In order to uphold 'do no harm' principles, a child protection system must be accessible, confidential, child/youth friendly, and contain a variety of options that includes formal, informal, and anonymous reporting mechanisms. Reporting systems need to be transparent so that individuals know what to expect if they make a notification. It appears that services in offshore places of detention are provided by a variety of contractors, not all of whom have child protection as a key accountability. These service providers are bound by confidentiality agreements. While such agreements may be made for a range of appropriate reasons, they can impact on mechanisms for referring complaints about child protection issues. Consequently, it would not be surprising if child reporting systems in this context were confusing, poorly understood and unreliable.

Without independent observation and transparent reporting systems, the safety of asylum seeker children is, for the most part, the responsibility of service providers who may have competing and conflicting obligations and who are bound and potentially compromised by their contractual arrangements with the Department of Immigration and Border Protection. In other words, service providers may have an incentive not to refer complaints where reporting might injure their reputation and commercial interests.

Recommendation 2 –Independent Monitoring Body

- The Australian Government must establish an independent monitoring body with legal authority to conduct periodic monitoring of all the detention facilities where children are residing, including offshore places of detention. This must include independent technical monitoring of the accessibility and quality of services being provided to asylum seeker boys and girls.

It is very difficult to obtain reliable information about the conditions in Australia's immigration detention facilities. The lack of an independent monitoring body is a significant obstacle to ensuring the safety, health, and well-being of children. This, combined with the current structure and nature of contracting arrangements with service providers in these places of detention (including the strict nature of the confidentiality agreements into which individual staff members are required to enter) raises serious questions about how the safety of children in immigration detention can be adequately ensured. Children's right to protection necessitates an independent monitoring body with full legislated authority to identify and respond to child rights violations.¹¹

¹¹ The Committee on the Rights of the Child noted in 2005 '[t]here is no regular system of independent monitoring of detention conditions' in Australian immigration detention centres and called on Australia to 'Consider creating speedily an independent guardianship/support institution for unaccompanied immigrant children': 'Consideration of Reports Submitted by State Parties under article 44 of CRC, Concluding Observations: Australia', UN doc CRC/C/15/Add.268 (20 Oct 2005), [16],[62](c) and [64](f). see also para 16.

Supporting children and their families to maintain wellbeing and development is essential for the humane treatment of girls and boys deprived of their liberty. Ensuring children are accessing their rights to education and recreation is protective, life-saving and life-sustaining.¹² On the basis of information made available to the public, services provided in Australian Immigration Processing Centres do not meet national or international minimum standards and therefore immigration detention is harming the health, development, and wellbeing of children residing in these facilities.

Impact on Education

Article 28 of the CRC states all children have the right to education. The CRC further details the goal of education, to develop each child's personality, talents, and abilities to the fullest. Education programs delivered to children in onshore and offshore detention do not do this.

Currently education in immigration detention centres follows the Australian curriculum. This may not be the best approach, particularly in offshore settings or where it is likely that children and their families will not be resettled in Australia, irrespective of our view that they should be.

Given the trauma asylum seekers have already suffered together with the anxiety and stress created by the ongoing uncertainty of indefinite detention, the needs of students in immigration processing centres will be vastly different to the typical Australian classroom in which Australian teachers have been trained to teach. The International Network for Education in Emergencies (INEE)'s *Minimum Standards for Education in Emergencies*, clearly highlights how education should be planned and implemented in crisis situations like immigration detention. The guidelines state:

*"..important decisions will need to be made about the nature of education services offered, whether formal or non-formal; the curricula to be followed, whether from the country of origin or host country; and priorities for learning, whether focused on survival, vocational skills or academic study. There may also be a need for curriculum revision or development."*¹³

It is not clear that these kinds of considerations have been made in the framing of educational service provision, either in offshore or onshore detention settings. A rights-based approach to education in detention would require engagement with children and their families and consideration of the children's best interests.

Education programmes in immigration detention can be a form of psychosocial intervention, as they establish familiar learning environments, ensure regularity, and instil feelings of hope for the future.¹⁴ Teachers responsible for delivering education in immigration processing centres need to be provided with additional capacity building that focuses on the psycho-social needs of asylum seeker girls and boys. INEE's minimum standards clearly state that teachers and school administrators should receive additional training regarding their role in mitigating the psychological and social impact that the situation has on learners.¹⁵ It is unclear if teachers in processing centres are given this necessary training. Without it, essential psychosocial interventions and mitigation measures will not be mainstreamed in the classroom and asylum seeker children will continue to learn irrelevant curriculum in a potentially harmful environment.

¹² INEE *Minimum Standards for Education: Preparedness, Response, Recovery*, (2010) New York, 4.

¹³ Ibid, 53.

¹⁴ Ibid, 54.

¹⁵ Ibid.

Recommendation 3 - Multi- Agency Assessment of Educational Needs

- A multi-agency independent assessment using the National Framework and INEE minimum standards is conducted to review the suitability and accessibility of current educational programs being delivered to asylum seeker boys and girls in both onshore and offshore facilities. Given the differences between each detention facility, educational programs must be contextualised to each location, rather than a one size fits all policy.
- Teachers who are required to educate asylum seeker children must undergo mandatory training on responding to the psychosocial needs of asylum seeker girls and boys. The training must be tailored to both onshore and offshore contexts.

The approach of multi-agency assessments is used in other refugee settings. For example, in contexts such as Bhutan and South East Nepal, the development of the curriculum has been based on an in-depth assessment conducted by global and national educational technical experts and relevant stakeholders, including community members. The curriculum tailored to the camps is a combination of the Nepalese national curriculum to ensure accreditation, with additional Bhutanese language, history, and cultural subjects to maintain identity for refugee and asylum seeker children.

The right to recreation

Rest and leisure, play, recreational activities and participation in cultural and artistic life, outlined in article 31 of the *CRC*, are vital for the healthy development of girls and boys.¹⁶ Recreational activities and play promote well-being by enhancing development, including brain development, encouraging positive social interactions, and improving health indicators.¹⁷ Through recreation and play, children and young people can begin to process the events which led them or their families to seek asylum and their current situation in a safe environment, with the opportunity to express their worries and concerns to peers and/or trusted adults.¹⁸ It is hard to see how such a safe space could be created behind razor wire in offshore detention. The remote onshore sites, isolated offshore islands, and reports of rigid routines within the facilities means children do not have the freedom of movement required to claim their right to recreation. Drawing on standards used in International humanitarian settings, Plan recommends the following be done as a minimum:

Recommendation 3 - Detainees to be Consulted in Relation to Recreational Activities

- Asylum seeker communities must be consulted in the development and implementation of recreational activities. Activities must be tailored to the individual needs of asylum seeker children and young people, with particular focus on the impact that indefinite detention has to the various age groups.

¹⁶ UNICEF, *Implementation Handbook for the Convention on the Rights of the Child* (UNICEF Implementation Handbook), United Nations Publications, Geneva, 2002, p467.

¹⁷ INEE (2010) *Minimum Standards for Education: Preparedness, Response, Recovery*, INEE, New York, P62.

¹⁸ Global Education Cluster, *Making Education a priority in Emergencies*, Education Cluster, Geneva, p2.

- Recreation activities must including resilience building that addresses the impact of indefinite detention which is vital for the health, development, and wellbeing of children living in detention facilities.

The *Minimum Standards for Child Protection in Humanitarian Action* emphasises the importance of engaging children, young people, their families, and community leaders when developing and implementing recreational and play activities.¹⁹ These standards advise that activities are age and culturally appropriate and accessible, taking into consideration 'do no harm' principles.²⁰ Children and their communities must be empowered to identify potential recreational activities and their appropriate age groups, given the different cultural, age and gender dynamics within a refugee processing centre.

In Plan's experience, recreational activities should incorporate resilience building for those children and young people participating. For young people particularly, activities that encourage community engagement, and contain elements of responsibility, helps them feel like active and contributing community members. Typical youth engagement activities implemented in camp contexts include vocational training, community building/restoration, and income generating activities that build resilience and inspire positivity about the future.

Based on available reports, it appears that current conditions in offshore detention would make it very difficult to offer appropriate activities to either children or young people. The lack of autonomy in detention facilities is likely to mean that youth are unable to make meaningful contributions within their community but rather have their daily routine dictated to them. The likely feelings of frustration and disempowerment are not conducive to health and wellbeing but are also likely to impede the next stage in children's journey, whether that be resettlement or the return to their country of origin.

Conclusion

The Australian Government has a choice about how it approaches immigration processing of asylum seekers. Less restrictive options are available for children and their families subject to refugee status determination, both in and outside of Australia's migration zone, some of which were outlined in the Human Rights Commission's last inquiry into immigration detention.²¹ These options must be explored and an alternative found so that children and their families can live in a environment conducive to their safety, development and well-being.

¹⁹ CPWG (2012) *Minimum Standards for Child Protection in Humanitarian Action*, CPWG, Geneva, p.156.

²⁰ Ibid.

²¹ A last resort, 153.