MERCY ADVOCACY: Following up on earlier action

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In previous months we have concentrated on children in immigration detention and, in particular, on the situation of those in indefinite detention because of their parent/s adverse ASIO assessment. Tamil refugee, Rangini, whose story we came to know, remains in detention with her children.

We are also still awaiting the judgement in the case of another such detainee brought before the High Court by the Melbourne lawyer, David Manne.

Meanwhile the United Nations High Commissioner for Refugees, numerous national and international experts in security and refugee law and the governments of many other democracies have demonstrated alternatives to Australia's current management of security risks posed by refugees.

The following article conveys the recommendations for reform of Catherine Branson, the recently retired Australian Human Rights Commissioner.

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We can and must protect the rights of refugees while safeguarding national security

There are currently 48 adults in detention in Australia who are recognized refugees but have received adverse security assessments from ASIO. Some have their children detained with them. One toddler has spent his whole life in detention; other young children have only ever experienced flight and detention. All of these people face the real possibility of life-long separation from loved ones.

They have not been told the reasons why they have been assessed to pose a risk to our national security. They do not have any meaningful review by our courts or tribunals of the decisions made about them. And, under current arrangements, they will remain in closed immigration detention unless another country agrees

to resettle them, or circumstances in their country of origin resolve to the extent that they are no longer considered to be refugees. As neither option seems realistic in the short to medium term, they face indefinite detention.

The Australian Government has an indisputable responsibility to safeguard our national security. That is our right and what we expect and require as Australian citizens and residents.

However, it is my firm belief that this sovereign duty can be realised simultaneously with the protection of human rights.

We must find solutions to the circumstances of people who have received adverse security assessments. And we must find them fast. The human costs being paid make not doing so untenable.

As reported widely in the media there has in recent days alone been at least one suicide attempt and other signs of severe distress among those affected.

Last month, Australian Human Rights Commission staff observed this acute despair first hand when they visited 27 refugees who have received adverse assessments in detention facilities in Melbourne and Sydney. Some of the people with whom they met pleaded for assistance in arranging a ‘mercy killing’ and showed them letters which they had written to Government authorities also making the request. Others simply wept without words to describe the situation.

So what can be done to create a fairer system? The simple answer to that is that there are several models and options to explore.

Comparable jurisdictions, such the United Kingdom, Canada and New Zealand, have developed more transparent and equitable systems which could guide our own approach. And various recommendations for our domestic context have already been made – for instance by the parliamentary Joint Select Committee which handed down its report in April this year

These recommendations include allowing refugees to challenge the merits of an adverse security assessment in the Security Division of the Administrative Appeals Tribunal. This would simply extend to refugees a right that already exists for Australian citizens and others. And it would not require public disclosure of sensitive intelligence.

In other countries, appeals processes use ‘special advocates’ who are security cleared and bound by stringent confidentiality requirements so they can receive certain types of classified information on behalf of people deemed to pose a risk.

Without such a review process, it is impossible to detect if a critical error has been made – such as a mistake as to identity or a failure to identify false intelligence perhaps created maliciously.

Consideration could also be given to introducing a system of graded risk assessments. This would allow for the management of a specific risk according to how serious it is. Such an approach would likely find that a good number of people assessed to pose a risk could nonetheless safely live in a community setting with appropriate conditions or controls. These kinds of arrangements have been adopted in other countries.

As the New Zealand Court to Appeal has said, it’s obvious that all risks to national security don’t call for equal treatment, and it is also apparent that different risks can be identified and distinguished.

Australia can and must do better. There is too much at stake for us to do nothing.

(Abridged from an article in UNHCR June *Refugee Newsletter No. 1/2012)*

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NB:

This month’s Advocacy folder contains Church perspectives (and reference also to the views of the Refugee Council of Australia and the Australian Human rights Commission) on the immediate issue of offshore detention.

Two sample letters (one focussed on children and the other more general) for contacting parliamentarians such as the Immigration Minister Bowen / your own MP/….. are included.