**FAIR AND REASONABLE? MANDATORY DETENTION OF ASYLUM SEEKERS**

A number of resources have been provided for you in this package. Use any/all of the material to complete your analysis.

**Your Task:**
1. Select an issue from the list provided.
2. Describe the issue (150 words)
3. Explain why this is an issue of justice or the common good (150 words).
4. Identify the people or groups who have a stake in the issue and analyse their perspectives on it. Why would some stakeholders not want the situation to change? (750 words)
5. Analyse the issue in terms of the principles that have been studied that promote human flourishing. Which perspective would most effectively promote the common good? (750 words)
6. In light of your analysis, and after considering the ethical questions provided, discuss how you would respond to this issue. (200 words).

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**Perspective: Australian Government**
- What belief is held by the Government?
- What resolution would they opt for?
- Who would benefit?

**Perspective: Asylum seekers and Refugees**
- What belief is held by this group?
- What resolution would they opt for?
- Who would benefit?

**Perspective: Amnesty International**
- What belief is held by this group?
- What resolution would they opt for?
- Who would benefit?

**Perspective: Mental Health Professionals**
- What belief is held by this group?
- What resolution would they opt for?
- Who would benefit?

**Perspective: Refugee Council of Australia (RCOA)**
- What belief is held by this group?
- What resolution would they opt for?
- Who would benefit?

**Perspective: United Nations High Commissioner for Refugees (UNHCR)**
- What belief is held by this group?
- What resolution would they opt for?
- Who would benefit?

**Perspective: A Christian Perspective**
- What belief is espoused in Christian teaching?
- What resolution is presented in this perspective?
- Who would benefit?
Introduction:
An asylum seeker is defined as someone who is seeking protection as a refugee but whose claim for refugee status has not yet been legally assessed by the appropriate authorities.


An excellent brief critical treatment of the issue has been given by Julian Burnside, in his Forward to Linda Briskman, Susie Latham and Chris Goddard, Human Rights Overboard: Seeking Asylum in Australia (Melbourne: Scribe, 2008), 10-16. The book for which Burnside writes is the result of a large-scale people's inquiry (in the absence of any government inquiry) into the mandatory detention system.

Background:
Between 1976 and 1981 over 2000 Vietnamese boat people came to Australia without authorisation. They were not held in detention and were allowed to remain in Australia.

Since May 1992, however, under Australian law and policy, "unauthorised arrivals", i.e. asylum seekers who arrive in Australia without prior authorisation, have been subject to mandatory detention. The detention centres in which they have been held range from Villawood in the western suburbs of Sydney, to Port Hedland in the remote north-west of Western Australia.

It was the Tampa incident of 29 August 2001, in which asylum seekers were turned back from Christmas Island, that brought Australia's discouraging response to attempted boat arrivals to the attention of the international community. Within the country itself, there was very strong public support for the Government's policy to stop Australia becoming a country of first asylum. At the same time, Christmas Island was removed from Australia's migration zone, so that onshore applications for asylum could no longer be made there.¹

Until 2008, there was bipartisan support in the Australian Parliament for the detention of unauthorized asylum seekers for the entire time it took to process their applications for refugee status and any appeals that might follow. No other first world government, however, adhered to such a strict legal policy.\(^2\)

**Perspectives:**
There are various groups (“stakeholders”) that are involved in the issue of Mandatory Detention in some way. In this section, please reflect on the information from the previous section and from the following resources. In reviewing the information from these sources, identify the perspectives and interests of each stakeholder group. Consider the questions provided on the cover sheet of this task in order to guide your reading.

<table>
<thead>
<tr>
<th>Perspective 1:</th>
<th>In June 2008 the new Minister for Immigration, Senator Chris Evans, outlined a set of seven key immigration values which would set new policy directions for the incoming Labor Government.</th>
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</thead>
</table>
| Australian Government | 1. Mandatory detention is an essential component of strong border control.  
2. To support the integrity of Australia’s immigration program, three groups will be subject to mandatory detention:  
   a. all unauthorised arrivals, for management of health, identity and security risks to the community;  
   b. unlawful non-citizens [i.e. people who are in Australia without a valid visa] who present unacceptable risks to the community; and  
   c. unlawful non-citizens who have repeatedly refused to comply with their visa conditions.  
3. Children ... and, where possible, their families, will not be detained in an immigration detention centre (IDC).  
4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.  
5. Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.  
6. People in detention will be treated fairly and reasonably within the law.  
7. Conditions of detention will ensure the inherent dignity of the human person. |


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One of Australia’s top immigration lawyers, Kerry Murphy, writes that the key immigration principles “are founded in concepts of human rights and respect for the dignity of people. Shaping the policy around these principles, rather than political push factors, would lead to a more humane and justifiable process all round.” Read his article for more on his views: Kerry Murphy, "Back to Basics on Asylum Seeker Policy," *Eureka Street*, June 22, 2011, http://www.eurekastreet.com.au/article.aspx?aeid=26889.

The following links will provide current information on the Australian Government’s policies in relation to refugees:

The Commonwealth Department of Immigration and Citizenship's Fact Sheets:
- Factsheet 61, "Seeking Protection within Australia"
- Factsheet 82, "Detention"
- Factsheet 83a, "Community Detention"


**Ethical Questions for Reflection**

What are the values that underpin asylum seeker policy in Australia? What values should underpin asylum seeker policy? Are these consistent with other countries around the world?

Note the quote from Kerry Murphy’s article above. What are the “political push factors” that affect asylum-seeker policy? How do they affect policy and what impact do they have on the asylum seeker debate? To what extent do you think these “political push factors” are a reflection of popular opinion? What role do the media play in influencing such popular opinion?

**Perspective 2:**

United Nations High Commissioner for Refugees (UNHCR)

The stability, harmony and social cohesion of the country in which asylum is being sought are important values. Alongside this have to be set international legal and humanitarian obligations as well as the inherent dignity of the human person and the promotion of a good that includes the well-being of desperate people who look to Australia for asylum.

The UNHCR's 1999 Revised Guidelines on the Detention of Asylum seekers state: "As a general principle asylum seekers should not be detained." [See Frank Brennan, *Tampering with Asylum: A Universal Humanitarian Problem* (St Lucia: University of
Nor do these Guidelines permit the use of detention as a deterrent. See, again, Julian Burnside’s Foreword to Linda Briskman, Susie Latham and Chris Goddard, *Human Rights Overboard: Seeking Asylum in Australia* (Melbourne: Scribe, 2008), 12.

**Ethical Questions for Reflection**

The idea of “deterring” refugees from seeking asylum in Australia is a notion that is often heard in political debates. Is this ethical? What are the values that underpin policies based on “deterrence”? Are there violations of human rights in such policies? If so, which rights are violated?

Julian Burnside discussed international opinion about Australia’s policy of mandatory detention. Should international opinion matter in this issue? Why/why not? What role can international opinion play in the debate? Should Australia look to the policies of other countries in order to inform their own? How does the Australian policy differ from those of other nations?

**Perspective 3:**

_Amnesty International and UN Human Rights Committee_

Writing on “Mandatory Detention in Australia,” *Amnesty International* highlights that "the UN Human Rights Committee has consistently found the mandatory detention regime to breach basic human rights standards". It also challenges what it calls the myths and misconceptions that:

- it is a criminal offence to enter a country without authorisation,
- the arrival of boat people is a threat to Australia's security,
- mandatory detention is an essential component of strong border control.

**Ethical Questions for Reflection**

Why do people flee their own country and seek asylum in another? What are some of the contributing factors in their decision to flee?

What are the values that underpin the myths and misconceptions outlined by Amnesty International? What historical situations have led to the development and perpetuation of these myths? Are there other factors that perpetuate these myths? What role does the Government play in perpetuating these myths? What role do the media (television, radio and newspapers) play? How can these misconceptions be redressed? What impact do these misconceptions have on policy?

According to Amnesty International, what international human rights standards are breached by the policy of mandatory detention?
| Perspective 4: | The *Refugee Council of Australia’s* (RCOA) page on [Mandatory Detention](https://www.refugeecouncil.org.au/what-we-do/immigration/mandatory-detention/) states:

> The policy of indefinite mandatory detention for asylum seekers who arrive in Australia without a visa has been an issue of concern for RCOA and others since its inception. The current policy is resulting in lengthy periods of detention for thousands of people - including children - who do not need to be detained, causing considerable harm to already vulnerable people and resulting in hundreds of millions of dollars of unnecessary expenditure each year.

The above page also includes a discussion on a number of alternatives to detention.

**Ethical Questions for Reflection**

What are the alternatives to detention, outlined in the above article? Are these feasible in Australia? Are they fairer/ more just/ more ethical than detention? Are there any concerns with these alternatives? Why might the Government not be utilising these alternatives to their full potential (i.e. think of the factors that motivate policy development)? What are the implications of these alternatives for asylum seekers? What are the implications for the community? What are the implications for the Government?

| Perspective 5: | According to [Mental Health Wiki](https://en.wikipedia.org/wiki/Mental_Health_Wiki):

> There is a large body of research indicating that immigration detention causes asylum seekers psychological harm. Post-traumatic stress disorder, depression and anxiety are highly prevalent amongst failed asylum seekers and refugees who have previously been detained, with the extent of their mental ill health linked to the length of time they have spent in detention. Time spent in immigration detention has been found to contribute to the severity of symptoms relating to PTSD, depression, anxiety and suicidality.


ABC’s *Four Corners* looks at the “Dangers of Australian Refugee Detention Centres” (video only):

Right now there are over 4,000 people held in immigration detention centres across Australia. On average, asylum seekers remain in detention for around a year, but that figure hides a group of people who remain locked away for much longer periods of time. Just over a year ago, the Federal Government announced it would begin releasing children into the community to minimise the harm caused by their incarceration. At the same time, thousands of adults remain locked away in detention centres remote from the rest of the world—a situation that’s concerning to many healthcare professionals.

The Australian Medical Association has also called for an end to mandatory detention.

**Ethical Questions for Reflection**

In the article from the Australian Human Rights Commission, above, the plight of detained asylum seekers is made clear:

> We feel that we have lost everything here—our hope, our health, our memories, our names, our ability to help our families, our minds. We are more than half way to dead now. We are all dying here, from the inside out. We see others who have gone mad and think that we are going there too.

Is community detention a better option? What impact might alternative policies have on the mental health of asylum seekers? Would this impact be positive or negative? Why?

Consider the social cost of this issue. How might the policy of mandatory detention impact health and community services? What systems are put in place for asylum seekers who have been granted refugee status, after a long time in detention? Are these systems adequate? The following report by Tony Ward, for the Yarra Institute for Religion and Social Policy, explores the *Long-Term Health Costs of Extended Mandatory Detention of Asylum Seekers*.

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**Perspective 6:**

**Asylum seekers and refugees**

Among the Australian general public, the perception remains strong that asylum seekers who arrive by boat

- are "illegal immigrants",
- should wait their turn in the queue,
- could find protection in Indonesia or Malaysia if they wanted to,
- will flood the country if a deterrent strategy is not adopted,
- are a drain on public resources,
- would throw their children overboard,
There is extensive Catholic teaching on refugees and asylum seekers. The following two documents provide a summary of the teaching:

- [Edmund Rice Centre: Debunking the Myths About Asylum Seekers](#)
- [Phil Glendenning, Director of the Edmund Rice Centre, was interviewed by Philip Adams on Late Night Live, (April 4, 2012), (audio only). The interview was on Afghan Returnees. Here is the preamble:](#)

  Afghan returnees are targeted by their countrymen for having left their country, because they are seen to be favourable towards the West, and because they are falsely held to have converted to Christianity. Phil Glendenning has recently returned to Afghanistan to see how the returnees he met there several years ago are faring. He says Australia has an obligation to reassess those people's asylum applications, as many were not done adequately the first time around.

- [An emotive video (video only) that looks at the plight of refugees and asylum seekers is “Asylum seekers in Australia - What kind of nation?” “Searching for a more compassionate approach to asylum seekers coming to Australia, this is a short documentary that aims to give the facts faces and give the stats eyes.”](#)

- [“Seeking Asylum” (video and transcript) follows three people who escaped from the Taliban:](#)

  This clip shows interviews with three Afghan people living in Australia after escaping from Afghanistan when the country was ruled by the Taliban. The first interviewee, Sayed Jawad, expresses a sense of hopelessness, while the other two interviewees, Marzia and Rajab Ali, recount their experience of living under the Taliban, and explain why they fled from Afghanistan.

- [“Letters to Ali” (video and transcript):](#)

  In June 2002, Trish Kirby, her husband Rob and their four children travelled thousands of kilometres from their home in Melbourne to Port Hedland Detention Centre to meet fifteen-year-old Ali, an asylum seeker from Afghanistan. Trish reads extracts from an article she has written ‘Walking in their Shoes’ about meeting Ali for the first time. Each of the children – Emma, Rian, Hanna and Erin – recalls impressions from their first meeting.
A Christian Perspective


Adequate protection should be guaranteed to those who, although they have fled from their countries for reasons unforeseen by international conventions, could indeed be seriously risking their life were they obliged to return to their homeland.

John Paul II, “Intervention by the Holy See at the Executive Committee Meeting of the Office of the United Nations High Commissioner for Refugees,” October 2, 2001:

A disproportionately high burden for the international protection of refugees falls on poorer countries that, very often at short notice, must play host to millions of persons displaced by conflict or insecurity. In some wealthier parts of the world, by contrast, new restrictions are making it ever more difficult for people even to have recourse to the legal framework of protection based on the Convention. Making access to legal protection ever more difficult means that, at times, people are being forced into the hands of unscrupulous networks of smugglers and to have recourse to means outside the law. The legal framework exists to come to the assistance of people who are enduring persecution. They have a fundamental right to access to its mechanisms.


Ethical Questions:
There are numerous questions we need to ask, from an ethical point of view, in relation to the mandatory detention of asylum seekers. Many of these questions have been asked through the examination of the various perspectives. A few more are listed here. Can you think of any others?

Under what circumstances might it be ethically acceptable to detain asylum seekers?

How ethical is it to maintain or promote the concept of offshore detention involving other countries such as Nauru or Malaysia?

What would be the implications if Australia adopted "detention in the community" similar to the New Zealand approach?

In the light of the documents you have read in this package, how should Australia respond to children of asylum seeker families or unaccompanied child refugees?

Which approach would most effectively promote the common good?

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Consider all that you have read in this module. Think about the history and background to the issue, and the diversity of perspectives and interests among the various stakeholders. Think about the ethical questions, and how the different positions dispose us to thinking differently about what the stakeholders should or should not do. Now ask yourself what the best course of action would be for securing the common good. What should the Australian Government do to bring about the common good? If you were in a position to change the policy, would you scrap the policy of mandatory detention in favour of other alternatives? What should the international community do to bring about the common good? How will the common good be realized in this situation, and who must contribute?

And what about us? What should we do?

This package has provided you with more than enough resources to complete your task, but if you are hungry for more, visit the ACU library guide: Fair and Reasonable? Mandatory Detention of Asylum Seekers.