

## AUSTRALIA'S MALTREATMENT OF ASYLUM SEEKERS AND REFUGEES (Part III)

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“I don’t accept criticism of our approaches to asylum seeker and refugee issues.”... “We’ve got a lot to be proud of and I don’t think anybody can maintain that we are somehow viewed badly around the world because of those things.”

Prime Minister Julia Gillard, *The Canberra Times*, 31 January 2013.

Those words were uttered by the Prime Minister when taking the stage at the National Press Club on 30 January 2013. The occasion was her announcement that she would, in due course, pay a visit to the Governor-General to seek new elections for the House of Representatives on 14 September 2013. By a weird coincidence, it will be the first anniversary of the re-opening of the Nauru transport/detention/concentration camp under ‘Pacific Solution 2’. Perhaps, no one thought of it; certainly no one mentioned it. The show would ‘move forward’. Was it another episode of ‘policy on the run’? No matter. Three days later the resigning Attorney-General Nicola Roxon dutifully paid tribute by referring to Ms. Gillard as a ‘titanium leader.’ *Brava!*

If it was another pseudo-Sibylline manoeuvre, perhaps it was motivated by complications concerning the implementation - better, lack thereof - of the Expert Panel on Asylum Seekers Report released on 13 August 2012.

Beyond a sense of hopelessness, despair in the petty arena which Parliament had become, and a profound distaste for the very people that the Refugee Convention - with many other treaties, too - is intended to protect, a rationale for the appointment of the Expert Panel had never been offered. Maybe, before embarking on an examination of the critical solution recommended by the Houston Report, a survey of the statistics on asylum seekers' attempted arrivals to Australia as at the end of June 2012 - the month of the appointment of the Expert Panel - may be useful to define the measures of 'the problem'. Much of the information was not, for reason of time, available to the Expert Panel.

As disclosed in the [Department of Immigration and Citizenship Annual Report 2011-12](#), the number of people held in immigration detention was reaching record highs.

As at 30 June 2012 there were 7,252 people in immigration detention.

In June 2012, about 20 per cent - 1,437 - of the 7,252 people in immigration detention were residing in community-based accommodation. While 7,252 was the number of people held in immigration detention centres as at 30 June 2012, it is useful to look at the number of people who were taken into immigration detention during a whole year - the 2011-12 financial year.

12,967 people were taken into immigration detention during 2011-12, of which:

- 10,385 - or 80 per cent of the total - were unauthorised arrivals - 2,014 by plane and 8,371 by boat;

- 2,455 - or 19 per cent of the total - were people who had been living in the community but overstayed or breached visa conditions;

- 68 - or 0.5 per cent of the total - were foreign fishers, and another 59 were in 'other' categories, such as seaport arrivals, stowaways and ship deserters.

While 12,967 people were taken into immigration detention during 2011-12, 19,370 people were held in immigration detention during 2011-12.

Out of the 19,370 detained people, 14,438 - or 74.5 per cent - were asylum seekers who arrived in Australia by boat, unauthorised, at an excised offshore place.

Of these 14,438 asylum seekers, 5,899 were men, 563 women and 510 were minors.

During the same year, 4,932 people were held in immigration detention for arriving in Australia by plane without authorisation, or breaching visa conditions - such as overstaying their visas or having their visa cancelled.

The Australian Government grants visas to asylum seekers who apply for refugee and protection visas from overseas and from Australia's mainland under the 'Humanitarian Program'. Under the programme, there were 13,750 places every year.

In 2011-12, 13,759 visas were granted under Australia's Humanitarian Program - 6,718 under the offshore component, and 7,041 under the onshore component. The offshore component offers resettlement to people overseas who have been determined to be refugees or in humanitarian need by United Nations High Commissioner for Refugees - U.N.H.C.R., while the onshore component offers protection for people already in Australia who are found to be refugees. Under the offshore component, 821 visas were granted to 'woman at risk' applicants in 2011-12. Under the offshore component, the highest number of visas granted in 2011-12 was to applicants from Asia, followed by the Middle East, Africa, Europe and the Americas.

In 2011-12, 14,415 people applied for a visa under the onshore programme. Half of them - 7,041 - was granted asylum. Almost half of the 14,415 people who applied for a visa under the onshore component had arrived in Australia by plane - 7,036, while 7,379 had arrived by boat. Under the onshore component, most visas went to people who arrived by boat - 4,766, an increase from the previous year. Meanwhile, 2,272 visas were granted to people who arrived by plane.

To put these numbers into perspective within the broader Australian migration intake, it is worthwhile to note that in 2011-12 some 71,819 people received a visa under the points tested skilled-migration programme, with the biggest group coming from India and then Britain. Meanwhile, 68,310 visas were granted under the Temporary Business (Longstay) subclass 457 visas, with the biggest group coming from Britain.

That Australia takes very few asylum seekers is highlighted by comparing it with other countries, say, Sweden. Australia, which is 17 times the size of Sweden, ranks 46<sup>th</sup> in the world for accepting asylum seekers; Sweden ranks 29<sup>th</sup>.

Australia, with a population of 22 million in 2010 and 22.6 million in 2011, took in 21,805 in 2010 and about 21,000 refugees in 2011. Sweden, with a population of between 9.3 and 9.4 million took 82,629 refugees in 2010, and about 81,000 in 2011.

Sweden hosted 8.8 refugees per 1,000, compared with Australia taking 0.98 per 1,000 head of population. Sweden issued a record number of residence permits in 2012, with the total tally ending up at 110,000, a 19 per cent hike from 2011 with refugees accounting for the bulk of the increase.

Pride in achievement could be justified if the major recommendations of the Houston Report had been implemented, reasonably, rightly, integrally and ethically. They were not. Six months later this is still the case. Those recommendations are contained, in essence, in Part B: 'Measures to discourage the use of irregular maritime travel to Australia.'

The relevant paragraphs (3.41 to 3.43) express the 'philosophy' of the Report. It set out 'a range of disincentives' 'actively [to] discourage irregular and dangerous maritime voyages to Australia for the purposes of claiming protection or seeking asylum. The purpose of these disincentives, which are consistent with Australia's international obligations', [or so at least the Expert Panel on Asylum Seekers said], 'is not to 'punish' those in search of such protection or asylum. It is to ensure that [irregular maritime arrivals, IMAs] to Australia do not gain advantage over others who also claim protection and seek asylum but who do so through enhanced regional and international arrangements and through regular Australian migration pathways.

'Regional and international arrangements' were to be pivotal to the realisation of the recommended Australian Policy.

"3.42 One of the goals of enhanced regional cooperation on asylum seeking is that, over time, those choosing to claim protection by travelling to Australia on irregular maritime voyages should have their claims processed through regionally integrated arrangements. Those arrangements would entail protections, decision making, review processes and durable

outcomes in close consultation with, UNHCR. Where resettlement is the appropriate durable outcome for an individual, it would be provided on a prioritised basis across the region. These are practical objectives to which a regional cooperation framework should be directed, and which Australia and other regional countries should pursue as a matter of urgency.”

The Policy obviously demanded active approach by Australia to ‘other regional countries’.

“3.43 To support such processing within the development of a comprehensive regional cooperation framework, the Panel believes that the Australian Parliament should agree, as a matter of urgency, to legislation that would allow for the processing of irregular maritime arrivals in locations outside Australia. That legislation should also reserve to the Parliament the provision to allow or disallow the legislative instrument that would authorise particular arrangements in specific locations outside Australia.”

The Houston Report went on to deal with, ‘processing of protection claims of IMAs in Nauru.’

It observed that “3.44 While some key aspects of *a more integrated regional framework* on asylum seeking can occur relatively quickly, others will take time to be established. In the intervening period, Australia’s current circumstances call for more immediate measures. In this context and in coordination with the Nauruan Government, *appropriate facilities and services should be established in Nauru as soon as practical for the processing of claims made by IMAs to Australia and for their living arrangements while they await a durable outcome.* [Emphasis added]

3.45 The Panel’s view is that, in the short term, the establishment of processing facilities in Nauru as soon as practical is a necessary circuit breaker to the current surge in irregular migration to Australia. It is also an important measure to diminish the prospect of further loss of life at sea. Over time, further development of such facilities in Nauru would need to take account of the ongoing flow of IMAs to Australia and progress towards the goal of an integrated regional framework for the processing of asylum claims.

3.46 *Asylum seekers who have their claims processed in Nauru would be provided with protection and welfare arrangements consistent with Australian and Nauruan*

*responsibilities under international law, including the Refugees Convention. Those protections and welfare arrangements would include:*

- *treatment consistent with human rights standards (including no arbitrary detention);*
- *appropriate accommodation;*
- *appropriate physical and mental health services;*
- *access to educational and vocational training programs;*
- *application assistance during the preparation of asylum claims;*
- *an appeal mechanism against negative decisions on asylum applications that would enable*  
*merits review by more senior officials and NGO representatives with specific expertise;*
- *monitoring of care and protection arrangements by a representative group drawn from government and civil society in Australia and Nauru; and*
- *providing case management assistance to individual applicants being processed in Nauru.”*

[Emphasis added]

Further, the Report provided that “3.47 Those IMAs transferred to Nauru *may choose to return voluntarily* to their home country.

In such circumstances, this voluntary return could be facilitated through appropriate arrangements including Australian assistance with reintegration.” [Emphasis added]

The Expert Panel wanted it to be guaranteed that

“3.48 There should be provision for IMAs in Nauru who are *determined* [obviously meaning, *found*] *to have special needs, or to be highly vulnerable, or who need to be moved for other particular reasons*, to be transferred to Australia. The Panel recommends that such IMAs come to Australia on a temporary visa. Their conditions and entitlements during this period in Australia would be similar to those that apply to persons currently being processed on a bridging visa.

Such arrangements would continue to apply for the period until their application for protection has been fully processed in Nauru and a durable outcome provided.” [Emphasis added]

There followed what must be regarded as crucial provisions:

“3.49 Other IMAs not in need of moving to Australia would remain in Nauru until their refugee status is determined and resettlement options are finalised.

3.50 Irrespective of whether IMAs stay in Nauru for the period of their status determination or are moved to Australia, the same principle would apply to all. *Their position in relation to refugee status and resettlement would not be advantaged over what it would have been had they availed themselves of assessment by UNHCR within the regional processing arrangement.*” [Emphasis added]

This is what would become known as the ‘no advantage provision’.

This was regarded as the centrepiece of the Houston Report and a subsequent government’s bill predicated the so-called ‘no advantage’ principle “to ensure that no benefit is gained through circumventing regular migration arrangements” and to provide “incentives for asylum seekers to seek protection through a managed regional system.” The ‘no advantage’ line was based on the old ‘queue jumping’ myth dressed up in new language where new arrivals would go to the end of a mythical queue. Violators would be incarcerated for around the same time as other refugees in Indonesia or Malaysia. They could even be sent to one of those countries. And what would that have meant in practice ?

“People live in those processing facilities in limbo. They cannot work, they cannot go to school and they have no entitlement to health care. They are in absolute limbo and sometimes with no prospect of being resettled for 20 years.” Australian Greens Senator Larissa Waters pointed out, referring to the conditions of people being held in Indonesia and Malaysia.

The ‘no advantage’ principle is based on the lie that there are regular migration arrangements open to the asylum seekers who risk their lives by boat. These people should have come through non-existent ‘regular’ channels !

Six months after the initial embrace of the ‘policy’, the Gillard Government has yet to announce the precise exchange rate between the currencies of misery and lack of advantage.

The Report went on: “3.51 *Decisions in relation to how IMAs in Nauru would be processed would be determined by Australian officials in accordance with international obligations and in the context of prevailing circumstances.* [Emphasis added]

3.52 The involvement of UNHCR and [the International Organization for Migration, IOM] with registrations, processing and resettlement and/or returns in Nauru and other regional processing centres would be highly desirable and should be actively pursued as a matter of urgency. [Non-Government Organisations, NGOs] and civil society groups should also be productively engaged in specific aspects of welfare and service delivery.

3.53 For those asylum seekers in Nauru who are found to be refugees, resettlement options should be explored with UNHCR and other resettlement countries. If such refugees require resettlement in Australia, this would be provided at a time comparable to what would have been made available had their claims been assessed through regional processing arrangements.

3.54 In the context of recent High Court decisions, the Panel considers that any future arrangements for processing of protection claims in Nauru as part of a regional cooperation framework should be implemented with new legislative authority from the Australian Parliament (Attachment 10 [dealing with the *Migration Act* 1958, the *Migrant Regulations* 1994 and the *Immigration (Guardianship of Children) Act* 1946]).

3.55 Consistent with the objectives outlined above, the Panel recommends that as a matter of urgency the Australian Government commence negotiations with the Nauruan Government to identify a suitable location for the establishment of a facility of sufficient capacity to host IMAs to Australia for the short term.”

The Report also contained provisions for a ‘processing facility’ in Papua New Guinea.

“3.56 In the Panel’s view, in addition to Nauru, similar arrangements also need to be put in place elsewhere in the region to address the rising number of IMAs to Australia.

The PNG Government has facilitated such arrangements in the past and entered into a Memorandum of Understanding (MOU) with Australia on 19 August 2011 for the processing of asylum claims of IMAs at an assessment centre on Manus Island. It would be a matter of negotiation with PNG whether Manus Island remains its preferred location for such a facility or whether other options would be relevant.



3.57 If a processing centre for asylum claims were to be re-established in PNG, similar arrangements to those proposed in this Report in relation to Nauru (paragraphs 3.43 to 3.55) would need to be negotiated with the PNG Government. Furthermore, relevant new legislative authority would need to be passed by the Australian Parliament.”

Part B of the Report continued, dealing with attempts to revamp the Malaysia Arrangement, family reunion changes for IMAs, reducing risk of longer maritime voyages to Australia, review of the efficacy of Australia’s processes for determining refugee status, turning back irregular maritime vessels carrying un-authorized asylum seekers, removals and returns of IMAs, disruptions of proceedings, law enforcement in Australia, and provisions for the extension of cooperation across the boundaries of Australia’s search and rescue region to neighbouring countries, notably: Indonesia, Papua New Guinea and the Solomon Islands.

There should be no argument that the already mentioned points were to become ‘fundamental conditions’ to the treatment of asylum seekers and refugees, according to the Refugee Convention and the other international treaties and conventions to which Australia is a party.

*In limine*, even if only one the conditions

- treatment consistent with human rights standards (including no arbitrary detention);
- appropriate accommodation;
- appropriate physical and mental health services;
- access to educational and vocational training programs;
- application assistance during the preparation of asylum claims;
- an appeal mechanism against negative decisions on asylum applications that would enable merits review by more senior officials and NGO representatives with specific expertise;
- monitoring of care and protection arrangements by a representative group drawn from government and civil society in Australia and Nauru; and
- providing case management assistance to individual applicants being processed in Nauru.”

is dis-honoured, Australia is in violation of international law.

Once the Government announced that all recommendations of the Report had been accepted, that there would have been no ‘cherry picking’ of the Report recommendations, and that they were ‘a package’ - all or nothing, with the ensuing parliamentary debate and hurried decision to resume offshore processing on Nauru and Manus Island, both major parties sat down to scrap the moral gutter and to display their utmost cruelty to asylum seekers and refugees. In an unleashed competition in rhetorical travesties they used the full arsenal of ‘justification’, couched in glib *mantras*: “preventing deaths at sea”, ensuring “no advantage” for those who “choose” not to seek protection through “established mechanisms”, and warning of the danger of “allowing the perfect to become the enemy of the good.” There was a lot of chest-thumping rhetoric about “border security” - and much, much more.

The political hysteria about “boat people” always misses that 90 per cent of people travelling to Australia by boat seeking asylum are found to be legitimate refugees, once they are actually assessed. The Report confirmed that.

How have the major political parties got to this point ? A natural tendency exists to interpret harsh refugee policies as the political expression of latent xenophobia and entitlement anxiety in the electorate. Politicians’ frequently voiced opinion that Australians have now had a “gutful” of the refugee issue - usually hastily followed, as if as an afterthought, by a reference to the “tragedy” of deaths at sea - seems intended as a particular gesture to the outer-metropolitan voters often credited with a central role in the dynamics of the issue.

Both ‘Labor’ and ‘Coalition’ speakers were eager to give the impression that their ‘policy initiatives’ were ‘the answer’ to authentic movements of ‘public opinion’. The latent xenophobia was meant to appease ‘public opinion’ that migrants could be usurping public money. In time the attention of Australians would be re-directed to money matters - always controlling in an essentially mercantile society of English branding. Australians would be told that there is not enough money to implement a National Disability Insurance Scheme or to implement the Gonski Report recommendations to increase funding to schools. On the Government side it was worth considering that there would be ‘no problem’ finding five billion dollars - at least - over four years to implement a ‘policy’ which is guaranteed to cause harm to vulnerable people and to corrupt Australia’s relations with its poor Pacific neighbours - at the very least.

However, it would be mistaken to see public sentiment as the principal mechanism driving 'policy' in Canberra. Most people have no independent contact with refugees nor, indeed, any care to be informed on the fact that humanitarian intake was just 13,799 people among 170,300 overseas migrants - 2009-10 and 2010-11 figures respectively - is a statistical guarantee of that point.

The dislocation of 43.7 million people through abject poverty, civil unrest, religious persecution, regime tyranny, war, and the impacts of flood and shoreline erosion is a global problem. Australia's horror at feeling the impact of just a minuscule portion of that number is to Australians' shame. Pakistan - with 1.9 million, Iran - 1.1 million and Syria - 1 million bear the greatest weight of those events. Indonesia and Malaysia, not as rich as Australia, also are affected by the flight of the dislocated from their source of torment. There is no question that Australians need to do more.

The only way to stop the horror of mothers and babies, fathers and sons drowned by their dream for peace, is to stop the boats leaving port. The potential for death is present from the moment they set sail. Australia needs to engage in an honest conversation with its neighbours - particularly Indonesia and Malaysia. Not for nothing did the Houston Report recommend an increase in Australia's intake to 27,000.

If Australia were to double Houston's immediate target, Indonesia and Malaysia could accept an offer of assistance in ensuring that as many boats as possible never leave port. Meanwhile a ramped-up Australian Embassy presence could determine status ahead of bringing Australia's quota of these desperate people to sanctuary.

The measures introduced by the Gillard Government with the Coalition's support would have been an embarrassment to thinking people. Compassion was totally absent. Having already established a shared disgraceful narrative about "queue jumpers", "illegal immigrants" and "potential terrorists" Government and Opposition had agreed to punish rather than succour.

There have been more than 600 people die at sea in transit to Australia since October 2009.

People's attitude to asylum seekers and refugees is largely dependent on what they are told by politicians and their mouthpieces in the media. Once people have been instrumentalised

in the service of electoral strategy, the facts no longer matter, but are open to indefinite manipulation by politicians and their willing or unconscious messengers.

The Gillard Government officially received the Houston Report on 13 August. It put its legislation before Parliament the very next day, and by the end of the week it had passed both Houses. It was rushed through before the public could become fully aware of its contents and implications. The mass media faithfully repeated all the Government's lies about "fairness", protection of people and saving lives.

The morning after the release of the Houston Report, *The Sydney Morning Herald* [editorial](#) did not hesitate to frame 'Pacific Solution 2' in exactly the major parties' own terms - as a matter of "border protection". Intellectual laziness ? Maybe. The paper even twice referred to boat arrival, in contravention of both the facts and a recent Australian Press Council [recommendation](#), as "illegal". This editorial line was widely echoed by serious journalists of competing media, all advocating offshore processing as a matter of necessary political compromise - an end in itself, apparently.

The media's default acceptance of the new political *vulgate* on asylum seekers was nowhere more evident than in a remarkable episode on the A.B.C. *News24* programme on 16 August. Mr. Jason Clare, the Home Affairs Minister, had just announced that asylum seekers rescued by the cargo ship *Parsifal* had used aggression to force the crew to change course from Singapore to Christmas Island. Quite to the contrary, from a press release from Wallenius, the shipping company - also owners of the *Tampa* - it later emerged that nothing of the sort had happened: far from showing aggressive behaviour towards the crew, asylum seekers had threatened self-harm. According to [later reports](#), the strongest indictment able to be made against the asylum seekers was that they "could pose" - not *did pose* - "a security threat to the *Parsifal*'s crew and vessel."

In an [interview](#) with the A.B.C. *AM* programme, Mr. Clare had noted that the asylum seekers' "very aggressive" behaviour showed "just how dangerous it can be out on the high seas when you've got desperate people doing dangerous things." The Coalition criticised the Government for not having deployed the S.A.S. - a special operation unit of the Australian Army - or pressed piracy charges against the asylum seekers !

As the catalysts of the legislation, the members of the Expert Panel played a particular role in the new direction Australian ‘policy’ would take. Later [reports](#) emerged at the “dismay” experienced by the members of the Panel - Mr. Paris Aristotle in particular - at the way their recommendations had been warped by the political process. Mr. Aristotle was the only member of the Expert Panel with any experience in refugee policy, which is why many who work in the area were aghast when he signed up to a set of recommendations which included reopening processing centres on Nauru and Manus Island and later excising the Australian mainland from the country’s migration zone.

If protestations were sincere, they were an extraordinary admission of political *naïveté*. It was clear from the outset that the Houston Report had been commissioned to provide the government with the political cover it needed to resolve the impasse - this is, after all, the main purpose such reports serve.

With so little time to reach a conclusion, and with terms of reference predicated on a stop-the-boats and border-protection agenda, the Gillard Government was obviously after an ‘independent’ endorsement of some version of its immediate policy options - either Nauru, reportedly privately favoured by Immigration Minister Bowen, and already offered as a counterpart to Malaysia in the context of a possible bipartisan compromise, or Malaysia on its own.

For all its claims of independence, then, the Expert Panel’s recommendations were always bound to be subsumed by the parliamentary logic of the refugee debate. Pious hopes that its recommendations would prompt a serious rethink of long-term policy were just that. In the case of Houston and L’Estrange at least - with no expertise on asylum issues, but Canberra *habitués* and familiar with the political playbook - it is hard to believe the dismay was genuine. If the Panel’s wounded claims of disappointment were just a scripted attempt to bolster its appearance of independence, this speaks volumes about the cynicism with which self-styled ‘independent’ players are willing to allow themselves to be used in a process which has consistently subordinated asylum seekers and refugees’ welfare to the escalating viciousness of the party-political calculus.

In either case, it was a sorry tale of manipulation - by politicians, or by the panellists themselves - of the politics of acute human need. Meanwhile, desperate asylum seekers had no other choice but to continue to board boats.

The offshore processing legislation was passed by politicians, not by voters. The root cause of Australia's shameful new asylum regime had only a little to do with reserves of xenophobia in the community.

Barely ten days after the delivery of the Houston Report, the Law Institute of Victoria reiterated its position that the debate ignores the humanity of the plight of asylum seekers and refugees. "Australia has a duty to process asylum seeker claims. Warehousing asylum seekers in Nauru and Manus Island fails to protect their human rights. It makes accessing legal representation very difficult." said the Institute president. The Law Institute of Victoria joined with the Law Council of Australia in expressing disappointment at a number of recommendations of the Expert Panel.

In its submission to the Expert Panel, the Institute put forward that an effective and sustainable approach to asylum seekers must be based on respect for human dignity and not on political expediency. The Institute wrote: "Any policy options which seek to de-humanise asylum seekers or which effectively punish individual asylum seekers with the aim of general deterrence must be rejected."

Disappointingly - the Institute added - the Houston Report recommended offshore processing as part of a suite of measures to deter people from trying to reach Australia by boat, and that is what the Government rushed to implement into law, with support from the Opposition.

Instead the Law Institute suggested that a more appropriate response would be:

- to provide access to temporary visas to travel to Australia - to enable people to enter and remain in Australia for the limited purpose of making protection claims;
- to decouple the link between the offshore Refugee and Humanitarian programme and onshore protection programmes, so that onshore arrivals do not reduce the number of visa places for refugee and humanitarian entrants to reunite with family members; and
- to reform the family migration programme, to allow refugees living in Australia to sponsor their families as migrants. This would reduce the burden from offshore humanitarian programmes.

On 24 August 2012 the U.N.H.C.R. ruled out any role in processing asylum seekers on Nauru or Manus Island, saying that Australia will be responsible for their health, welfare and processing - and protection of those found to be refugees.

In a rebuff to the Government's so-called 'no advantage' test for asylum seekers, the agency said that it had a host of concerns about vulnerable people being kept indefinitely in remote locations.

"We would have an arm's-length monitoring and supervisory role under the Refugee Convention but, no, we don't envisage any operational or active role in the management of the arrangements themselves." the U.N.H.C.R.'s regional representative, Mr. Rick Towle, told A.B.C. radio. "We are concerned that in these remote places it is difficult to bring full and credible status to termination procedures, including the safeguards." "It is difficult to maintain an adequate level of health and care for people who may already be suffering from trauma as a result of their persecution and leaving their countries of origin and the voyages towards Australia."

The Immigration Minister, Mr. Chris Bowen insisted that he had never envisaged the U.N.H.C.R. playing a role in processing, and yet the Expert Panel had argued that it was "highly desirable" that the agency played a central role.

Refugee advocate David Manne said that it appeared the agency had not been consulted by the Panel or the Government before it decided to press ahead with the arrangement, under which asylum seekers could expect to stay on Nauru and Manus for as long as they would have waited for an outcome in transit countries.

Meanwhile, Attorney-General Nicola Roxon had been asked to review scores of cases of Indonesians serving mandatory five-year prison terms after the decision to restore judicial discretion in cases of alleged people smuggling. On 24 August 2012 prosecutors had moved to adjourn several cases after Ms. Roxon said that they have the ability to amend charges so that "first-time offenders and low-culpability crew" do not face mandatory prison terms. Victoria Legal Aid's Ms. Sarah Westwood welcomed the move, but asked that the situation of such offenders who were already serving five-year terms be considered.

Two days after Prime Minister Gillard announced that Australia would start sending asylum seekers for processing on Christmas Island by the end of September - and to Manus Island at a later date - a journalist and a photographer submitted visa applications to visit Papua New Guinea and Manus Island. Their applications were approved by the P.N.G. Prime Minister's office the following day. The applications stalled after being sent to the PNG Immigration and Citizenship Service. A spokeswoman wrote to Fairfax media on 24 August 2012 to advise that, "we are unable to process your applications due to a ban being imposed by the Foreign Minister on issuance of visas to foreign media personnel until further notice." Foreign Minister Rimbink Pato defended the decision on Radio New Zealand International, saying the ban was temporary and would protect the country from misreporting, which could be "misinterpreted" by Papua New Guineans. "There's no need for the access." Mr. Pato said. "PNG's a culture where we discuss, negotiate and compromise. So we don't want any misreporting, as a consequence of which issues could be misinterpreted by our own people as well as by the outside world. And to work out those issues, we'll do it ourselves first and then - when the time is right - everyone will be invited to come and see what we've achieved." The media organisation involved appealed for the matter to be urgently reconsidered.

Transportation of the asylum seekers was not going to be without controversy in Papua New Guinea.

The National Capital District Governor, Mr. Powes Parkop, who is a senior member of the Government, had threatened to take legal action to stop the centre being built.

"There's no law in PNG that allows people to be detained without being charged." he told Radio Australia's Asia Pacific. ... That is not legal here [in PNG] because it is against our constitution, which safeguards and protects our people, if they are taken in by police, or other authorities, they are supposed to be charged as soon as possible for a particular offence."

The Australian Prime Minister meanwhile was in the Cook Islands for the Pacific Islands Forum. The Australian High Commission in Port Moresby would not elaborate.

Senator Bob Carr, who had been extracted from the cesspit of the Labor Party in New South Wales just five months before to become Foreign Affairs Minister, declared through a spokesman: "We are seeking further information. It is a concern and our high commissioner is looking for more detail."



As at September 2012 the Australian Government had been spending some AU\$ 72,000,000 simply to move people around detention centres. There is no better way to understand the stupidity and wastefulness of the 'policy' on asylum seekers and refugees pursued by the Gillard Government than to look at the following examples.

In one case, in 2012, a young man was flown from the Melbourne Immigration Transit Accommodation in Melbourne to Perth - about 2,700 kilometres - and then to Christmas Island - about 2,600 kilometres - to face charges of breaking a television set. The charges were dropped because the Australian Federal Police could not prove that a set ever existed in the place where the man was supposed to have broken it and no officers would testify against him. He was flown back to Perth and to Melbourne the same week.

In another case, a man was to be flown from Scherger Detention Centre up in Cape York to Melbourne - about 3,000 kilometres - for his Immigration Court hearing. He was booked for the 11.00 a.m. flight. The guards missed it. The man sat around Weipa airport with guards and caught the only other flight that day to Cairns. He sat around Cairns airport with guards and caught a late night flight to Brisbane, arriving after midnight. He was taken to a detention centre there for a few hours then taken out at 4.00 a.m. to the airport to catch an early flight to Melbourne. He was taken directly to the Court and put in a cell downstairs. Repeated requests for him to be brought up so that he could have a few minutes with his lawyer before the hearing were refused, but eventually he had five minutes in the courtroom with two guards at his elbow as he tried to speak to his lawyer. He was flown back to Brisbane/ Cairns/Weipa/Scherger that same night. Apart from the injustice - how much did this cost ?

Asylum seekers and refugees have been surviving in Australian hands as if in a cruel and inhumane Kafkaesque twilight world. There would be nothing which would not be cast aside - Australia's treaty obligations, Labor Party policy - as Prime Minister Gillard tries to capture some of the reactionary vote which has coalesced around the Leader of the Opposition, Mr. Tony Abbott.

The Rudd Government had been influenced by the demands of the rank-and-file party members, who in turn, sided with public opinion. The *Tampa* scandal had encouraged many people to support the refugees and put an end to mandatory detention. On the other side

stood a *cabal* of reactionaries, cynically seeking to manipulate the issue to whip up chauvinism, racist division, and diversion from the attacks on ordinary people made by Howard for the powerful rulers of Australia. Barring some short exceptions - the short period of the Whitlam Government, for instance, forty years ago - the Australian Government's immigration policies have always been driven by the economic needs of capital's labour markets. Migrant and refugee workers predominate in the unskilled and semi-skilled jobs with harsh conditions and low wages, such as meat processing and storage, warehousing and cleaning. The bulk of today's refugees come from war zones which are mostly fed by United States led aggression - Australia sheepishly following. As long as this aggression keeps up, victims of war will continue to seek asylum outside their own countries. Australian Governments aligning themselves with aggressors are therefore part of the problem.

Demonising asylum seekers may be a temporary diversion, but not a solution - it is contemptible. The fundamental problem is that Labor and the Coalition are locked into the present course. There is very little difference of substance between them. Both parties posture and do nothing which would make a real difference. Putting an end to involvement in unjust wars overseas would be a good start. Assisting developing nations to reduce poverty and address climate change issues would reduce future factors in the involuntary movement of people.

Early in September 2012 the High Court of Australia disposed of a major legal barrier to the removal of about 200 asylum seekers who had exhausted visa application and review processes. The rejection of a challenge to the failure of the Immigration Minister, Mr. Chris Bowen to exercise his discretion in the cases where appeals have been exhausted could result in the first involuntary returns to Afghanistan.

A spokesman for Mr. Bowen said that the Government was pleased the court had confirmed the processes for the administration and exercise of ministerial public interest intervention powers were "robust and lawful."

"We will now seek early resolution of the remaining 190 cases currently before the High Court that had been stood out of the court's list pending today's outcome." the spokesman told the press. "This decision takes away significant potential barriers to the removal of

people who have exhausted their visa application and review process and have no legal right to remain in the country.”

While the spokesman said arrangements were being made “to be able to facilitate these removals as a matter of course”, refugee advocates urged the Government not to deport people. Mr. Ian Rintoul, spokesman for the Refugee Action Coalition, said he was disappointed by the decision and urged Mr. Bowen not to see it as a “green light” to deport people to dangerous situations in such places as Sri Lanka and Afghanistan. But that is what the Gillard Government was preparing to do - for Sri Lankans, *en masse*. Mr. Rintoul said that another 50 asylum seekers beyond the 190 attached to the case could be affected.

The High Court’s decision came as the Chief Judge of the County Court of Victoria, Michael Rozenes, lamented that many Indonesians who crewed asylum seeker boats spent up to two years in immigration detention and gaol before prosecutors decided not to proceed with people-smuggling charges which carry mandatory gaol terms. Chief Judge Rozenes congratulated Attorney-General Nicola Roxon and the Commonwealth Director of Public Prosecutions for “ultimately making what can only be described as the right decision” in cases which involved poor Indonesians who in many cases had been duped into taking jobs on boats. “It is however, regrettable, if not tragic, that the accused in these matters waited for so long in detention before they were initially charged, and then even longer on remand while this decision was made.” he said.

Chief Judge Rozenes was speaking after bail was given or extended to 16 Indonesians. All had been in custody for between 12 months and two years. Mandatory gaol terms were overwhelmingly being applied to poor, uneducated Indonesians who had no role in planning people-smuggling operations. Almost 200 Indonesians were in gaol after being convicted on the charge of aggravated people-smuggling, which called for mandatory gaol terms for any crew member of a boat carrying five or more asylum seekers, irrespective of their role. More than a third of about 140 cases were still before the courts and were allocated to the County Court of Victoria, where 44 charges have been dropped and the only full trial resulted in the acquittal of the two accused.

This attitude had certainly not contributed to good neighbour relations between Australia and Indonesia.

It has become part of the *vulgate* on the Houston Report that any effective policy response must involve a “regional solution.” Consider Australia’s nearest, most populous neighbour: Indonesia has not signed the Refugee Convention. Its record in dealing with the thousands of asylum seekers within its borders is not impressive. Yet, here is an archipelago of 17,400 islands north-west across the seas to Australia’s north. Clearly, the boundaries it shares with Australia, are the key to any real regional solution; it rests there - not in Nauru, not in Papua New Guinea, or even in Malaysia.

The respective positions are different.

There is therefore often a sense of resentment towards Indonesia that a regional solution is not already in place: it “should be doing more.” This stems from an assumption that Australia and Indonesia are partners in dealing with irregular migration in the region. They are not. Indonesia is a transit country and Australia is the destination.

The consequences are obvious.

Firstly, the Indonesians could very well say: “It is not our problem.” Asylum seekers are in Indonesia to get to Australia. For many Indonesian officials Australia’s calls for Indonesia “to do more” are therefore hypocritical - Australia does not want to accept asylum seekers but expects that Indonesia should. In return for what ?

In Indonesian eyes, by not accepting asylum seekers, Australia is seen as creating a problem and blaming Indonesia for it. For many Indonesians, this reeks of a neo-colonial arrogance. A second common view in Indonesia is that Australia has failed to accept moral responsibility for asylum seekers.

Secondly, Indonesia may retort by saying that Australia has failed to accept legal - and never mind moral - responsibility for asylum seekers and refugees. The United States-led Australian invasion of Iraq and Afghanistan was very unpopular in Indonesia. Many Indonesians argue that by participating in both wars, Australia helped create the “push factors” which increased refugee numbers in south-east Asia. Now it expects Indonesia - which warned against these adventures - to fix the problem. In return for what ?

Thirdly, Australia is seen as a wealthy, developed and ‘empty’ place. It should not be looking to a poor, developing and overcrowded country to take more poor people. Figures

are powerfully telling: Java, the fifth largest island of the archipelago is 139.000 square kilometres, with a population of 135 million; Tasmania, the smallest of Australian states, is 68,000 square kilometres, about half of Java, with a population of 512 thousand; and the second smallest state Victoria is 227.000 square kilometres and has a population of 5.6 million. Indonesia has its own huge and intractable problems of internal refugees and displaced persons.

In Indonesian eyes 'Fortress Australia' is greedy, selfish and inhumane, refusing to take responsibility for a problem it helped create and to face which it is better equipped - or should be anyway.

While there is truth in some of these perceptions, there are good arguments which can be made in reply. Unfortunately, Australia seems to have no time for them, and would have much less leverage than is usually assumed were it trying to do so. Indonesia has certainly bigger fish to fry.

And there is the rub !

Australia and Indonesia have enjoyed close government-to-government relations under President Susilo Bambang Yudhoyono.

With reference to Indonesia there are only courteous hand-shakes by Prime Minister Gillard and unbending threats by the Leader of the Opposition to send back the leaky boats !

But there is no "regional solution" because the Australian Government is too simple minded - perhaps too 'Menzian' - to offer Indonesia a real opportunity for meaningful discussions and solution. In these circumstances any co-operation won through diplomatic initiatives such as the 'Bali process' - the international framework agreement, which was initiated at the "Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime" held in Bali, Indonesia in February 2002, for handling large influxes of asylum seekers and to combat human trafficking - was, in fact, remarkable. It was largely a product of goodwill and, to a great extent, President Yudhoyono's willingness to look south and take Australia more seriously than any president of Indonesia before him. But what after him ?

Time may be running out for a real “regional solution” unless Australia can think up a good reason now why Indonesia should come on board - and that will probably come with a big price tag.

Nor would the initially uncertain attitude of the Immigration Minister - threaten deportation without specifying whether the ‘transportees’ sent to Nauru via Christmas Island still had any access to Australian jurisdiction - help to win collaboration for a “regional solution”.

For, if they did, then the whole point of offshore processing would be lost. If they did not, he should have said so, accepting the consequences of public opprobrium by sending a tough message. If he did not know, then the situation would be even worse than one thought. Turning back the boats was after all contemplated by the Expert Panel, although - for understandable diplomatic reasons - it emphasised “regional co-operation”. Indonesia would have found some difficulty but could be persuaded to co-operate if delicate, culturally appropriate tactics were deployed sensibly.

As compared with the early days of Howard’s ‘Pacific Solution’, ‘transport’ of the first plane-load of asylum seekers to Nauru on 14 September 2012 was a qualified success. There was none of the deception, confrontation, litigation, brinkmanship or coercion which accompanied the first ‘transport’. The group of the ‘transported’ Tamil Sri Lankans was smaller, and their demeanour was calmer. They accepted at first to be accommodated in tents - initially, as they were told.

Twelve years ago the hastily constructed camps were hopelessly overcrowded, asylum seekers had to wash in salt water and the camps were run like detention centres. This time, the promise was of something far more humane and open, aside from the very real uncertainty about how long they would remain in the world’s smallest island nation.

The political test of Prime Minister Gillard’s ‘Pacific Solution 2’ was not how, or even whether, it managed the difficult task of balancing humanitarian obligations with the aim of deterring people from risking their lives by paying for passage to Australia on leaking boats. It was whether, in the words of the Leader of the Opposition, Mr. Tony Abbott, the plan would stop the boats or, more realistically, whether it would dramatically and quickly slow

the surge in the number of unauthorised arrivals from the record levels of previous months. But there were few grounds for optimism.

To begin with, the ‘push factors’ for members of the minority *Hazara* group in Afghanistan and Pakistan, in particular, were then and are now as strong as at any time in the past two decades. In addition, the people-smuggling networks are far more sophisticated now than they were then.

But the biggest reason whereby Nauru was not going to have the impact it had in 2001 is that, this time, it did not loom as the kind of *Île-des-Pins* it had in 2001.

For all the Opposition’s talk about returning to the other policies it maintains worked in 2001 - temporary protection visas and turning back the boats - neither of these approaches was supported by the Government’s Expert Panel or, for that, matter the bureaucrats who advised Howard in 2001.

This time, the message is different. It is that asylum seekers and refugees will be processed relatively quickly, but will remain on Nauru for as long as they would have stayed in transit countries awaiting resettlement, so that they gain ‘no advantage’ by paying a people smuggler.

What was still unknown was how the asylum seekers were to be processed, and who would process them, and whether they would have had resort to Australian courts - which seemed unlikely.

Theoretically, the ‘no-advantage test’ sounded fine; in practice it appeared quite early of difficult implementation. According to the U.N.H.C.R., the time it takes to process and resettle a refugee in south-east Asia may not be a suitable yardstick for countries which have signed the Refugee Convention and, as a result, committed to best practice.

To suggest how long such time should be is not, according to the U.N.H.C.R., that simple because there is no ‘average’ time for resettlement. Its practice is to resettle “on the basis of need and specific categories of vulnerability,” not on the basis of a “time spent” formula.

Further to confuse the process, the Immigration Minister, Mr. Chris Bowen appeared to have understood the problem when he said on 14 September 2012 that the ‘no advantage’ principle would be applied “case by case.”

Finally, the U.N.H.C.R. had another concern: the ‘no-advantage principle’ was supposed to operate together with a move towards a regional framework - a suggestion which was not new but required time.

There is another difference, too, between the deterrents imposed by Howard and Gillard. Howard’s was unapologetically brutal. Gillard’s was presented as being more nuanced, reflecting the influence of the Expert Panel - and Mr. Aristotle in particular.

Initially, people were told that, while the asylum seekers were on Nauru, they would be able to learn English, to go to school, to develop skills and to receive counselling from the Salvation Army, all of which would make the transition to work in Australia all the smoother. Moreover, their ‘Care and protection arrangements’ would have been monitored by a yet-to-be-appointed group.

While the Expert Panel wanted the U.N.H.C.R. and the International Organisation for Migration to be involved in the Nauru camp, both agencies appeared to have chosen to stand back and watch developments from a distance.

At mid-September 2012 Australian Federal Police were preparing to move some of Christmas Island’s less-willing detainees to Nauru. This would follow the successful ‘transport’ to the island on the night of 13 September of 30 Sri Lankan men selected for ‘operational reasons’, including that they had agreed to travel and were in good health.

Immigration Minister Chris Bowen said that the first transfer put the lie to claims by people-smugglers that offshore processing would not happen.

The Department of Immigration and Citizenship emailed Christmas Island residents a “special community update” saying that the mood of the island’s detention facilities was calm since the beginning of the Gillard Government’s version of the ‘Pacific Solution’. The Department was concerned about the potential for strife, and said in the bulletin that contractor *Serco* had put on extra guards.



Mr. Bowen said that a broad cross-section of people would have been sent to Nauru in the following weeks as the Government moved to send a strong message to stem the flow of boat arrivals.

A.F.P. agents informed that they considered Sri Lankan asylum seekers amiable and most willing to accept to go to Nauru. Many Afghan asylum seekers were believed to be fearful but indicated that they would go without protest. There were concerns, however, that some among the group of Iranian asylum seekers would be unwilling to go.

The Immigration Minister was asked whether children could be among those transferred to the tented facility before more permanent structures were built. "I've said that for obvious reasons the law applies, and we are not going to provide loopholes for people-smugglers to exploit," he replied. Mr. Bowen said that the message was very clear. "You arrive in Australia by boat, you can be taken from Australia by airplane and processed in another country."

The 30 Sri Lankan men in the first group to touch down on Nauru would have been accommodated in five-man tents until more permanent *dongas* were constructed.

Mr. Bowen said that an announcement about the detailed legal treatment the asylum seekers would receive would have been made soon. On his part, the Nauruan Foreign Minister Kieren Keke told the A.B.C. that the processing, assessment and determinations of asylum would be made by Nauru under Nauruan law. "So that is a significant change but it is something we are comfortable with and has been worked in co-operation with Australia." Dr. Keke said.

Another planeload of Sri Lankan asylum seekers was expected to land on Nauru on 18 September 2012 as the Gillard Government reinvigoration of the so-called 'Pacific Solution' was gathering pace. Like the 30 Tamils who had arrived on 14 September 2012, they were taken by bus to the 500-person capacity tent camp in the sweltering middle of the island, where they were to be hemmed in by thick jungle, the island's rubbish tip and a rock quarry.

Another planeload of several dozen Tamils was expected later in the week, and the first group of Afghan *Hazaras* early the following week. By then the camp would have housed more than 150 asylum seekers. Some of them could also turn out to be women, children or whole

families, as Immigration Minister, Mr. Chris Bowen had told a press conference on 13 September 2012: “You can expect to see a broad cross-section of people transferred to Nauru next week and in coming weeks.”

Despite promises by Mr. Bowen that Labor’s system on Nauru would involve a processing centre, not a detention camp, the site’s inhabitants were forbidden from leaving.

A Nauruan Government spokesman, Rod Henshaw, said on A.B.C. radio that the situation was a “period of settling in.” “I know the Nauru Government is anxious to have them settled and, over a period of time, to give them the privileges of wandering around.”

Questions continued to be asked about the decision to process the refugee claims under Nauruan law. The regional head of the U.N.H.C.R., Mr. Rick Towle, had already lamented that Australia was handing over legal responsibility for people seeking asylum in that country. Some had expressed concern that Australia may disagree with a refugee approval made under Nauruan law and refuse to take the person, with the result that s/he could be returned to her/his country or not resettled in Australia.

On 5 October 2012 the High Court of Australia ruled that government regulations which allow the Australian Security Intelligence Organisation, A.S.I.O. to deny protection visas for refugees on the basis of adverse security assessments, thereby ensuring their indefinite detention, are illegal.

Every aspect of the Gillard Government’s ‘border protection’ regime is marked by a contempt for basic precepts of international and human rights law. The role of A.S.I.O. in keeping officially recognised refugees in detention centres for indefinite periods of time, on the basis of entirely secret and arbitrary ‘security’ assessments, is just one of the devices through which the Government has sought to deny the basic right of people to claim asylum in Australia.

The High Court ruling did not substantially challenge any aspect of this framework and in fact explicitly endorsed several anti-democratic provisions of the security assessment process. Moreover, despite the unlawful character of the existing setup for assessing refugee visa approvals affected by adverse A.S.I.O. investigations, none of the more than 50 refugees held in detention centres would have been released. The Government and the Opposition have

made clear that they will quickly pass whatever legislation may be required to circumvent the High Court decision.

The High Court challenge to A.S.I.O.'s role in detaining refugees was brought by refugee lawyer David Manne, representing a Tamil man identified only as 'M47' who has spent nearly three years in a detention centre in Broadmeadows, Melbourne. The case of the 'special treatment' inflicted by the Gillard Government on Tamil Sri Lankans deserves separate consideration - too long to be expanded here.

The Gillard Government was urged to establish a compensation scheme for dozens of Indonesian children who were wrongly jailed as adult people smugglers. The scheme was proposed to avoid the prospect of many civil suits and potentially much higher payouts. Mr. Mark Plunkett, the lawyer who exposed the gaoling of children, warned that Indonesia could institute an inquiry and support claims for damages if Australia's response was inadequate.

Australian Greens Senator Penny Wright, who chaired a Senate inquiry into the detention of Indonesian minors, on 4 October 2012 called for a formal apology to those wrongly detained and a mechanism for compensation. In her own report, Senator Wright said that the inquiry had heard evidence that young Indonesians were subjected to arbitrary detention, housed in adult facilities with convicted murderers and paedophiles, and separated from their families for significant amounts of time.

Mr. Plunkett likened the failure of any government official to admit fault at the inquiry to an episode of *Yes Minister*. "It cannot pass that we would lock up more than 60 of the most vulnerable, uneducated children from another country without there being a proper inquiry. People should be brought to account for it," he said. He was calling for a scheme where compensation was paid according to the age and length of time spent in detention. "If they get common-law claims, these kids will get hundreds of thousands [of dollars], but if it's a redress scheme, the money can be properly managed," he said.

Earlier in 2012 the Attorney-General's Department had reviewed cases of 28 convicted people-smuggling crew who claimed to be minors at the time of the offence, resulting in the release from prison of 15. There were still 33 cases where accused people smugglers in detention or gaol claimed to be minors.

Victoria Legal Aid's Ms. Sarah Westwood said that the recommendations in the majority report for dealing with those who claimed to be minors were "all fundamental rights that are extended to people in Australia who are suspects in a criminal prosecution." She commended Senator Wright for endorsing calls for boat crew who claim to be minors being appointed an independent guardian; time frames being set to ensure that detention before any charges was kept to a minimum; and guaranteed access to legal advice at the point of detention.

Mr. Plunkett said that the incarceration of minors remained a big concern at the highest levels of the Indonesian Government and warned that "if Australia doesn't have a royal commission, I'm encouraging Indonesia to have one, or go to one of the United Nations bodies to have one." he said. "The Indonesians themselves could have an inquiry, which would be very embarrassing to Australia, and you could sue in Indonesia for claims against Australia."

It was not long before the first case of attempted suicide on Nauru was reported. It had happened on 10 October 2012 when an Iranian asylum seeker whose identity and age still remained unknown, was found hanging by the neck 'turning blue' by fellow asylum seekers, according to Mr. [Ian Rintoul](#) from the Refugee Action Coalition, who received the news by phone from Nauru.

A spokesman for Immigration Minister Chris Bowen confirmed that a detainee had attempted "self harm" two days before, but was not prepared to go into the "specifics of the self harm." Once staff became aware of the incident, "an officer intervened and he was immediately assessed and cleared of all physical harm." Mr. Bowen's spokesman said.

Mr. Rintoul thought that the man could likely have been one of [20 Iranians](#) who left Christmas Island for Nauru on 25 September.

The suicide attempt directly followed a visit by Mr. Bowen to Nauru earlier the previous week. Mr. Bowen addressed the detained asylum seekers, who told the R.A.C. that he had said their claims would not begin to be processed for another eight months to a year - the time it would take to train assessors and interpreters. Mr. Bowen's office confirmed that the Minister had spoken to detainees about the Government's 'no advantage' policy, and that all

asylum seekers arriving in Australia or Nauru were being made aware of it, but that Mr. Bowen had made no specific statements on the duration of processing.

After having spoken with asylum seekers on Nauru, Mr. Rintoul said that the picture that he received was that the conditions in Nauru were quite bad and were being deliberately kept that way. “When Bowen actually came and made it clear that it would be eight to 12 months before you’ll even be processed, and ‘you’ll be here for years’ after that. That was the tipping point, not just for [the man], but for the rest of them.”

Suicide attempts, violence and hunger strikes at the detention centre at Nauru had been [a hallmark](#) of the Howard Government’s ‘Pacific Solution’.

A massive backlog of asylum seekers had built up inside detention centres because processing had stopped since the ‘Pacific Solution’ was reinstated and almost none of the new arrivals had been transferred to Nauru or Papua New Guinea, which were not yet ready to receive them.

Warnings from the U.N.H.C.R. and refugee advocates emerged as U.N. High Commissioner for Refugees, Mr. Antonio Guterres concluded that Papua New Guinea had “neither the competence or capacity” to process transferred asylum seekers alone.

Meanwhile the Opposition continued “to talk tough.” Cracking down on people-smuggling was to be one of the key topics that Mr. Tony Abbott and his Coalition delegation would have raised with President Yudhoyono and his ministers during a three-day visit to Jakarta. After attending the Bali bombing commemorations, the Opposition Leader, along with three senior frontbench colleagues, would have raised trade, tourism, regional security, education, food security and people-smuggling topics in the Abbott-led Coalition’s first high-level visit to Indonesia.

Details of the visit emerged as Australian Human Rights Commission President, Professor Gillian Triggs warned that the Government’s ‘no advantage’ policy for boat people risked breaching international law if it meant the Government stopped processing claims for asylum. The warning came as three boats were intercepted on 12 October 2012, taking the number of asylum seekers to have arrived since the Gillard Government announced the reintroduction of processing on Nauru and Papua New Guinea to almost 4,100.

“During my visit, Julie Bishop, Scott Morrison, John Cobb and myself will hold talks with government ministers and industry officials. These will broadly centre on building the relationship not only around trade but also regional security, cracking down on people-smuggling, education, food security and tourism.” said Mr. Abbott.

In July, Prime Minister Gillard had accused Mr. Abbott of being “gutless and cowardly” for not raising the issue of the Coalition’s policy to ‘turn back boats’ carrying asylum seekers to Indonesia waters when he met President Yudhoyono in Darwin.

There are a number of ways to interpret the Opposition Leader’s failure to raise his asylum seeker ‘tow back’ proposal in his meeting with President Yudhoyono, but none of them is positive. In short, the ‘tow back’ proposal was and, in so far as it continues to be defended by Opposition speakers, remains a policy disaster.

The underlying assumption about taking back the boats to Indonesia - if one puts aside the unresolved humanitarian issues around blaming refugees for being refugees - is that asylum seekers are Indonesia’s problem, not Australia’s. However, given that the overwhelming majority of asylum seekers who transit through Indonesia intend to come to Australia, the Indonesian Government has a rather different view.

Clearly, Indonesia may be perfectly justified in considering Australia’s attitude as that of a bully.

For Indonesia, with its highly porous borders and myriad problems with immigration, emigration, corrupt officials and still limited capacity to deter ‘unregulated immigration’, feels at best the victim in this sorry saga. Yet, as a gesture of goodwill, it seems that Indonesia has accepted that boat-borne asylum seekers are a regional problem and not, as they effectively are, Australia’s problem.

Still, the intimation that Australian naval vessels would return to Indonesian waters boats bound for Australia is an affront at a number of levels. It assumes the problem is Indonesia’s alone, that Indonesia has the capacity to deal with ‘unregulated immigration’, and that its navy has the capacity to rescue people from often unseaworthy craft on the verge of sinking. It also assumes a lack of humanitarianism on the part of Australia.

This has been the view in Indonesia since the 'tow back' policy was first announced. Interestingly, however, this disagreement comes at a time when Australia and Indonesia are enjoying their best ever bilateral relations.

Mr. Abbott's boasting is also a classical example of Australia's haughty way of talking to people at its north - if and when it does so ! It shows Mr. Abbott's propensity for bullying and all-around neo-imperialistic attitude.

Avoiding difficult issues would have been entirely consistent with President Yudhoyono's Javanese cultural tradition. Australia's cultural and political traditions, in some senses exemplified by Mr. Abbott's confrontational style, are the opposite of Java's preferred polite and refined behaviour. Direct or confronting discussion is regarded as culturally coarse in Indonesia and as diplomatically offensive more generally.

The Opposition's foreign affairs spokeswoman, Ms. Julie Bishop said that she and immigration spokesman, Mr. Scott Morrison later had 'broad ranging discussions' with Indonesian Foreign Minister, Mr. Marty Natalegawa.

Knowing that the 'tow back' policy would have been unlikely to produce agreement and being relegated to second-tier status where it was, at best, noted, if Mr. Abbott had persisted with the proposal, President Yudhoyono would undoubtedly have ended the meeting. So, rather than court a greater and more embarrassing problem, Mr. Abbott avoided the issue altogether. Given that Indonesia is very unlikely to agree to such a policy, if Mr. Abbott becomes prime minister after the next election, it is likely that he will continue to avoid it.

It was Mr. Abbott who resolved to desist. To do otherwise would have been to plunge Australia-Indonesia relations back to the lowest of their previous depths. Wrecking a very strong and important bilateral relationship is not what any Australian prime minister would desire.

The Immigration Minister, Mr. Chris Bowen said on 12 October 2012 that the challenge for Mr. Abbott and Mr. Morrison was to stop the tough talk in Australia about turning back boats and to "sum up the courage to actually raise the issue of turnbacks" with President Yudhoyono. "Last time they met, Mr. Abbott failed to even mention the much-maligned policy, in the face of a long line of Indonesian senior politicians and officials rejecting tow-

backs.” Mr. Bowen said. “Mr. Abbott talks about a Jakarta-focused policy but can he even get Jakarta to focus on what is the pillar of his border protection policy, let alone come away with an agreement ?”

Asked whether he would have raised the turn-back issue with the Indonesians, Mr. Morrison insisted that the Coalition’s policy on asylum seekers had always been much broader than towing boats back. He said he was not going to tell the Indonesians what they should be doing, but rather would listen to them.

As Mr. Bowen sought to capitalise on the most controversial element of the Coalition’s proposed measures for tackling people-smuggling, the Gillard Government once more faced warnings that its ‘no advantage’ test could breach international human rights law. “From the point of view of international human rights law, asylum seekers are entitled to have their claims properly considered by the Government.” Professor Triggs said.

A new warning came again from the U.N.H.C.R. and refugee advocates: a massive backlog of asylum seekers was building up inside detention centres because claims for refugee status were not being processed. None of the asylum seekers who had arrived by boat since the return of the ‘Pacific Solution’ had a claim for refugee status processed; only 211 had been transferred to Nauru, as authorities scrambled to prepare facilities.

U.N.H.C.R.’s Antonio Guterres also had declared that Papua New Guinea lacked “any national capacity” to implement its international refugee obligations under the plan.

On 12 October 2012 Papua New Guinea dismissed Mr. Guterres’s criticisms, insisting its legal system was equipped to deal with refugee processing and human rights issues. Attorney-General Kerenga Kua said: “I don’t see how one could possibly say PNG has an inadequate regulatory or legal framework to deal with the issues when we have one of the best constitutions in the world in as far as protection of human rights is concerned. You cannot find a codified set of human rights in Australia, whereas we do. It is part of our constitution.”

Professor Triggs, who had returned on 12 October 2012 from a three-day inspection of Christmas Island, said that overcrowding was apparent at the camp known as *Aqua*, which was under “considerable stress.” This camp, for extended families, was intended to provide



children with appropriate playing areas. Professor Triggs said that the main problem in applying the 'no advantage' policy was that it was legally meaningless. She said there was no benchmark throughout the region which could be used to determine what an advantage or disadvantage might be. On Christmas Island she had spoken to asylum seekers who had been waiting four or five years in Malaysia and Indonesia for their claims to be assessed by the United Nations. "If that is to be the standard that Australia adopts, then I see no end to this," she said. "If they are to be detained for these periods of time - if that were to be the benchmark - then we would really have, for all intents and purposes, indefinite detention without charge or trial."

The U.N.H.C.R. had detailed five major concerns about the Gillard Government's plan to send asylum seekers to Manus Island.

The concerns were detailed in a letter dated 9 October 2012 from Mr. Guterres which was tabled in Parliament as a resolution approving the designation of Papua New Guinea as a "regional processing country" passed in both Houses. The concerns included that country's failure to sign international treaties against torture and for the protection of stateless people, and the absence of any national legal or regulatory framework to address refugee issues in the country. In the letter to the Immigration Minister Mr. Guterres said that the arrangements for offshore processing on Manus Island - like those on Nauru - are between the countries involved and that the U.N.H.C.R. "would not have any operational or active role to play in their implementation."

The letter also described an absence of "any national capacity" in Papua New Guinea to implement international obligations. "We recognise that efforts are presently being made to identify and train a small cadre of officers in asylum and refugee issues," Mr. Guterres wrote. "Over time, capacity will improve but, depending on the scale and complexity of the task of processing cases and protecting refugees under the bilateral arrangements, it will likely remain insufficient for an important period of time."

The agency also said that the risk of *refoulement*, or return to the place of persecution, remains in spite of written undertakings that it would not take place.

One more concern related to the quality of protection for asylum seekers and refugees, especially because of the "very limited opportunities for sustainable local integration."

The letter also highlighted the U.N.H.C.R.'s reservations about the 'no advantage' test which is intended to apply to those sent to Manus Island and Nauru. The letter further said that the time taken to resettle cases referred to the U.N.H.C.R. in south-east Asia may not be a "suitable comparator"; that there is no 'average' time for resettlement from transit countries; and that the test appeared to be based on the longer term aspiration for regional processing to be in place.

A spokesman for Mr. Bowen said that the Government would "take on board" the issues raised by Mr. Guterres. He said that the Government would work with the Papua New Guinean Government on the setting up of the processing centre and expected the first transfers to occur "in coming weeks." "Of course, Papua New Guinea has already given Australia the assurances around the principle of non-*refoulement* and the assessment of asylum claims in line with the Refugee Convention."

On 18 October 2012 the U.N.H.C.R. expressed fresh concerns about the ability of Nauruan officials to process refugee claims on the scale anticipated.

Legislation tabled in the Nauruan Parliament had confirmed that asylum seekers sent from Australia to Nauru under 'Pacific Solution 2' would have their claims processed under Nauruan law "as soon as practicable." A Refugee Status Review Tribunal was to be established on Nauru to examine the appeals of failed asylum seekers, and those unsuccessful in gaining a protection visa through the Tribunal could then take their claims to the Nauruan Supreme Court. But the legislation also enabled failed asylum seekers to challenge their determinations in the High Court in Australia - where the High Court judges would be free to examine the claims with reference to Nauruan, not Australian, law.

A spokesman for the U.N.H.C.R. in Australia said that the organisation remained "very concerned about the available experience and expertise to process claims on the scale and complexity envisaged by the arrangements." The U.N.H.C.R. also urged once again the Gillard Government to begin "without further delay" processing asylum seekers in detention in Australia and Nauru.

At the same time, Australian Defence Force chief David Hurley told a Senate estimates committee that the work of Navy patrol boats intercepting asylum-seeker vessels was “difficult, dangerous and unrelenting” for crews.

On 14 October 2012 it was disclosed that the Australian Federal Police was reviewing CCTV footage from a detention centre as part of an investigation into the incident involving two guards from the company *Serco*, the private company running Australian detention centres. The guards had been stood down pending an investigation into allegations that they assaulted a mentally disabled man at the *Villawood* centre, just days after he arrived. **The victim was** a 29-year-old Kurdish asylum seeker, who suffers from a mental condition which psychiatrists have warned is exacerbated by incarceration without specialist mental-health services.

The Immigration Department confirmed an incident had taken place on 2 October and a police investigation was under way. “The department took action very quickly to instigate an independent investigation.” a spokeswoman said.

The mentally disabled man arrived in Australia in August 2010 and had been in detention for two years. His case was taken to the Federal Court in June 2012 in an attempt to obtain his release and give him psychiatric care.

During the court hearing in June, Professor Louise Newman, the director of the Centre for Developmental Psychiatry and Psychology at Monash University, revealed that the man had previously suffered assaults while in detention. “He has experienced trauma whilst in detention, including sexual assault, aggression and tormenting interactions.” she said in a report to the Court.

Images of baton-style implements used by *Serco* guards had been revealed in a series of Government documents on weapons and restraints used in detention centres, which had been obtained by a newspaper. The documents also revealed that “instruments of restraint” had been used more than 100 times in one year for what the Immigration Department has deemed “minor incidents.”

After an 18-month battle to gain access to the documents using freedom-of-information laws, the pages which were finally released showed the baton-style implements - torches and

metal detectors, and even electrified ‘cattle prods’ - had been used despite denials from the Department that staff had them.

A departmental spokesperson confirmed that “batons or Maglite-type torches or other implements that may be confused with cattle prod-like weapons are not part of the standard kit of resources used by Serco staff either in detention centres or during escort activities.” But the documents clearly showed the implements, although details about their use had been redacted. There were also images of the flexi-cuffs used on detainees.

The incident in which the asylum seekers complained they had been threatened with the batons was the subject of an inquiry by the Commonwealth Ombudsman.

On 14 October 2012 a huge protest on Nauru followed a breakdown of communication between the Immigration Department officials and detained asylum seekers. An angry engagement followed the next day when the Department officials allegedly took a very stand-offish position rather than respecting the basic rights of the asylum seekers.

Horrific statements by officials to asylum seekers such as that they have the right to return to ‘where they came from’ should be forbidden. Such statements were in conflict with the *Migration Act* and the U.N. treaties, conventions and protocols signed by Australia. To tolerate such statements amounted to coercion, discrimination and - never too far - a waft of racism. Racism comes in many forms - some gross and some subtle. The smallest ‘provocation’ is sufficient to trigger it. A trickle of humanity flees from persecution and horrific conditions, from civil strife, attempting to reach Australian shores and Australian Governments react with racism, eager to justify their racist actions, deeds and words and then ‘to normalise’ racism and to stereotype peoples.

If the Gillard Government has a ‘policy’ on asylum seekers and refugees it is one of brutality in and by a country which prides itself for its ‘multiculturalism’. As a ‘culture’, it is one which sees the denial of rights as a virtue, which permits at the same time to shed tears for those who die at sea trying to reach Australia and yet just watches a detainee attempt suicide, while exhorting people to give up on the idea of seeking asylum, and then chalks it up as a win, and remains indifferent to the fact that some people are killed after being sent home !

Another group of 38 asylum seekers, Iranian and Afghan, arrived in Nauru on 19 October 2012, taking the number of asylum seekers, in the increasingly crowded detention centre, to around 330.

On 17 and 18 October 2012 asylum seekers on Nauru broke down into protests, with near 300 Iranians, Iraqis, Afghans and Tamils calling for processing of their applications at long last to commence. A united protest of all detainees was held on 17 October, demanding that processing of refugee claims start immediately and that the Australian Government stop sending asylum seekers to Nauru.

Conditions in the camp had become unbearable. One message from Afghan asylum seekers received on 18 October said that, *“Now Nauru has become a place for asylum seekers to be detained, in small tents that are set up on dirt and are non-standard, with only a few bathrooms and showers that aren’t usable and an area that is surrounded by wire. ... Here, in addition to mental and psychological problems such as several instances of suicide attempts, most of the asylum seekers are suffering from horrible skin diseases that the officials’ only solution to is to recommend Panadol and an intake of cold water.*

*When the sun rises the asylum seekers try to seek refuge outside the tents in search of some shade in dread of the blazing sun rays and the hot weather inside the tents and only when the sun sets are they able to return to their tents.*

*Dirty water exacerbates the skin diseases and every day is worse than the day before. There is no such a thing as medication and hygiene; if a refugee is suffering from an illness all they get for treatment is quarantine. The numbers of sick refugees are increasing due to extremely hot weather, inappropriate places for sleeping and lack of hygienic facilities and this particular contagious disease is troubling the refugees to a great extent.*

*We request the World Health Organization and the Amnesty International to visit us, or any other organization or human being who claims to be an advocate of human rights to help us so that our cases are processed in Australia as soon as possible and to stop the Nauru solution to prevent a humanitarian disaster from happening.”*

Nauru was rapidly becoming the kind of hell-hole first opened by the Howard Government. There were persistent demand to the Gillard Government to repudiate Mr. Tony Abbott’s call

for asylum seekers to be held in such appalling conditions for five years and, instead, to begin processing refugee claims immediately and halt the transfer of any more asylum seekers.

Reports were multiplying that asylum seekers were living in squalid, unhygienic conditions. In return, they were told to lump it or leave, “to behave”, medical attention was not being flagged. There was fear of an influenza outbreak in the tent concentration camp at Nauru.

One asylum seeker said that the camp was reminiscent of the detention camps in the north-east of Sri Lanka, and “the smell of death the same.”

Mr. Tony Abbott’s claim that under a Coalition government asylum seekers detained in Nauru would be held for at least five years is the equivalent of this being deemed a prison sentence - to many a death sentence.

Reports from asylum seekers on Nauru informed of sweaty tents, squalor, outbreaks of various illness, of ill health, limited medical attention, an aversion by personnel to flag medical attention, and quarantine for the virulent ill. There would have been multiple traumas, meltdowns into various depressions and various clinical disorders - acute and chronic. The inmates needed on site physicians, specialist health professionals, clinical psychologists and psycho-social counsellors.

An *en masse* hunger strike was being considered to bring on to Nauru and the Australian Government international attention. A letter was being drafted by asylum seekers to be passed on by them to the U.N.H.C.R. complaining of the conditions and the maltreatment alleged at the camp. The inmates were living in the forlorn hope that the U.N.H.C.R. could intervene.

Contaminant illnesses, outbreaks of diseases, grievous suffering, suicides and deaths, and riots would have become the by-product of Australian contemporary racism - and packaged and branded by the Gillard Government.

Meanwhile the Gillard Government was considering the readiness of Manus Island to receive asylum seekers while wondering whether the ‘no advantage’ test is harsh enough.

Towards the end of October 2012 families and unaccompanied children would soon have been detained on Manus Island. The coming months would be seeing the ill history repeating. Christmas Island was overcrowded. Asylum seekers on Nauru were engaging in protests and men had attempted suicide. As everyone involved searched for someone to blame, what became increasingly clear was that authorship of this developing history was shared. Australians were co-creators of the human suffering which would begin to filter its way into public awareness over the coming years.

A too-simple reading of recent history would suggest that blame lies with Australian political leaders. But the fault for so much cruelty was not only with political representatives, who had turned a difficult but manageable humanitarian issue into a partisan battleground. The fault was also with the popular media, which had dispensed hysteria, hyperbole, mis-information and fuelled the flames of prejudice. Lies and vilification have sold papers, attracted viewers and, in an ongoing cycle, ensured that ‘asylum seekers’ remained the hot topic at least since the *Tampa* events. By highlighting some controversial rhetoric, forcing someone to respond, following it up with a recycled picture of distressed people huddled on a rickety boat, finding someone willing to use the words “flood”, “armada” or “queue jumpers”, the Leader of the Opposition - a law graduate - has not stopped referring to asylum seekers as “illegal”, and the media circus, with accompanying sales, continued. The final fault resides with the Australian people, who have come to identify cruelty with security, compassion with weakness, and to prefer slogans to the accurate pursuit of facts. “Plane people” are no problem. “Boat people” are, simply because so decided by political representatives. Australians are willing participants in a contrived drama. Australians all are the makers of the current political reality, with desperate men on Nauru families and children on Manus Island.

To be sure, there was no justification for the exorbitant visa costs that Nauru had decided to impose - an AU\$1,000-per-month charge - on visas for asylum seekers sent there by the Gillard Government. The A.B.C. revealed on 26 October 2012 that the visa regulations were introduced by the Nauruan Government the previous month, although it was understood they remained the subject of ongoing negotiations with Australian officials. Nauru had established a new visa category, called an ‘Australian regional processing visa’, which costs AU\$3,000 for a three-month period.

According to the regulations published on the Nauruan Government's website, a 'regional processing visa' could be extended so long as a new fee was paid "by or on behalf of the Commonwealth of Australia."

By the end of October 2012, 381 asylum seekers had been sent to the detention centre on Nauru.

Writing on 29 October 2012 in the online journal MJA *InSight*, the Australian Medical Association federal president, Dr. Steve Hambleton said that no independent body existed systematically to monitor health and mental health services in detention centres. Now - he said - was an ideal opportunity to establish such an independent body, as the Australian government moved from the disbanded Detention Health Advisory Group to its replacement, the Immigration Health Advisory Group.

According to the World Health Organisation, Papua New Guinea is the highest-risk country in the western Pacific region for malaria. Manus Island - where the Gillard Government intended to send asylum seekers - has the highest number of probable and confirmed malaria cases in Papua New Guinea. "They are also at risk of dengue fever in those locations and being in a hot, wet location, there are other risks such as dehydration, clean water supply and heat stress." Dr. Hambleton said. "On top of that you have a distressed population. Some have been subjected to torture, some have been separated from their family."

Dental health, TB and vaccination programmes also needed to be monitored. In Dr. Hambleton's view, members of an independent panel should be drawn from the medical, psychology, dental and nursing professions, and include specialists in public health and child health.

Former Australian of the Year and psychiatrist Professor Patrick McGorry supported the plan. "They don't have the highly specialised expertise required for such traumatised people." Professor McGorry said. "I really think it's deeply flawed, the mental health side of it anyway. I don't think we have independent scrutiny."



A spokesman for the Immigration Minister, Mr. Bowen said that there was already an advisory group to deal with such matters. He said that the Minister for Immigration and Citizenship's Council on Asylum Seekers and Detention also advised the minister, a panel led by refugee advocate Mr. Aristotle.

As the situation on Nauru was growing more desperate, detainees mounted a weekend of hunger strikes and protests against poor conditions and facilities, especially health care and first aid. A total of four detainees were known to activists to have attempted suicide.

On 28 October 2012 asylum seekers on Nauru [staged a protest](#) and began to chant and to hang banners and placards. The protest was a continuation of others which took place on 26 and 27 October when, according to the Refugee Action Coalition, a banner stating “we are not criminals” was confiscated by the Salvation Army, who are providing ‘humanitarian support’ on the island.

The almost 400 asylum seekers also held a mass hunger strike on 26 October, with most abstaining from at least lunch and dinner. According to testimonies from asylum seekers contacted by the R.A.C. the snap one-day fast was “a warning for [the Immigration Department] in the future. Maybe we will start the hunger strike for an unlimited time.”

Mr. Omid Soroush, a Kurdish Iranian man, had also been conducting a [hunger strike](#) for over two weeks, and the other inmates were very worried about him.

A spokesman for the Immigration Department, responded to questions about the hunger strike. He [claimed](#) that the Iranian man was “classified voluntary starvation” and that “more than 380 were eating.” The Department’s own definition of “hunger strike” only includes those who have missed meals for more than 24 hours.

Medical facilities in the camp’s small hospital are inadequate, one detainee reported. “I don’t think they have more than one or two doctors.” Treatment was patchy, with some injured detainees being left for long waits or returned to the camp without having been treated at all. According to one asylum seeker’s account, an Iranian man bitten by a snake and crying out in pain was sent back to his tent to wait for treatment.

Further accounts claimed that, “One guy was sick, he went to the doctor, so, the doctor say, ‘OK... I will shift you to the mental hospital’. Are we crazy, are we mental ? No - we

are all humans, we are asylum seekers, we are not criminals. By their own hand they want to make us crazy. All the guys are suffering. They are becoming crazy. Every day, day and night, we are suffering.”

By the end of October 2012 four detainees were known to have attempted suicide.

On 30 October 2012 the Gillard Government was preparing to enact a plan aborted by John Howard years before, during ‘his’ ‘Pacific Solution’, which would strip rights from asylum seekers who reach the Australian mainland by boat.

It was revealed that the Immigration Minister intended changing the law effectively to excise the entire Australian continent from the migration zone for people arriving by boat. Howard’s brutal treatment of refugees had attracted widespread horror and revulsion amongst ordinary people. Seeking to appeal to that sentiment, the Labor Party opposed the 2006 excision proposal. Chris Bowen, then a Labor MP, and now the Immigration Minister, denounced the Howard Government in an August 2006 speech. Describing the proposed legislation as “hypocritical and illogical” and a “stain on our national character”, Mr. Bowen noted that it “contravenes [the 1951 Refugee Convention] because it treats people differently in Australia depending on what part of the world they have come from and how they arrive.” Worst stains were to come.

In 2012 the Immigration Minister was demanding the adoption of precisely the ‘policy’ he had condemned, on the flimsy basis that it was one of the recommendations of the Expert Panel. The change would mean that asylum seekers reaching the mainland or the sea immediately around Australia would be sent to Nauru or Manus Island for processing. Until then they were to be processed onshore.

Only about 200 people have reached the Australian migration zone since Labor had come to office, while more than 1,000 others had come close to it. This compares with more than 28,000 arrivals outside it.

Interviewed on A.B.C. Radio, Mr. Bowen declared: “If I have a choice between saving somebody’s life and being entirely consistent with something I said in 2006, well, I’ll go for saving the life, thanks very much.” He later spoke about a recent spate of suicide attempts and self harm incidents among asylum seekers detained on Nauru, who face the prospect of

detention on the island for five years or longer, even if they are found to meet the strict official refugee criteria. Asked if “we just have to get used to” such incidents, Mr. Bowen replied: “this is all necessary in order to avoid - not one or two people, you know, drowning at sea - but to avoid mass tragedies like we’ve seen.” This is miserable sophistry !

Mr. Bowen said that the measure was, on the Government’s legal advice, “entirely in keeping with our obligations under the Refugee Convention.” Is this purulent hypocrisy - or ethical jobbery ?

Caucus endorsed the legislation, although Left-winger Melissa Parke MP, a former human rights lawyer, reminded Caucus that the Refugee Convention prohibited punishing asylum seekers because of the way in which they arrived.

Behind the veil of a logical hoopla - for how can Australia pretend to be a good international citizen upholding the Refugee Convention when it breaches a Convention which instructs the signatories to deal with people who arrive in a country if no one ever makes it in the first place ? - and a veneer of studied, confected compassion, anyone who has followed the public debate since the 1990s would know xenophobia and not deaths at sea - remember the loss of 353 people on the SIEV X under the first Pacific Solution ? - is the underlying driver of offshore processing policies.

The Houston Report did offer a sobering factual context. Isolated by geography, Australia had 11,510 asylum applications in 2011 - 2.5 per cent of developed nations’ total of 441,260, a 32 per cent jump since 2007. Australia’s ‘region’ has about 3.6 million refugees, and 30 to 40 per cent of their movement is undocumented. Most are stranded in countries which are not Convention signatories and have no prospect of resettlement. Millions are in protracted refugee situations of at least five years. The average is about twenty years, up from nine in the early 1990s. Fewer than 1 per cent were resettled in 2011. So much for a resettlement queue !

No wonder refugees see a risky sea voyage as their only hope. Australia resettled 9,200 people last year, but most did not come via Indonesia and Malaysia, the transit points for almost all boat arrivals. In 10 years to February 2010, only 560 refugees came from Indonesia. Malaysia has about 100,000 refugees; Australia resettled 830 from 2009-11.

Significantly, most boat arrivals are from four countries: Afghanistan, Iraq, Iran and Sri Lanka – the first two being countries on which Australia recently brought war and its consequences ! Only by taking in, say, 10,000 or 20,000 a year from its ‘region’ would Australia stop the boats without abandoning asylum seekers and refugees to their fate.

Under the then existing migration laws, only asylum seekers intercepted at sea or at Christmas Island, the Cocos Islands or Ashmore Reef could be sent for processing on Nauru or Manus Island. By extending the migration excise zone to the mainland, the Government would be reviving a plan reluctantly dumped by then Prime Minister Howard in 2006 when he faced a backbench revolt led by Liberal ‘moderates’. Prime Minister Gillard’s Expert Panel recommended the measure, even though asylum seekers rarely reach the mainland. The Expert Panel recommended that: “Legislative change would ensure that all irregular maritime arrivals will be able to be processed outside Australia, regardless of where they first enter the country.”

Mr. Bowen’s adoption of the Houston Report’s recommendation on the migration excise zone was debated in the Labor Caucus. Several members of Labor’s Left faction were rumoured to intend to raise concerns about the plan. In the end Labor’s Left faction supported the new excision regime. In a Caucus meeting, Left faction leader Senator Doug Cameron remained silent as Mr. Bowen announced the legislation. Cameron later declared that the issue was resolved after the Houston Report was delivered: “That’s when the fight was, and that’s when the fight was lost.” Far from any “fight” within the Labor Caucus, the sole calculation of the ‘Left’ has been to provide Prime Minister Gillard with unstinting support while maintaining a cynical public show of ‘concern’ for the refugees whose lives were being destroyed.

Labor’s policy u-turn was promoted under the banner of ‘humanitarianism’ – creating a necessary ‘disincentive’ to refugees arriving by boat in order to “save lives”. This is a complete fraud. It was the Gillard Government which had caused the situation whereby countless desperate refugees are unable to claim asylum through regular channels and are being forced to undertake dangerous sea voyages to seek safety for themselves and their families. Many hundreds have died in the process. Gillard’s Government was using these disasters to justify even more draconian and punitive measures.

It became known on 1 November 2012 that the United Nations was increasingly concerned about the unresolved status of more than 5,700 people being held in detention in Australia and Nauru. The U.N.H.C.R. had sharply criticised the Australian Government for leaving in limbo the asylum seekers who have arrived since its 13 August announcement of offshore processing. “This effective suspension of processing raises serious legal issues, as well as concerns for the health and wellbeing of those affected.” the agency said. It was imperative that all asylum seekers affected by the 13 August decision on offshore processing be provided with a fair and effective procedure with due process, as soon as possible, the U.N.H.C.R. said.

Amnesty International attacked the intended excision as “a dangerous move that will not save lives and blatantly defies Australia’s commitment under the Refugee Convention.” ... “As the only country of the world to excise its borders from its migration zone, Australia has now confirmed its place in a shameful race to the bottom.” A.I. spokesman Dr. Graham Thom said. Amnesty said that it was entirely hypocritical for the government to reintroduce the “very same measure it vehemently opposed during the Howard years.”

Defending the excision, for which he had introduced legislation on 31 October 2012, the Immigration Minister told the A.B.C.: “What this change does is actually make the treatment of people more consistent, so that there is no difference as to whether you arrive at Christmas Island or you arrive at Darwin or Broome or anywhere else. You get treated the same way. *So that is entirely consistent with the Refugee Convention.*” [Emphasis added]

Opposition spokesman Mr. Scott Morrison said that the boats would continue to come as long as the Labor government continued in power. “The only message that people smugglers will understand when it comes to stopping the boats coming to Australia is a change of government.”

While the Coalition was making ready to support the legislation, two Liberal MPs, Mr. Russell Broadbent and Ms. Judi Moylan, announced that they would have crossed the floor to oppose the excision legislation. Ms. Moylan said: “To me this is a very dangerous piece of legislation. When you look at the incremental changes that are made, we’re watering down the rule of law, we’re watering down people’s entitlement to natural justice.”

A convener of Labor's Left, Senator Doug Cameron, said that there were a number in the Caucus "that are saying we need to get some guidelines and some structure around how this [offshore processing] is going to work."

But, for the time being, it was going to be equal brutality to all asylum seekers !

Amnesty International condemned the proposed legislation excising the Australian mainland from its migration zone as a dangerous move which will not save lives and will blatantly defy Australia's commitments under the Refugee Convention. "The Australian Government's latest move joins a long list of measures implemented to deter those in dire need of our protection. It is entirely hypocritical for the Government to re-introduce the very same measure it vehemently opposed during the Howard years." ... "It shows the extraordinary lengths the Government will go to absolve Australia from its international obligations." ... "This absurd development sends a clear signal to the region that it is perfectly acceptable to 'chop and change' legislation purely to serve political interests, at the expense of some of the world's most vulnerable people." said Dr. Thom.

If the new move was intended to be a 'solution', it was one which - in cold blood - would enable Australia to renege on its commitments to offer asylum to those facing persecution by redefining 'Australia' ! The use of mind displayed in such a game would turn trust and justice into dust. This was the result of a 'policy manual' composed by spivs and main-chancers.

On 2 November 2012 the Immigration Department informed that a group of 170 - making up almost half the asylum seekers on Nauru - had begun their hunger strike the day before. They said that their hunger strike would go on indefinitely, although the department cast doubt on whether they were refusing to eat. A spokeswoman said: "They have also indicated they have stopped eating meals." adding subtly (?) "[But] just because people have said they are not eating meals does not mean they have engaged in voluntary starvation." One trained by the Jesuits can immediately perceive the distinction !

Mr. Ian Rintoul, for the Refugee Action Coalition, said that asylum seekers had told him their main demands were to be taken to Australia and for their claims for refugee status to be processed immediately. He quoted one asylum seeker as saying: "We are not criminals. We

did nothing wrong. We did not come to Nauru. We came to Australia for protection.” Mr. Rintoul said that the situation on the island was explosive. “Asylum seekers have been left with no idea when their claims will be processed and what will be their ultimate fate. They have no choice but to protest.”

Meanwhile, it became known that Parliament had approved the construction of permanent immigration detention centres on Nauru and Manus Island. The Nauruan centre would eventually have space for 1,500 inmates.

The hunger strike by refugees detained indefinitely on Nauru had escalated in size by early November 2012 to almost 300 people after days of protest. Media reports stated that 25 people involved in the strike had physically collapsed and seven had been given medical treatment. The asylum seekers were protesting the appalling conditions on the island and the Australian Government’s refusal to start processing their refugee claims.

The strike began after an Iranian refugee attempted self-harm, and had spread to 170 asylum seekers. The protest reached 276 by the 3-4 November weekend, involving three quarters of the 377 refugees in the detention camp.

Explaining their desperate stand, they stated on their *Facebook* page that they would continue the strike “to the death”, because they were not being given “fair treatment, which affect us physically and mentally” and “this bitter reality tortures us 24 hours” a day. “In our home land we were in a danger of being tortured physically, but here we are facing mental torture.”

If the strike were to continue in the following week, the camp’s medical centre and the hospital on Nauru could not deal with the crisis. An Iranian man had reportedly been on a hunger strike for more than three weeks.

The Gillard Government had responded with callous indifference, belittling the hunger strike, and declaring that it would make no difference to the government’s refusal to set a time limit on the detention of the asylum seekers.

An Immigration Department spokeswoman had dismissed the hunger strike, saying “just because people have said they are not eating meals does not mean they have engaged in voluntary starvation.” Another spokesman declared: “It was reiterated to them that these sorts of activities would have no impact on the outcome of where they’re placed.”

The conditions facing the refugees were appalling. A report by *The (Melbourne) Age* in early September had described the site as having “only the most basic facilities when they arrive, including ... tents, an army cot made of canvas and steel poles” and with long power outages several times a week. The site, located several hundred metres from the country’s only rubbish tip, was “also home to large rats.”

A refugee had told *The Sydney Morning Herald* that the camp was “like a mental hospital” and was making the detainees “mental, making them crazy.” He added: “This camp, I think, this is not suitable for anyone. We are humans. I don’t think that an animal can survive this.”

Hunger strikes became a feature of the first version of Prime Minister Howard’s ‘Pacific Solution’ with detention on Nauru and Manus Island - of up to five years in some instances - which had led to severe cases of psychological trauma, as well as suicide attempts.

The Gillard Government’s embrace of ‘Pacific Solution 2’ was going far further. Interviewed on the A.B.C’s *Lateline* programme early in November 2012 Immigration Minister Bowen refused point-blank to indicate a maximum time for the detention of refugees. Moreover, he derided the Opposition for proposing a five-year limit. Mr. Bowen insisted that detainees would remain on Nauru for the “equivalent” time they would have had to wait for refugee visas had they applied through official channels - which effectively means many years, quite possibly longer than five years.

Prime Minister Gillard’s Government - if conceivably more brutal than Howard’s - went even further, excising the entire Australian mainland from the migration zone, so that anyone arriving without a visa is barred from applying for one. In effect, Australia has become a legal “black hole” for asylum seekers.

With assistance from the Opposition, the Gillard Government cynically presented its violation of fundamental legal and human rights as a ‘humanitarian’ response. The Government claimed that it was necessary to introduce such measures to deter people from risking their lives by coming to Australia by boat. In reality, the narrow opportunities provided for asylum seekers to enter Australia through the official channels, and the lengthy waiting times, force many of the most desperate to risk a dangerous crossing by sea. The



inevitable disasters, in which hundreds have perished, are then used as a pretext to introduce even more draconian policies.

The Gillard Government's flagrant violation of international refugee law was highlighted by the forced return of 26 asylum seekers to Sri Lanka, after they were denied the right even to apply for protection status. The repatriation of Sri Lankans without explaining to them their rights as asylum seekers is a symbol of despair in 'policy making'. It is an exercise in naked power.

Contracts for a new detention camp on Nauru were soon to be awarded, and work was expected to commence soon afterwards, the Immigration Department informed.

The 377 detainees on Nauru had been living in tents on the island, and had staged an increasingly impassioned protest, seeking to come to Australia to have their claims for asylum heard. There had been mixed reports about the hunger strikes engulfing the camp. The men and refugee advocates said that 300 people were now taking part in the hunger strike.

The detainees wrote on their *Facebook* page: "In Modern Period nobody wanna like keep even domestic animal in a tent at 42 Celsius temperature for a months, but the Human being are still living in hell hole Nauru. ... The Asylum seekers in Nauru think once they have taken the risk of deep Indian ocean, now they will take the risk during hunger strikes, until getting their rights till the death."

Meanwhile the hunger strike had entered its fifth day on 5 November.

Of course - as noted - the Immigration Department does not use the term "hunger strikes", but defines "voluntary starvation" as people missing three consecutive meals. It says food and water are provided to asylum seekers at all times. "We know steps are being taken to make sure people who don't want to take part can eat." a spokesman said. "We know there's been a degree of pressure from people who've been unwilling to take part in the protest." He confirmed that a senior immigration officer had met with the detainees at the weekend, but said it was stressed to the group that "these sorts of activities" would not alter their situation. One of the asylum seekers on Nauru told the Refugee Action Coalition that the official "did not have answers" for them.

The Immigration Department spokesman could not confirm whether claims - once lodged - would be processed according to Nauruan law, and Nauru would be responsible for resettling them, but intimated that it would be at least six months before their claims for asylum were processed, in accordance with Australia's 'policy'.

Meanwhile the Opposition Leader, Mr. Tony Abbott said that a Coalition government would not rule out expanding the Nauru camps, even to more than 15,000 detainee capacity - 50 per cent more than Nauru's population. "I would do what is necessary to stop the boats because if you can't stop the boats, you can't govern the country." he said.

In a statement on 6 November 2012, the Australian Home Affairs Minister confirmed that authorities had intercepted three more boats at Cocos Islands. The ACV *Triton*, operating under the control of Border Protection Command, intercepted three suspected asylum seeker boats on 5 November, with initial reports suggesting that they carried 8, 24 and 26 people. The 58 asylum seekers would be taken to Christmas Island, where they would undergo security and health checks. This followed the arrival of four other boats carrying 355 asylum seekers on the weekend and early on 5 November.

In the camp, two asylum seekers had been handed summonses to appear at a Nauru court on 19 November 2012, 'presumably' over a protest in September which had led to property damage. Back then two asylum seekers were charged with damage to tents and not co-operating with police. A spokeswoman for the Australian Federal Police said the A.F.P. had no operational jurisdiction in Nauru, and the matter was a question for the Nauru Police Force.

A spokesman for the Nauru Government told reporters that the court order was a natural progression of justice: the refugees were expected to obey the local laws of Nauru while they remained there. And very few people would argue with this in principle.

On 7 November 2012 the Human Rights Commissioner, Professor Gillian Triggs, re-iterated that the indefinite detention of asylum seekers on Nauru is "an egregious breach of international human rights law." Professor Triggs, appointed in June 2012, said on 6 November 2012 that she would seek an urgent meeting with the Immigration Minister, Mr. Chris Bowen, about Nauru when she returned from a human rights conference in Jordan. "I have made my view really plain to the Department of Immigration and Citizenship in saying

that to detain people on this remote island, and delaying by at least six months their processing, and where they're advised that they will be kept there for five years, is an egregious breach of international human rights law.” she said. “Asylum seekers have a legal right under international law to have their claims assessed in a speedy and appropriate way and this is at risk of being arbitrary detention.”

Professor Triggs warned that delays in processing claims and the fact “that there’s literally no end to the potential period of time that they would be held on the island” were “causing very, very serious inabilities to cope, and I think ultimately will lead to serious mental illness and to disturbances.”

In a separate development, Australia had told Sri Lanka - a country to which it has been returning asylum seekers - that it must stop its police and army abusing, mistreating and torturing its citizens and end the abductions and disappearances occurring across the country. Australia’s demands to Sri Lanka were made in Geneva as part of the United Nations universal periodic review process, in which all U.N. countries have their human rights records assessed by fellow members.

As Prime Minister Gillard prepared to hold a meeting with Indonesia’s President Yudhoyono in Bali on 9 November 2012, which meeting would include discussions on asylum seekers, former prime minister Kevin Rudd said that it was imperative any offshore processing in Nauru remained in line with international human rights law. “I have always been concerned that Australia properly honour all of its international legal obligations.” Mr. Rudd told A.B.C. radio. Mr. Rudd said that it was possible that offshore processing on Nauru and Manus Island could be subject to legal challenge. “These things are always challenge-able before the courts and the courts in Australia will always seek to test any given application of the consistency between domestic policy action or domestic legislation on the one hand and our international legal obligations on the other.” Mr. Rudd said. “So these matters are always going to be subject to challenge and test.”

However, despite his concerns, Mr. Rudd said that as a member of the parliamentary Labor Party he supported the Government’s policy direction and believed that Immigration Minister, Chris Bowen was doing a good job. “The Immigration Minister has put in a huge

amount of work to try and get the balance right. I believe he's a person of integrity and I therefore support the government's current direction." he said.

In an A.B.C. interview on 14 November 2012 the United Nations Human Rights High Commissioner, Dr. Navi Pillay, said that asylum seekers would not need to go on hunger strikes if Australia was providing proper humane conditions at its detention centres.

The day before an A.B.C. programme had reported that hundreds of asylum seekers had been on a hunger strike and one man had not eaten for more than a month.

Dr. Pillay said that that was an alarming indication that conditions on Nauru are unbearable. She added that she had appealed to Prime Minister Gillard to ensure that there are human rights protections on Nauru.

The High Commissioner was in Indonesia, where she spoke to an A.B.C. correspondent there. She said: "I obviously appreciate the Prime Minister's goal to end people smuggling but feel that the way to go about it is seriously placing at risk the human rights of people such as those being held in Nauru. I'm very alarmed to hear that they are on hunger strike. That I think is an indication of the unbearable conditions under which they're being held, the uncertainty of their future. I'm afraid that this new scheme of having them appraised on offshore islands is just going to end up in another regime of indefinite detention which is what we objected to all along about this scheme."

Asked: "What does this say about Australia ? Is this a blight on Australia's record if it goes down this path ?"

Dr. Pillay: "It would be a blight on Australia's good human rights record if it doesn't respect the rights of asylum seekers under the Convention to which it is a party."

To the question: "Is that effectively saying that Australia has broken its obligations under the Convention ?"

Dr. Pillay: “No, there is still a chance for Australia to ensure that protections have to be in place. And this was my personal appeal to Prime Minister Julia Gillard when I last met her - at least ensure that protections are in place. And if that is done you wouldn't have people going on hunger strike.”

The correspondent went on: “So you suspect that the protections aren't adequately in place ?”

Dr. Pillay said: “I suspect that and I fear that this is another road to indefinite detention. Detention of asylum seekers should be the last resort, not the first, definitely not indefinite.”

The interviewer: “So what should Australia do ?”

Dr. Pillay: “Obviously Australia has an obligation to its own citizens, to protect them from unwanted or excessive migration. On the other hand, it seems to handle migrants coming from Europe and so on who land by plane. They're not held in detention. They are provided, they could stay in homes and so on while they are being processed. They have to devise a method of processing individuals' asylum claims expeditiously. That's also under the Convention.”

Omid, an Iranian asylum seeker in detention on Nauru was taken to hospital on 16 November 2012 after being on hunger strike for 36 days. His protest highlighted the brutality of the Gillard Government's policy of transporting refugees to Nauru.

There had long been fears about Omid's health. A refugee identified as Mohammed told the Australian press in the previous week: “If you see him, you will find him just a skeleton body, 'cause he's too weak. Last time a doctor told him that 'very soon you will hurt and [your] brain will stop working.' ”

Asylum seekers had reported that another detainee, identified as Wasam, was sent to hospital with suspected kidney failure after an 8-day hunger strike. Another five were reported to be continuing their hunger strike, which was entering its nineteenth day.

At its height, the Nauru hunger strike involved around 300 people. Many of the asylum seekers stopped after 12 days, when it was reported that Amnesty International was to inspect

the island on 19 November 2012. Amnesty's visit, however, would not influence - let alone change - the Gillard Government's course.

Amnesty representative, Ms. Alex Pagliaro said that the most important feature of the trip would be talking to asylum seekers and ensuring transparency and accountability. Several media reports had already exposed the trauma the refugees are experiencing in the hot, rat-infested tent city.

A refugee who wanted to remain anonymous told *The (Melbourne) Age* of 17-18 November 2012 that he had witnessed two attempted suicides. One man attempted to hang himself and another tried to cut his own throat. The refugee added that the two men were now confined "like mad people." He explained: "The officers have to be there all the time because otherwise they will take the opportunity to go and suicide. People are becoming crazy. There is no hope here."

Prime Minister Gillard's Government is deliberately using the conditions on Nauru to terrify asylum seekers, hoping to deter others from trying to reach Australia. On 18 November 2012, even as the hunger strike was proceeding, another 24 asylum seekers from Iran, Iraq and Sri Lanka were flown to the island, taking the total number of Nauru detainees to 387. The Immigration Department stated that such "transfers" would "continue to occur regularly."

The Australian Government had further sought to intimidate the detainees on Nauru by orchestrating criminal prosecutions against those taking part in protests. On 16 November 2012, 15 asylum seekers were charged with causing AU\$24,000 worth of damage during a protest at the camp in late September. Two others were charged the previous week.

A protest over deportations also broke out inside a detention centre within Australia. On 12 November 2012 three Fijian detainees had climbed onto the roof of Sydney's *Villawood* centre for three days, over the imminent deportation of two Fijian people. There were fears they might jump from the roof. In 2010 another Fijian national leapt to his death at *Villawood*. The detainees eventually came down from the roof following the arrival of Australian Federal Police officers, but their fate had not been reported.

At *Villawood* and Melbourne's Broadmeadows centre, two detainees attempted suicide early in November, after being denied visas, despite being recognised as refugees, because of adverse security clearances by the Australian Security Intelligence Organisation, A.S.I.O. Detainees blacklisted by A.S.I.O. can also potentially be kept in detention indefinitely, because they cannot legally be returned to their home countries, where they would face persecution. Moreover, they remain in a legal 'black hole' - denied the right even to know why they have been declared security risks.

One attempted suicide victim was officially recognised as a refugee in 2009 but has been detained at Broadmeadows ever since. He was discovered at 2.40 a.m. on 15 November 2012 attempting to hang himself. The latest incidents follow suicide attempts in May and October 2012 by Tamil asylum seekers in Melbourne, some of whom were also denied A.S.I.O. clearances.

As part of its refugee deterrence regime, the Gillard Government was stepping up the forced removal of asylum seekers to Sri Lanka. On 18 November 2012 Immigration Minister Chris Bowen confirmed the largest 'involuntary transfer' yet to Sri Lanka - the deportation of 50 asylum seekers - taking the total to 282 since Labor's 'Pacific Solution 2' took effect on 13 August 2012. These returnees were denied the right even to apply for protection, and denied access to legal advice - something which is also in breach of international law. Many asylum seekers returning to Sri Lanka, especially Tamils, were reported to have been arrested on arrival and later to have experienced torture and other forms of persecution.

Two Amnesty International inspectors spent several hours at Nauru detention centre and visited two detainees who had reportedly been hospitalised after going on a hunger strike. According to other asylum seekers, one of those men had not eaten for 40 days and was suffering from internal bleeding.

The inspectors described the conditions at the centre as appalling. They said that detainees are getting infections because their tents are wet, and there have been several suicide attempts and incidents of self-harm.

One of the inspectors, Dr. Graham Thom, said that overcrowding and a sense of hopelessness are contributing to physical and mental problems. "These conditions are very cramped. We

are talking about 14 people to a tent. In summer, in the heat, it's always hot." he said. "It gets over 40 degrees during the day inside those tents and it was certainly very hot and humid when we were there." He said that there is not enough by way of shower blocks and facilities, there is not enough mental health facilities to look after these people.

Dr. Thom said that, while a number of the detainees are developing skin conditions, he is most concerned about their mental health. "In the front of their minds is the fact that they're not being processed, the uncertainty that's facing them is clearly having an impact on their mental health. We saw people who showed us scars where they had cut themselves." he said. "They wanted to highlight one of the poles where somebody had tried to hang himself."

The Amnesty's visit took place after 14 men appeared in court on 19 November accused of rioting and causing damage to facilities at the detention centre in September. Under Nauru's legal system, if a case is due for mention in court the defendant is only given representation by a paralegal. This prompted a stand-off outside the court for a couple of hours when the 14 men protested that they were not being given proper legal representation. Eventually, a lawyer who had been retained by the Refugee Action Coalition, volunteered to represent the men. The men have had their bail extended and the case was due before court again in December.

On 16 November 2012 afternoon, Omid, then on the 35th day of his hunger strike, was transferred to hospital after he started excreting blood. For several days, doctors had been warning of the danger of permanent organ damage, heart attack, blindness, and death. With every hour those warnings came closer to reality.

There were then 401 asylum seekers on Nauru, 99 short of its full capacity. A second hunger-striker was hospitalised on 18 November. Psychotic episodes had become more frequent; three asylum seekers had attempted suicide, with one trying to hang himself from a light pole; two other detainees had mutilated their heads and necks; and four had dug symbolic graves. As at 19 November 2012 five asylum seekers were on their 19th day without food.

Immigration Minister Chris Bowen was determined to remain deaf to protest: processing under the 'no advantage' principle on Nauru and, soon, Manus Island would continue regardless of how many detainees suicided or starved themselves to death. Nothing justifies



Bowen's intransigence other than his refusal to forfeit perceived political advantage. Determination not to give in may be understandable when terrorists are holding a government to ransom. This was not the case. What are the Nauru detainees asking Australia to do? - just to process their refugee applications in a timely manner and under decent conditions, nothing more.

For many, Gillard's return to Howard's 'policies' shows the futility of trying to win any improvements on this acutely politicised issue. As *GetUp!* - an Australian activist group - put it in an email to its list on 16 August, "many of us are weary, many are angry and many just want this issue to go away." In this context, one common reaction among refugee supporters has been to adjust their demands in order to acknowledge the reality of resumed offshore processing. *GetUp!*, again, immediately refocussed its message in light of the reopening of Nauru, effectively declaring the battle against offshore processing lost, and urging its supporters to campaign to win improvements for refugees removed from Australia.

The Salvation Army, which also has an official position against offshore processing - though not, to judge from their [2010 election statement](#), against mandatory detention - had signed a government contract to supply humanitarian support services on Nauru, a decision which had led to criticism for complicity and [forced them into long justifications](#). However desirable it is to ensure that conditions on Nauru are as bearable as possible, refugee supporters should never concede, even just implicitly, the acceptability of offshore processing. Calls limited to improving conditions on Nauru are fundamentally incoherent: refugees cannot be processed in a way which respects their rights on disease-ridden, impoverished islands with no support infrastructure. And regardless of the conditions, processing refugees anywhere offshore is inherently unacceptable, since it undermines the international principle of refugee protection Australia is obliged to uphold.

In the packed domestic detention network, the vice continued to tighten. The period of Omid's hunger strike had witnessed two suicide attempts, a rooftop protest in *Villawood* - thanks to last ditch efforts by advocates, the protesters' imminent deportation was eventually halted by an injunction - and the ever present, continually mounting toll of madness, frustration and despair. Despite a recent High Court decision, 55 asylum seekers alleged by A.S.I.O. to pose a 'security threat' are still detained indefinitely.

At mid-November the Immigration Department announced tighter restrictions on visitors to mainland detention centres, with visits to some sections now needing to be booked 24 hours in advance. The Gillard Government continued to spare no effort to sever asylum seekers from contact with the community - a new measure designed to increase detainees' isolation from the outside world, and to make it impossible to obtain asylum seekers' signatures on last-minute legal documents preventing deportations, as refugee advocates regularly need to do.

No increase to Australia's humanitarian intake, no professions of concern for refugees in camps, could cancel out these horrors. And what is it all for? To avoid "deaths at sea". On that count, too, the plan is a failure, with 7,600 extra people undertaking the dangerous voyage that the Gillard Government's plan was meant to prevent since it was announced in mid-August, all of them were no longer risking death at sea, but death by starvation, despair and suicide.

One week into Omid's hunger strike, and fresh from Australia's success in being elected to the U.N. Security Council, Prime Minister Gillard [spoke](#) of Australia's "big heart", of its commitment to "strengthen the global rules-based order" and of its track record in taking a "humanitarian" and "fair-go perspective" around the world. These were outrageous lies; should not be uttered except for consumption by people who know nothing, who care about nothing - except perhaps an expectation to be deceived.

The reality of a colonial version of a Westminster type political system is that nothing in the short term can prevent a government from pursuing whatever policies it deems in its political interests. Only the most naïve could imagine that protests against offshore processing will bring immediate improvements. Perhaps - and only perhaps - a determined, persistent campaign of public pressure, through demonstrations, individual lobbying and public advocacy, could shift public opinion far enough to compel a response from politicians, who blather about the "fair go" and similar rhetorical inanities.

On 20 November 2012 the Gillard Government began 'transporting' asylum seekers to Papua New Guinea - including women and children as young as ten. Late during the night, a group of 19 asylum seekers from Sri Lanka and Iran were flown from Christmas Island to the Manus Island detention centre, under an agreement that the Australian Government had

signed with the Papua New Guinean Government in September. The group was made up of seven family groups, including women and four children.

The C.E.O. of the R.C.A., Mr. Paul Power, said that Manus Island, like Nauru, was unsuitable for refugee families. “Manus Island is a remote location that can’t offer the level of community support and care available on the Australian mainland.” Mr. Power said. “Alarmingly, the World Health Organisation has declared Papua New Guinea the highest-risk country in the western Pacific region for malaria, while Manus Island has the highest rate of probable and confirmed malaria cases in the country. When you factor in the risk of malaria, other mosquito-borne disease, relentless heat, the uncertainty of not knowing how long you will wait to be processed under the no advantage principle and the deep trauma of a painful refugee journey, the potential of significant mental health damage is huge.”

Mr. Power said that the U.N.H.C.R. had questioned the appropriateness of Australia’s transfer of asylum seekers to Manus Island. “Although Papua New Guinea has acceded to the Refugee Convention, it retains seven significant reservations relating to social, economic and political rights of refugees. Questions also remain about the effectiveness of Papua New Guinea’s domestic legal system in processing refugee claims and the capacity of the country to undertake refugee status determination procedures.”

Mr. Power said that the U.N.H.C.R. concluded that Papua New Guinea did not have the legal safeguards nor the competence or capacity independently to protect and process asylum seekers transferred by Australia. “By sending asylum seekers to Manus Island and Nauru, Australia has walked away from its obligations as a Refugee Convention signatory to accept asylum claims.”

The Immigration Minister, Mr. Chris Bowen presented as a ‘new success’ that asylum seekers were to be released into the community on bridging visas, even if they arrived after the Government reintroduced offshore processing and put in place the so-called ‘no advantage’ test. Mr. Bowen conceded that there had been too many arrivals since August - 7,829 between 13 August and 21 November 2012 - to be able to send all asylum seekers either to Manus Island or Nauru, and some people would have to be released into the community.

“Transfers to Nauru and Manus Island will continue, however in the coming weeks and months my department will begin releasing some people who arrived by boat on or after August 13 into the community on bridging visas.” he said in a statement. “Consistent with no advantage, people from this cohort going onto bridging visas will have no work rights and will receive only basic accommodation assistance and limited financial support.”

Mr. Bowen defended his plan to release thousands of asylum seekers into the community on bridging visas, despite criticism from one prominent Labor backbencher who feared the changes would create a poverty-stricken underclass.

The Government had effectively admitted that its offshore processing system had been overwhelmed by the large number of asylum seeker boats which continued to arrive, and many people would now have their refugee claims assessed while living in Australia. Those granted bridging visas would be prevented from working, would not have family reunion rights and would be given only a limited amount of financial assistance for food and accommodation. And that would be “consistent” with the ‘no advantage’ principle ?!

The implication was that the approach reflected the recommendations of the Expert Panel who devised the ‘no advantage’ principle. In fact, it was a radical departure from the Panel’s Report, which said nothing about denying work rights and was predicated on a strict “adherence by Australia to its international obligations.”

If one is going to accept not having any work rights to equate asylum seekers in Australia’s care with those in Malaysia or Indonesia, where does one stop ? Denying the asylum seekers access to healthcare or any income support ?

Asylum seekers released on the new visas would have had access to up to six weeks’ transitional support under the Department-funded Community Assistance support programme. While protection claims were un-finalised, they would have been eligible for support through the Asylum Seeker Assistance Scheme; they would also have been eligible for 89 per cent of the *Newstart* allowance, which equates to about AU\$438 a fortnight for a single person with no children. They would also be eligible for what the minister described as “basic” accommodation assistance, and would be subject to transfer to Nauru or Manus Island at any point in their stay.

Mr. Bowen rejected suggestions that the ‘policy’ would create an underclass of asylum seekers, most of whom would probably be found to be refugees. “It’s not generous, but it’s appropriate.” Mr. Bowen said of the welfare benefits available.

Refugee Council C.E.O. Paul Power disputed that, saying: “It is going to leave people living close to absolute poverty.” He added that the new rules effectively revived the Howard-era temporary protection visas, that Labor abolished in 2008 on humanitarian grounds.

On TPVs asylum seekers could work, but they could not access the family reunion scheme, leading to claims that they created an incentive for “boat people” to bring their wives and children on the hazardous boat voyage. Mr. Power said that, at least, the new visa system didn’t carry the threat of return. “[But] in some ways it’s worse in that people won’t have the right to establish themselves financially or reunite with their families.” Mr. Power said. “The incentive for family members to come to Australia by boat or follow each other by boat will be as strong as it was when TPVs were introduced.”

Labor Senator Doug Cameron, who has repeatedly criticised the way asylum seekers are treated, again voiced his concern about the latest moves and declared it is impossible to stop the boats.

“I don’t want people to come here and starve, I don’t want an underclass to be created in Australia.” Senator Cameron told reporters in Canberra. “If you have a situation where people are thrown into the community, having to rely on charity, you’re creating an underclass. ... To put someone into the community and put them in poverty is an issue. With the number of people that are looking to move around the world seeking refuge... you’re always going to have a situation that boats will come to Australia.” he added. “I don’t think you can stop the boats. I think that’s rhetorical nonsense.”

On his part, Foreign Affairs Minister Bob Carr called the bridging visas a “necessary policy” and said: “Offshore processing and the announcement [of it] are proof positive we are not going to allow people smugglers to rule the roost ... we’re not going to allow people smugglers to determine Australia’s migration arrangements.”

“We have a 20,000 per year humanitarian intake and that is the second most generous in the world. It’s second only to that of the United States. That increase from 15,000 to 20,000

has edged us above Canada, and I think all Australians can be proud of that.” He said that the recent voluntary returns of more than 400 “economic migrants” to Sri Lanka was proof the Government’s policy was working.

"Given the large number of displaced people in the world and the instinct of people in Sri Lanka to come here as economic migrants, paying money to people smugglers, imagine how higher the figures would be without offshore processing and without the return of people that’s now taking place. The important point is this - we’ve got people coming here, not as refugees, now being returned.”

That was the ‘real purpose’ of issuing temporary bridging visas under those conditions - to live outside detention camps but without any right to work or bring families to Australia: compelling asylum seekers and refugees and their families to return to their home countries - regardless of the dangers they would once again confront there - and to deter other asylum seekers from attempting to enter Australia.

The Gillard Government’s scheme is far harsher than the Howard Government’s temporary protection visas, which also denied family reunion rights but allowed refugees to work. The Gillard Government’s policy more flagrantly breaches international law, including the Refugee Convention, which recognises a legal right to flee persecution and prohibits discrimination against those who do so.

In the wise view of the Immigration Department, “At this stage, family groups are best accommodated on Manus Island, as opposed to Nauru.”

Mr. Bowen asserted triumphantly that “People smugglers have been peddling the lie that if you come to Australia by boat as a member of a family, you wouldn’t be processed in another country, you’d be processed in Australia. Obviously, that is not the case [and] today’s transfer and the transfers that will follow will underline that point.”

The international organisation, *Save The Children*, had been asked to help out at the centre to make sure younger asylum seekers were treated appropriately. The centre was to be operated by *G4S*, the same company which had bungled security arrangements for the London Olympics, with welfare services provided by the Salvation Army. Anyone sent to

Manus Island would face the prospect of waiting around five years to be granted refugee status and given a protection visa.

By acknowledgment of the Manus Island-based MP Ronnie Knight, the centre is an acceptable place to stay for a few months, but - he said - five years is too long. "That's a jail sentence. Anybody would go stir crazy for five years there and I think that's wrong."

Speaking at the same time as Mr. Bowen's media conference, Opposition Leader Mr. Tony Abbott continued the Coalition's attack on Labor's border protection policies.

"The Government today is boasting that some 18 people have been sent to Manus Island." Mr. Abbott told reporters in Perth. "What about the 30,000-plus *illegal boat arrivals* who have come to this great big island since this Government changed the policy that's working. [Emphasis added] It's just not good enough that this Government thinks it's an achievement to send just 18 people to Manus, when you've got 2,000 people coming every month."

More than 7,500 asylum seekers had arrived by boat since 13 August when the Gillard Government announced it would reopen the detention centres on Manus Island and Nauru - and that despite warnings from the Government that anyone who arrived after that date risked being sent to one of the offshore centres to have their refugee claims processed.

The Opposition Leader said that he was "all in favour" of offshore processing but did not believe Labor's plan would stop the boats.

"This government just *doesn't have its heart in it.*" Mr. Abbott said. [Emphasis added] "And for this government to say, oh look at the 19 that have gone to Manus when you've got 2000-plus coming every month demonstrates that they just don't get it."

Mr. Abbott said that people who came to Australia could not expect "to be treated like they are staying in a four or five star hotel. *The people who have come illegally to this country need to know that they are breaking our laws and that they are, if I may say so, taking unfair advantage of our decency as a people.*" Mr Abbott said. [Emphasis added]

*“It is illegal to come to Australia without papers, without proper documentation, without adhering to the normal requirements that we expect of people coming to this country.”*  
[Emphasis added]

This is, of course, manifest non-sense ! And Mr. Abbott knows it.

One of the few rays of light in recent times has come from retiring Liberal backbencher Ms. Judi Moylan who, while strongly criticising the maladministration of the Government, also urged people to reject her party’s “rubbish rhetoric” on the issue of asylum seekers and refugees. “We should not talk about queue jumpers, we should certainly not talk about illegals, we should not pretend these people are idle; they want to work and be part of our society, we just seem to spin rubbish rhetoric and get people whipped up over it, it’s an appalling low level of debate.” she said. “We can’t think this will go away just with sloganeering, there is no quick slogan that can fix this, it is not about turning back boats, it is not about punishing people.”

What is clearly obvious is that the current ‘policy’ paradigm is driven by a crude utilitarian calculus about what drives desperate people to travel to Australian shores, one which is beginning to resemble other experiments in Australia’s penal history in uncanny and depressing ways.

Britain’s various colonies in the antipodes were littered with little experiments in penal “reform”: Norfolk Island, Port Arthur, Macquarie Harbour. Most of them shared the same dubious logic of Chris Bowen, Angus Houston, Paris Aristotle and Tony Abbott: that we must be cruel to be kind; that the human will can be shaped by incarceration. Then rehabilitation was to be achieved by exemplary punishment. Now Australia seems to be re-running these failed experiments in a new century.

What is clear is that, while the Gillard Government continues to turn the screws on asylum seekers, one is witnessing the rapid criminalisation of the flight for a better life. It is electorally attractive - as everyone can see from the calculated way in which Mr. Tony Abbott is making sure he uses the word “illegal” in [every possible circumstance](#), regardless of the fact that it is not illegal to seek asylum in Australia. The Coalition will of course make sure that it never loses the race to the bottom on asylum seeker punishment, a structural fact of the political landscape that Prime Minister Gillard seems unable to understand.



Locked into the 'solution' recommended by the Experts it chose, the Gillard Government will continue to tighten the thumbscrews.

The Australian Greens condemned Mr. Bowen's announcement, describing the policies as "more extreme" than those introduced by the former Howard Government.

The party's immigration spokeswoman, Senator Sarah Hanson-Young, likened the bridging visas to the temporary protection visas demanded by the Coalition. "We've now got John Howard's Pacific solution, we now have John Howard's temporary protection visas." Senator Hanson-Young said. "The question to the Government is when are they going to look at how failed those policies were then, how failed those policies are now, and change tack?"

Greens Leader, Senator Christine Milne said that it was clear that Labor's policies have failed to stop the boats, arguing that "deterrence does not work." "Just becoming crueller and crueller is not going to change the fact that you can never be as cruel as the circumstances from which people are running." she said.

Mr. Bowen said that the Government would reopen the Pontville detention centre in Tasmania and also expand the capacity at the Melbourne Immigration Transit Accommodation by about 300 places. "Recent high arrival rates have placed pressure on our detention network, and it's sensible in managing this and also in terms of prudent contingency planning, that we take some steps to expand the capacity of our onshore detention network." he said.

The Minister attempted to argue that while the in-comings were increasing in number there also were outgoings. Just over 500 people had been returned - voluntarily or involuntarily - to Sri Lanka and Afghanistan.

The Government also revealed that on 20 November 2012 an Afghan man was involuntarily returned home after his claims for refugee status were rejected. This was the first time someone had been sent back to Afghanistan under an agreement signed by that country's Government, Australia and the U.N.H.C.R. in 2011.

In addition, a group of 100 Sri Lankans were to be involuntarily flown back to Colombo on an Air Force plane - the ninth such removal - in November 2012.

“We’ll continue these returns for as long as it takes for people who might be tempted by the wiles of people smugglers in Sri Lanka to undertake economic migration to realise that that path of migration to Australia is closed.” Mr. Bowen said. “Our humanitarian program is for people who are at risk of persecution, not for people seeking to undertake economic migration.”

The Government was also facing harsh criticism from Amnesty International in relation to the living conditions within the detention centre on Nauru, with the ‘transportee’ group describing them as “completely unacceptable” and expressing concern about the mental health of detainees.

Amnesty International observers had spent the two previous days on the island inspecting the facilities and had described them as “depressing”. “People wanting to show us where somebody tried to hang themselves - those sort of things that show the level of desperation that people are facing here on Nauru.” the organisation’s Dr. Graham Thom told the A.B.C. Radio National.

Mr. Bowen said that he was not surprised that Amnesty International had spoken out against offshore processing, but he would continue to defend the way the facility was being run. “We provide all the necessary care and support to people in a difficult situation.” he said. “But as I’ve said ..., hundreds [or] thousands of people have died by boat getting to Australia. There is a moral obligation to do something about that - that is what we’re doing.”

Not so, really. The Gillard Government’s justification for its hardline stance is by invoking the moral imperative to stop people drowning. There is no doubting a voyage to Australia is treacherous, but lives at sea are best protected by putting more patrols on the water, not by meting out punishment to people who have already arrived. But the Government is loath to take any measure which could be portrayed as welcoming to people fleeing hardship, proving it is actually the political imperative which motivates the Gillard Government most.

The electoral cost has indeed been great. The Coalition has been strident in its criticism, stoking fears in the community of overrun borders. Any opposition can be relied upon to magnify a government’s perceived failing, but Mr. Tony Abbott has repeatedly diminished his own personal standing by stretching facts to make a point. He has claimed, erroneously, that people arriving in Australia without documentation are “illegal” arrivals.

But the Coalition is not culpable for the Government's actions. The Gillard Government has surrendered the moral high ground it captured after the 2007 election with a promise - by its predecessor Rudd Government - to take a humane approach to asylum seekers. Rather than seeking to defend hard-won protections developed over decades by generations past, the Labor Party now may as well give up the pretence of support for the Refugee Convention.

Mr. Bowen, in particular, showed disturbing cynicism - having invited the rights group Amnesty International to inspect the camp on Nauru, he blithely dismissed findings of unacceptable conditions as predictable.

One of the issues which particularly concerned Amnesty International was the indeterminate timeframe being imposed on asylum seekers held on the island.

Amnesty had also expressed concern about nine asylum seekers who had been on a hunger strike, including one who had not eaten for 40 days.

Mr. Bowen said an *interim* joint advisory committee, chaired by Immigration Department deputy secretary Wendy Southern and Nauru MP Matthew Batsua, would take on an oversight role in relation to the Nauru facility.

Mr. Bowen revealed that initial interviews with asylum seekers would have taken place the following week, with full assessment of refugee claims beginning in 2013.

“Of course, the issuing of protection visas will not be considered for a substantial amount of time. The no-advantage test will mean that people will wait for a very substantial period - could it be five years? Yes it could.”

It became known that the Gillard Government had signed a contract with a Brisbane-based construction firm to begin building the first phase of the permanent detention centre on Nauru which would house 900 asylum seekers. “Recent high arrival rates have put pressure on our detention network and it is sensible in managing this and also in terms of prudent contingency planning that we take some steps to expand the capacity of our onshore detention network.” Mr. Bowen said. He said that the Tasmanian Government had lobbied for the recommissioning of the Pontville facility, which was opened temporarily from late 2011 to

early 2012, citing its economic benefits. “Other sites around the network will have a temporary capacity increase as this work proceeds and particularly as we work to increase capacity on Nauru and Papua New Guinea.” he said.

At Bowen’s media conference on 21 November 2012, an *Al Jazeera* reporter asked the Immigration Minister if he was “aware of the reputation for cruelty, frankly, that Australia is now developing overseas.” The journalist cited Amnesty International inspectors, who had described the conditions in the Nauru camp as “completely unacceptable,” and the U.N.H.C.R., who called them “unbearable.” Mr. Bowen rejected the assertion of cruelty and dismissed Amnesty’s comments as biased, reiterating that the Government was taking “difficult” and “hard” decisions to stop refugee boats.

Speaking to the press, an unnamed senior government source was blunter, saying that the cruelty reported by Amnesty could help send a message to asylum seekers that it was not worth getting on a boat. “We’re not losing much sleep over it.” the source said.

After visiting the Nauru camp, Amnesty officials had expressed shock that up to 14 men were living in a single tent, with temperatures exceeding 40 degrees Celsius, and their bedding soaked by rain. Amnesty warned of a “terrible spiral” of self-harm, hunger strikes and suicide attempts. Bowen’s spokesman, however, rejected the criticism, contemptuously insisting that while conditions “may not be pleasant”, food, water and medical care were available.

Nearly 8,000 people had arrived since August - despite the implementation of the ‘Pacific Solution 2’ - reflecting the desperate plight of millions of people seeking to escape from the horrors of war and oppression in places like Afghanistan, Iraq, Iran and Sri Lanka, and now Syria.

The numbers reaching to Australia remained low. The Gillard Government made much noise about lifting Australia’s official intake of refugees to 20,000 per year, but even that remained a drop in the ocean compared to the 42 million people whom U.N. agencies now classify as displaced.

Decency has been lost in the debate on asylum seekers and the race of cruelty in the face of what remains, by any comparison to the global movement of asylum seekers, a small number of people trying to reach Australia.

On 24 November 2012 Amnesty International inspectors said that conditions in the detention camp on Nauru have created a “climate of anguish” for the men being held there.

The human rights organisation, which released its formal report on its findings on 23 November 2012, wanted the Australian Government to close the centre and return the 387 asylum seekers to Australia for onshore processing.

Amnesty inspectors had spent three days looking around the offshore processing centre and their report describes the conditions as “cruel, inhuman and degrading.”

“I think it is fair to say that Australia is again in serious breach of its international obligations.” Dr. Graham Thom told [\*Agence France-Presse\*](#) news agency as Amnesty released its report: ‘Nauru offshore processing facility review 2012’. “These are appalling conditions and they are completely unacceptable for vulnerable people, many of who have suffered torture and trauma.”

Amnesty International described the situation on the island as a toxic mix of uncertainty, unlawful detention and inhumane conditions. It said that the camp failed to give the men appropriate accommodation, freedom of movement, or any sort of process to address their claims for asylum, and could result in serious mental trauma or even death.

“What we’ve seen with this sort of detention in the past is that it does break people and people ultimately do kill themselves or seriously hurt themselves.” Dr. Thom added, saying the mental anguish it caused could last years.

“We met a couple of men who were blinded by shrapnel and one of the men still has shrapnel in his face. He says when it gets really hot, the pain is just unbearable.” Dr. Thom said. He added that frustrations were building among the asylum seekers due to a lack of sleep and privacy and the seeming injustice that they were being processed on Nauru while others were being dealt with in Australia. During the day there was nowhere for the men to go, with the tents too hot to be occupied until late when it often rained, resulting in water lapping into them and dripping onto bedding. “They just can’t get away from being watched.” he said of the detainees, about half of whom are from Sri Lanka, with others from Iran, Afghanistan, Pakistan and Iraq.

Amnesty said that many of the Sri Lankan asylum seekers lamented that they had been sent there purely to encourage them to return to their home country.

But the conditions are “harsh and repressive”, with temperatures soaring above 40 degrees being exacerbated by the gravel ground covering and a lack of trees in the compound. One asylum seeker told the inspectors: “This place is like an oven. An oven for our bodies and an oven for our minds.”

Tents were “very cramped”, holding up to 16 people with no room to move between the stretcher beds and asylum seekers also complained of insects and rodents. Inspectors found at least one leak in every tent, which meant bedding and clothing got soaked whenever it rained.

Dr. Thom said that officials had prevented Amnesty inspectors from photographing the camp, despite having been told they would be able to take pictures. As Amnesty described it after three days of access, the camp is a toxic mix of uncertainty, unlawful detention and inhumane conditions is creating an increasingly volatile situation on the island, with the Australian Government “spectacularly failing in its duty of care to asylum seekers.”

Amnesty’s Dr. Thom and Ms. Alex Pagliaro were in the centre on the night of 21 November 2012 as the news broke that those who could not be sent to Nauru or Manus would be released into the community, albeit on harsh conditions - and Mr. Bowen confirmed their stay on Nauru was likely to be five years. The news dramatically accentuated their sense that they have been dealt with unfairly. Why were they, out of the thousands who have arrived since 13 August, chosen to be sent to Nauru? “A lot of them said: ‘We’re happy those people are going to be out in the community, but why have we been forgotten?’” Dr. Thom recalled. “Why have we been cast aside, pushed into a corner? Why are we locked up like this?”

The despair of the asylum seekers, Thom maintains, was all the greater because Immigration Department officials were not on hand to explain the implications of what was announced to the 387 detainees. Later that night, one of the 31 Iranians in the camp attempted suicide. Amnesty was back again the following day, when torrential rain inundated parts of the camp including many of the tents.

There was no official explanation for the clamp on media access, which was not intended by the Expert Panel and which seems to defy common sense. Surely, asylum seekers would be less likely to resort to hunger strikes and self-harm if they at least had some sense that their voice was being heard.

As Professor Harry Minas, a member of the **Minister's [Council on Asylum Seekers and Detention, M.C.A.S.D.](#)**, put it: "People should have the opportunity to express what they are experiencing and what they feel about what they're experiencing - that would be positive for their mental health."

The clamp is also at odds with the expectations of the Nauru Government, with Foreign Minister Dr. Kieren Keke saying he was under the wrong impression that the camp was already open - with detainees able to come and go as they please during daylight hours.

This points to one of the problems with the offshore processing model: the reality is that Australia is pulling the strings - and paying a fortune for the privilege, yet the asylum seekers are subject to Nauruan law and will be processed under it, if and when the world's smallest republic acquires the human and physical resources to do the job.

Amnesty International implored the Gillard Government to begin processing the 387 asylum seekers on Nauru and to rethink its strategy for curbing boat arrivals after describing conditions at the island's camp as "completely unacceptable."

The scathing criticism of the centre was dismissed by a spokesman for Immigration Minister Chris Bowen, who said: "Conditions in Nauru at times may not be pleasant, but they are the same conditions immigration staff and service providers are working under." He said it was not unusual for the processing of claims to take several months to begin. "It should not come as a surprise that Amnesty does not agree with the regional processing centre on Nauru." he said.

Dr. Thom urged the government to take a "close, hard look" at what it was trying to achieve on Nauru, saying the most poignant moments of the visit were meeting people who had harmed themselves or had been on hunger strikes.

"All they think is that they've been brought here to be driven crazy so they'll volunteer to go home. That's what they are telling us - and without being able to tell them anything about

the processing, how do you dispel those rumours?" he said. "In the front of their minds is the fact that they are not being processed and the uncertainty is clearly having an impact on their mental health."

Mr. Bowen's spokesman dismissed the criticism, saying food and water were available at all times, as was access to medical care and mental health professionals. Recreational activities included sports, English and other classes and excursions.

Foreign Minister Bob Carr said on 21 November 2012 that the Amnesty report was not a shocking indictment on Australia. "I think Australia stands out, stands out in the world as having a humane commitment that I'm very proud of." Senator Carr told A.B.C. Radio.

"We're dealing with people coming to Australia with people smugglers who haven't got claims to be refugees."

The consequences of this confusion were evident when 14 asylum seekers arrived at the court house to face charges stemming from a disturbance on 30 September, and told they would be represented by Nauru's public defender, a person they had never met. Three of the asylum seekers arrived in pyjamas, one so disoriented and weak that he had to be assisted in and out of the courtroom. Another arrived on crutches, claiming his injured knee and ribs were the result of heavy-handedness by security guards at the camp - a claim strenuously denied by an Immigration Department spokesman. They stayed on the bus for two hours before one of the island's few barristers represented them for the court appearance, but the question remained: would they have been adequately represented when they go to trial ?

They were actually on a limbo: in Nauru or on Manus Island - Australia's neo-colonial centres for refugee warehousing. Australia's Immigration Department felt no obligation to assist them because they faced criminal charges; Nauru's police commissioner said they must organise their own defence if they were unhappy with the public defender; and the resident magistrate said that it would have been desirable if they were separately represented. Clearly, their best prospect was for Australian lawyers to defend them on a *pro bono* basis, but that was unlikely given the costs involved and limited accommodation on the island.

The Immigration Department's director on Nauru agreed to speak anonymously. The officer conceded that there had been problems, but said with apparent conviction: "Our task is to



look after the transferees who have come there. That's our absolute main priority and is at the forefront of our minds every day. It's a slow process. We've only been operating for two months and I think to date a lot has been done. Things will change and improve as we go along and as we get more resources.”

Asked what the biggest challenge was, the officer replied: “I think it is getting people motivated, to engage and to focus on the future. If they consider themselves to have claims, then let's focus on the future and get them there. If they don't, then they need to consider alternatives such as going home.”

This of course, would be less daunting once processing begins, but the promise that even those found to be refugees were likely to be on the island for as long as they would have waited in transit countries would be going to test even the most resilient refugee - especially when combined with the not-so-subtle pressure to go back to where they came from.

The pressure is implicit in the information sheet which explains to the detainees that it would be several months before the arrangements for processing are agreed, that it would then be necessary to recruit qualified staff and find accommodation for them and that interpreters would also be needed.

Before explaining that those who are eventually found to be refugees can expect to wait “a long time” before they are resettled, *if* they are resettled, the information advised: “Remember that you can decide to leave Nauru voluntarily any time.”

The irreconcilable positions of Government and Opposition, united only in their search for the harshest conditions for asylum seekers and refugees, showed clearly that Australia does not have an asylum-seeker problem; Australia has a political leadership problem.

Opposition Leader, Mr. Tony Abbott exasperated concerns with his call to cut the humanitarian intake of refugees by 6,500. The move was estimated to save the budget AU\$ 1.4 billion over the forward estimates - Mr. Abbott arguing that the extra places were sending the ‘wrong message’ to people smugglers. He combined this cynical appeal with an outright falsehood: it is utterly wrong of him to say that asylum seekers who arrive without a visa and/or passport are acting illegally. Not only is it not illegal to seek asylum after arriving

without papers, Australia, as a signatory to the Refugee Convention, has an obligation to accept asylum seekers. Another of Mr. Abbott's disingenuous positions is that asylum seekers who arrive by boat are "queue jumpers". There is no queue; in many of the places where asylum seekers come from there is no consular mechanism for making applications.

The pernicious propaganda spread by the Opposition Leader had already had its effect on the Australian populace. Asked their opinion, on a poll closing on 22 November 2012, on Amnesty International report, and specifically the following question: "Amnesty International has described the Nauru detention camp as "completely unacceptable". Do you agree?" 32 per cent said yes, 60 per cent disagreed, and 8 per cent were not sure. A total of 3,149 votes had been cast. Encouraged by such results, the Coalition increased the pandering to the lowest common denominator of the national character. Then, having successfully linked an influx of refugees to a national security panic, a foreign invasion panic, and fears of delinquent parents and disease-ridden demon children, it simply lowered the standard every time Labor representatives dropped their own.

Both Mr. Abbott and Prime Minister Gillard, both of whom - incidentally - had graduated in law, are guilty of seeking to fan undue fears in the community that Australia is in danger of being overrun by refugees. Instead of appealing to the generosity and enlightened self-interest of the population, they are seeking to win votes in marginal seats, particularly in Melbourne and Sydney, by stoking base, uninformed notions that refugees drain and strain the community.

Australia takes relatively few asylum seekers. Compared to its national wealth as measured by Gross Domestic Product, it ranks sixtieth in the world. By total number of asylum seekers, it ranks twenty-third. If considering the population, it ranks thirty-second. For several years, Australia's targeted humanitarian intake has been 13,500 - out of a total immigration programme of 190,000 for 2012. There are more than 15 million refugees in the world.

Four of the five nations which host the biggest number of refugees are poor, relative to Australia. Pakistan has close to 2 million, Iran and Syria close to 1 million each, and Kenya and Jordan around half a million each.

The flow of refugees globally is primarily a function of regional conflicts from which people flee in fear of their very lives, rather than the immigration and other policies of various nations.

The U.N.H.C.R. sharply criticised the Government's decision to refuse to allow refugees on its new bridging visas to work, saying it breaches their rights under the international Convention. It said that people found to be refugees should be recognised basic human rights and rights to which the Refugee Convention entitled them, and that is "including family reunion, work and freedom of movement." The organisation also renewed its attack on the Government's 'no advantage' principle, because the practical application of this test did not match Australia's obligations under the Refugee Convention.

Meanwhile, two Liberal backbenchers, Ms. Judi Moylan and Mr. Russell Broadbent attacked their Leader's announcement on 23 November 2012 that he would cut the refugee intake from the present 20,000 back to 13,750.

Ms. Moylan said that it was "disappointing". She dismissed Mr. Abbott's defence of the refugee cutback as a saving of AU\$1.3 billion. There would not be a budgetary problem if people were not locked up in expensive detention - she said. She would not give unconditional support to Mr. Abbott's plan to make those on bridging visas work for the dole. If they had passed the refugee test "they should be able to live and work in the community."

Mr. Broadbent said that he was not surprised Mr. Abbott did not seek party-room approval for his announcement, which also included work for the dole for those on the bridging visas.

Mr. Abbott was in fact soon to announce that a Coalition government would subject working-age holders of bridging visas to mutual obligation requirements similar to work-for-the-dole.

"The difficulty with [the Government's] announcement - that people coming to Australia illegally by boat will be put on temporary bridging visas with access to welfare before more or less automatically getting permanent residency - is that it means that these people will get Australian citizenship with the worst possible preparation." Mr. Abbott said. "Five years on welfare, for life in Australia."

Mr. Abbott suggested that there should be some sort of "mutual obligation" on those asylum seekers receiving welfare support. "If it is right and proper for young Australians to be

working for the dole, surely it is even more right and proper for people who have come illegally to our country to be pulling their weight.” he said. “I think it is very, very important that there be no free ride. “There certainly shouldn't be a free ride for people who have come uninvited to our country.”

Mr. Broadbent said that Government and Opposition were trying to top each other for toughness. "Where does this lead ? What is the next step ?"

The next step was a search on how to make asylum seekers' lives harder. It was a plan which deeply disturbed organisations canvassed about the Government's tough new asylum seeker policies, including whether banning asylum seekers living in the community from working would be sufficiently punitive to prevent others from attempting the journey to Australia. The topic caused an ethical dilemma for groups working to improve the lives of asylum seekers. The groups were believed to be highly uncomfortable with being asked to advise the Immigration Department on measures which would make the lives of asylum seekers more difficult.

On 21 November 2012 the Government revealed how its 'no advantage' policy would work for asylum seekers who arrived to Australia by boat after 13 August, and who were not sent to Nauru or Manus Island.

On 25 November 2012 the Human Rights Watch organisation demanded that the Gillard Government immediately stop transfers of migrant children - including unaccompanied migrant children and child asylum seekers - to offshore processing sites in Manus Island and Nauru. “Migrant children are often survivors of traumatic journeys to reach Australia.” said Ms. Alice Farmer, children's rights researcher at Human Rights Watch. “Australia is callously disregarding their best interests and failing to provide them an opportunity for refuge when it pushes them out of Australian territory.”

The organisation pointed out, yet again, that Australia's policy violates its obligations to children under the Convention on the Rights of the Child, which protects all children in Australia's jurisdiction, including non-citizen children. The Convention requires assessment of “the best interests of the child” in all actions concerning children. The United Nations Committee on the Rights of the Child has interpreted this to mean a comprehensive review of a migrant child's needs for immigration status and basic services by qualified professionals in

a friendly and safe atmosphere. Transfer out of Australia's territory without such a determination fails this test, Human Rights Watch said.

Ms. Farmer recalled the recent finding of Amnesty International, one of the few independent observers to gain access to the facilities on Nauru, which had reported high rates of infection and mental health problems among the 387 migrants currently held there. Ms. Farmer also supported the view of the Refugee Council of Australia. Children's health is at risk on those isolated islands, said the Council.

Manus has one of the highest rates of malaria anywhere in the region, as well as other mosquito-borne diseases and relentless heat. Studies published in respected medical journals show that children held for prolonged periods in immigration facilities exhibit increased signs of declining mental health, including, anxiety, depression, and post-traumatic stress disorder.

"In reinstating the offshore processing policy, Australia is putting at risk the lives and health of migrant children arriving on its shores." Ms. Farmer said. "These children have basic needs that can be best met in Australia."

Children fleeing persecution have the right to seek asylum, and Australia's offshore policies violate that right, Human Rights Watch said. Australia has ratified the Refugee Convention, which prohibits parties to the Convention from penalising refugees on account of their supposedly illegal entry or presence. Asylum seekers who enter Australia illegally, including children, need to be given an opportunity to have their refugee claims heard by a competent body before being forcibly returned. Neither Papua New Guinea nor Nauru yet has the capacity to provide appropriate asylum procedures for children, or legal assistance to unaccompanied migrant children. said Ms. Farmer.

The Government had stated that it would transfer unaccompanied migrant children - children typically between the ages of 13 and 17 who travel without parents or other caregivers - to Manus and Nauru, without exemption. Yet all unaccompanied migrant children are entitled under international law to guardianship and legal assistance with their asylum claims.

Under the new regulations, Australia would transfer unaccompanied migrant children out of their jurisdiction without adequate guardianship procedures in place. For the previous ten

years, unaccompanied migrant children arriving in Australia had become wards of the state. Before the child could leave Australia, the Minister for Immigration would have to give consent in writing. The new regulations reversed this. Teenage children without families, far from home, would be left without anyone looking out for their interests.

Yet, Australia's new 'policy' is not likely to act as an effective deterrent to boat migration, Human Rights Watch said. People willing to risk their lives in dangerous boat journeys face enormous obstacles in Indonesia and other countries in the region, pushing them to flee to Australia. Australia intercepted two boats on the same day as the new transfers to Manus began, one southwest of Christmas Island and the other west of the Cocos Islands.

It appeared by the end of November 2012 that new rules denying asylum seekers work rights for up to five years would be softened in response to a backlash from some Labor MPs and one of the three members of the Expert Panel on Asylum Seekers. Mr. Paris Aristotle described the no-work-rights rules as inconsistent with the policy's controversial 'no advantage' test, punitive and in breach of Australia's international treaty obligations. He welcomed a nuanced retreat by Immigration Minister, Mr. Chris Bowen, who signalled a willingness on 26 November 2012 to put in place "some mechanism" for those found to be refugees, but having to wait several years for permanent protection, "to be able to support themselves."

Mr. Bowen announced on 21 November 2012 that, "consistent with 'no advantage', those who could not be sent to Nauru or Manus Island would be released into the community with "no work rights and will receive only basic accommodation assistance and limited financial support [of \$430 a fortnight]."

The move followed the recognition that too many asylum seekers had arrived since the new approach was announced on 13 August for them to be transferred to Nauru or Manus Island. It was an attempt to put those who would have been released on bridging visas on the same footing as those on Nauru and Manus Island, but it prompted warnings that it would create an underclass of refugees who would be ill prepared to build new lives when finally granted protection visas. It had also escalated unrest and anxiety among the 387 who had been sent to Nauru. They said that they had been treated unfairly and warned that one Iranian was close to death after being on a hunger strike for 45 days.

After representations from Mr. Aristotle and others, Mr. Bowen asserted on 26 November 2012 that the new rules were “not actually linked to the no-advantage principle as such”, and were more about the surge in numbers from Sri Lanka and the belief that many were “economic migrants” and not refugees.

He also vowed to work with persons and organisations actively advocating for the refugees sector to determine “how we will deal” with those found to be refugees under the new system, where asylum seekers whose claims are upheld must wait for as long as they would have waited to be resettled if they had stayed in a transit country - a period Mr. Bowen concedes could be five years.

In comments welcomed by Labor MP Melissa Parke, Mr. Bowen said he wanted “over time” to work out how these people had “appropriate support and care, and where appropriate they have some mechanism in place to be able to support themselves.”

In an article appeared in *The (Melbourne) Age* on 27 November 2012, Mr. Aristotle argued the correct response to concerns about economic migration from Sri Lanka is “properly and quickly” to establish if this is the case by processing applications. “Those that are refugees should be protected and those who are not can be returned.” he wrote.

“The announcements last week to disallow asylum seekers work rights and timely access to family reunion, even after they have been found to be a refugee, were not recommendations of the [Expert Panel]. ... The measures are highly problematic because they are a punitive form of deterrence in response to a specific and new phenomenon in people smuggling from Sri Lanka, which the government believes is for economic reasons as opposed to refugee protection.”

Mr. Aristotle expressed dismay at the Opposition’s proposal to slash the humanitarian quota to 13,750 places and reintroduce temporary protection visas, saying it makes little sense. He complained bitterly about the quality of debate in Australian public life about asylum seeker policy; it was the poorest that officials, parliamentarians and community members had experienced.

“Regrettably, it has not improved and continues on a destructive and combative course as opposed to one in the spirit of co-operation. That we could plumb to these depths on such a

vital human rights issue is sad but also emblematic of the entrenched positions within and outside of the Parliament. Leadership from all quarters is now the only way this destructive cycle can be ended.

The [Expert Panel] presented an integrated package of 22 recommendations knowing it would take time to implement them and have the desired effect. The report's most important components were measures to establish an effective regional processing and protection framework that would build a safer system. Increasing the humanitarian program to 20,000 places immediately and to 27,000 over the next five years, adding 4,000 places to the family migration stream and \$70 million dollars to improve regional processing underpins these measures.

However, there were also strong measures designed, not to punish, but to discourage people risking their lives while a better system is created. They included reintroducing processing on Nauru and Manus Island; building on and implementing the 'Malaysia Arrangement' and increased co-operation with Indonesia.

To mitigate the associated risks the panel recommended safeguards. They include no arbitrary detention, appropriate accommodation, legal assistance and merits review, an oversight group and services such as health, mental health, education and vocational training. *To date not all of these measures have been implemented*, particularly in terms of appropriate accommodation and the processing of claims. They are designed to ensure processes comply with our convention obligations. Both Australia and Nauru are signatories to the convention and therefore should implement these measures without delay. [Emphasis added]

The panel was pleased that the government responded promptly with a commitment to all 22 recommendations. *But I was dismayed that from the outset key elements were not supported at political and civil society levels, and were not examined with the open-minded consideration we believed was warranted.* [Emphasis added]

None of the measures are quick fixes, nor can they work on their own. The howls for immediate success and claims that it must have failed even though it has not been fully implemented are examples of the shrillness characterising this debate. A clear-eyed view of realistic options becomes clouded by political populism, media cycles, ideological rigidity and acrimony. There is little compromise in spite of tragic humanitarian consequences.



One of the most contentious and misunderstood proposals made by the panel relates to the principle of ‘no advantage’. The principle was not conceived as a means of preventing people from fleeing persecution or receiving protection. It seeks to create greater fairness for as many people as possible, including vulnerable refugees who are not within our immediate gaze.

This principle does not come with an exact mathematical formula and should be applied on a case-by-case basis incorporating issues such as vulnerability and need, as well as the length of time a person has been awaiting protection. The UNHCR is confronted by similar considerations when it makes determinations for resettlement all over the world. For example, an isolated mother and child who are vulnerable to abuse may be considered a higher priority than a young man in good health with access to resources. Time cannot be the only consideration and its purpose must never be to crush people.

The announcements last week to disallow asylum seekers work rights and timely access to family reunion, even after they have been found to be a refugee, were not recommendations of the panel. The minister on Monday clarified that these measures were not associated with the panel recommendations. I welcome his commitment to work further on this with community groups and his advisory committee in the coming months.

The measures are highly problematic because they are a punitive form of deterrence in response to a specific and new phenomenon in people smuggling from Sri Lanka that the government believes is for economic reasons as opposed refugee protection. This is best established by properly and quickly processing their claims. Those that are refugees should be protected and those who are not can be returned. The coalition’s proposal to slash the humanitarian quota back to 13,750 places and reintroduce temporary protection visas also makes little sense. These measures offer little in terms of a longer-term regional response.

The principle of no advantage cannot be severed from the other principles in the report in order to justify such measures. *In particular, the principle that all recommendations should ensure “adherence by Australia to its international obligations” must be respected.* [Emphasis added]

In just over a decade before the panel’s establishment, 960 people died at sea trying to reach Australia. There are reports of other disappearances from desperate families while others are

left only with photos of coffins in Indonesia containing loved ones. Just before the report was released a boat carrying 60 people disappeared and has not been heard of since. Two months ago a boat carrying 150 people sank with more than 120 drowning. A 13-year-old boy watched his father, brother and uncle perish; at least one person died from a shark attack. On October 27 a boat carrying 34 people sank, killing all but one.”

If there was a reply by the Gillard Government to Mr. Aristotle comments, its content was not made public.

M. Aristotle’s view is extremely disingenuous. It almost read as if the writer had just arrived, or only recently resided in Australia, or knew nothing about its recent discriminatory racism in immigration. As to who started this descent into the gutter is hard to establish.

One cannot forget the ‘White Australia policy’, which was of Labor’s inspiration, but from the joint wings of the post-colonial *melancholia* of the first Australian Parliament.

For most of the twentieth century there was no relaxation of the ‘policy’, until the Whitlam government abolished it - much with a short life as its promoter.

Until then new words only concealed old feelings: there had been the “reffos” - and more equivocally the “new Australians.” They were supposed to outline the ‘differentness’ of some newcomers - with all the consequences. There was an apparent change of heart, out of the guilt for having participated in the colonial aggression on Vietnam.

Then ‘mandatory detention’ came around - a condition not quite so disturbing to a recently ‘convict society’. Twenty years of it culminated in the piracy on the *Tampa* in 2001.

Almost everything which has happened in refugee ‘policy’ over the past twelve years has been informed and supported by dishonest rhetoric. Specifically, calling boat people “illegals” and “queue-jumpers” is not only false, it is calculated to prejudice the public against a tiny group of weak, vulnerable people who deserve help, not hatred.

The poison was started by John Howard - more openly after *Tampa*, of course, but it is still streaked through the Coalition rhetoric. Mr. Tony Abbott shamelessly continues to refer to boat-people as “illegals”, and to speak of them entering Australia “illegally”. Either his

policies are founded on a gross misunderstanding of the facts, or he is being intellectually dishonest. With him, it is hard to tell.

It was easy from then on to push the key which had kept Menzies and his successors in power for twenty-three nationalistic, xenophobic, neo-imperialist years. During those years 'the Peril' changed colour - from yellow to red and then again somewhere in between with the arrival of China on the world's scene. But, apart from shade, it was like the "Yellow Peril" nonsense all over again, this time just with a darker tinge and driven here by tawdry domestic politics where both sides are trying to outbid each other in a race to the bottom.

The latest Gillard Government contortion: to process asylum seekers in the community but deny them the right to work, contribute to society and support themselves was a travesty. In Australia, much of the animosity towards refugees is driven by shock-jock inspired resentment about the welfare benefits and assistance the populace is told that the asylum seekers receive. Condemning them to poverty-level welfare would not only fuel this divide, it would risk setting up an underclass and all the socio-economic troubles it brings with it. Even worse was Mr. Abbott's cynical work-for-the-dole scheme, which just reinforces the misconception that refugees are seeking something for nothing - rather than, as generations before them have proven, looking for an opportunity to work as actively as the second world war migrants did to build a better life for their family.

Add into this poisonous mix Mr. Abbott's renewed push for Temporary Protection Visas and the picture is clear: basically to punish people for having been unfortunate enough to want to flee danger and persecution.

As the Refugee Council puts it: "The return to Temporary Protection Visas amounts to cruel and inhuman treatment of people who have no other options for refugee protection."

The tragic thing in all this is that any pretence at humanity and compassion has been abandoned in an effort to demonise an easy, vulnerable target. How else could one explain Mr. Abbott's continued unashamed misuse of the word "illegal" even when challenged on the point ?

And the litmus test is in other questions - and answers.

Would both sides of politics be tripping over each other to introduce ever harsher and more inhumane ‘border protection’ measures if the asylum seekers arriving on Australian shores were white-skinned Christians ? The answer is: no.

If those fleeing war zones and persecution and seeking refugee status had blond hair, brandished Bibles and spoke the Queen's English, would Tony Abbott still be talking of "invasion" ? The answer is: no.

Would Chris Bowen still have been so keen to ship them off to Manus Island or Nauru and let them rot - mentally and physically - for years without hope ? The answer is: no.

There are in fact far more votes to be had in whipping up fear and resentment about dark-skinned people who speak ‘funny’, than there are in taking a reasoned, humanitarian approach to the issue.

Another set of observations, highly meritorious of respect, came from a well-known advocate for asylum seekers’ rights, Mr. Julian Burnside Q.C. He made a point of information which should persuade even the more obdurate the sceptics: “The number of boat people arriving here are tiny, by any measure. [In 2012], total boat people arrivals will amount to *less than 8% of our annual migration intake*. [Italics in original]

Boat people do not represent a failure of border control. Around 4 million people cross our borders with permission each year (mostly for tourism, business or study). If 20,000 boat people get here this year without authority, it will mean that border control is successful 99.5% of the time.”

Then Mr. Burnside proceeded to appeal to the Australian audience by the purse strings:

“The cost of indefinite detention has to be clearly recognised. Detention on-shore costs around \$150,000 per person per year. It costs about \$350,000 per person per year to hold them off-shore. But the cost goes further. Since most boat people are ultimately recognised as refugees, and are accepted into the community, they come into the community profoundly damaged by their detention experience and (in some cases no doubt) resentful rather than grateful. They are less able to contribute fully to the Australian community because of the damage we inflict on them. This is a profound irony, given that boat people show great

courage and initiative by getting here the way they do. In principle, they are just the sort of people we should want here.”

Finally, Mr. Burnside offered a proposal articulated on four steps to more humane refugee processing.

They are:

“First, boat arrivals would be detained initially for one month, for preliminary health and security checks, subject to extension if a court was persuaded that a particular individual should be detained longer.

Second, after initial detention, refugees would be released into the community, with the right to work and access *Centrelink* and *Medicare* benefits. Even if none of them got a job, this would still be cheaper than keeping them locked up.

Third, refugees would be released into the community on terms calculated to make sure they remained available for the balance of their visa processing.

Fourth, during the time their visa applications were being processed, refugees would be required to live in rural or regional areas of Australia. Any government benefits they received would thus work for the benefit of the rural and regional economy. There are plenty of towns around the country which would welcome an increase in their population.”

Mr. Burnside suggested that rural and regional Australia would be quick to see the benefits of such new approach.

The Gillard Government seems not to have responded to the proposal. *Hubris*, quite understandable but not justifiable, would not dispose of the serious, mounting problems in asylum seekers mental health.

For too many years now - at least since early 1990s, mental health professionals have documented the psychological health of asylum seekers within mandatory detention facilities. Findings from multiple studies have provided clear evidence of deteriorating mental health as a result of indefinite detention, with profound long-term consequences even after community resettlement.

Current immigration policies continue to promote uncertainty, fear and disempowerment among asylum seekers, which are known to contribute to poor mental health. There are also concerns that allowing asylum seekers to live in the community on bridging visas without the right to work could further exacerbate these feelings of helplessness.

Asylum seekers are already vulnerable to mental distress before arriving in Australia. Significant exposure to potentially traumatic incidents, including gross human rights violations, persecution, conflict, forced displacement and family separation, are common.

Being detained as part of the process of seeking asylum can actively compound existing mental suffering. Rates of mental health problems such as depression, anxiety, post-traumatic stress disorder - PTSD, suicide and self-harm are much higher among detained asylum seekers compared with compatriots in community settings.

One primary stressor which systematically undermines the mental health of asylum seekers is the pervading sense of uncertainty within mandatory detention. Visa processing times are often unknown, as are visa status outcomes. There is ambiguity about the duration of detention and barriers to family reunification. Asylum seekers also worry about the safety of family members and have doubts about whether they will be able to assimilate into the Australian community.

Other stressors which continue to undermine asylum seeker mental health within detention include reduced self-determination and autonomy, and physical and cultural isolation from family, friends and community. These factors, among others, can combine to fuel a pervasive helplessness which is commonly reported by detained asylum seekers.

Ongoing situational stress, such as being in an unfamiliar, poorly resourced environment, as well as living among other distressed individuals, does little to provide the safe and secure environment necessary to support recovery from traumatic stress.

All this has been known for quite some time. The trouble is that the Gillard Government prefers its own bureaucratic rhetoric = junk thought, and mistrusts the view of well-known specialists.

One such 'inconvenient' specialist is Louise Newman, Professor of Development Psychiatry at Monash University and Convenor of the Alliance of Health Professions for Asylum

Seekers. She said in no uncertain terms that she was aware that doctors treating Omid - the 35-year-old Iranian man who had been on hunger strike for 50 days, refusing food and fluids in protest against his indefinite detention by the Australian Government on Nauru, and was reportedly close to death - on Nauru had advised the Government to bring him to Australia for treatment. She described Nauru as an “explosive situation”, and said that evidence from other detention centres showed these events were “highly predictable and therefore should have been prevented.”

Nineteen other asylum seekers remained on hunger strike, some refusing water. Self-harm among asylum seekers had escalated with the Immigration Department acknowledging that 10 asylum seekers had hurt themselves in one day. There had been at least two attempted hangings in the week ending 1 December 2012.

During the night of 29 November 2012 a brawl had broken out between asylum seekers and detention centre guards. According to Mr. Ian Rintoul from the R.A.C. , the catalyst was the announcement of bridging visas for asylum seekers on the mainland. Five asylum seekers who were removed from the detention centre following the unrest allege they were beaten by Wilson security guards. Mr. Rintoul described the situation as a “complete meltdown”, such that Salvation Army workers were acting as guards to try and quell the violence. One Nauru worker told Mr. Rintoul that the violence was “the worst it has ever been.”

“The last 48 hours there’s just been a series of self-harms, attempted suicides - just pandemonium.” he told A.B.C. radio’s PM programme. “There’ve been scuffles between Wilson Security and asylum seekers, between asylum seekers and Salvation Army workers, and an endless stream of self-harm attempts. ... People have moved, asylum seekers have been removed from the detention centre. Five of them were still being held somewhere outside of the detention centre. There are accusations that people have been taken out of the detention centre, have been beaten by Wilson Security guards.”

Since Amnesty International had visited and inspected flooded tents housing up to 14 people, it had continued to rain heavily with more storms on the way. In the stifling heat, the physical and mental health of other men was deteriorating.

Professor Newman said that the asylum seekers are protesting because they “feel abandoned and utterly desolate.” She and many others in Australia’s mental health community said that

given current processing times these events were predictable. She was concerned that “the collective memory about what happened a decade or so ago [on Nauru] is pretty weak, where we saw similar outbreaks of mass protest and quite serious self-harming behaviours. But at the moment the department is seemingly not wanting to address the broader systemic issues that are contributing to this.”

Of what the Minister for Immigration said in a statement the previous week - to the effect that detainees were receiving the “best care possible in the circumstances” - Prof. Newman said: “I am not sure what he is comparing it to but it is not the case. There are real concerns about the capacity of the hospital on Nauru to respond and treat effectively people who are potentially shutting down and at risk of dying of voluntary starvation and dehydration ... reliable sources tell me that it is likely [Omid] will be transferred but we’ll wait and see and that needs to be done fairly quickly.”

Until August 2012 Prof. Newman had been the Chair of the Detention Expert Health Advisory Group, an independent body providing advice to the Immigration Department on the health needs of asylum seekers. The committee had been wound up in August, around the time when the Houston Expert Panel delivered its report.

The Department was to set up a new group, the Health Advisory Group, which would include representatives of professional health bodies. It had taken nominations but Prof. Newman was deeply concerned about the delay. “Now we are facing a significant crisis where you would assume independent advice would be welcomed.” she said.

In the meantime, the Government had set up a Joint Oversight Committee which Prof. Newman said that it lacked the necessary medical or psychiatric knowledge, but was staffed with more ‘flexible’ people. The Committee included one highly qualified mental health nurse but apart from that there was no medical personnel. “They cannot give the level of advice needed and are not independent because they are ministerial appointees.” Prof. Newman said. “[The Department] are clearly in need of independent expertise at the moment - we are facing hunger strike; we have children on Manus Island where they are exposed to multi-drug resistant tuberculosis and malaria; we know there have been outbreaks already of voluntary starvation. There is no paediatric and child psychiatry input at all.”



Prof. Newman said that if Nauru was not closed the demand for medical services would increase “dramatically after 12 months.” She argued that medical evidence shows that the health of asylum seekers will deteriorate markedly after 12 months, until the majority have a psychiatric disorder as well as physical health problems. “We could throw a thousand psychologists and a thousand psychiatrists into detention but people would still want to die in detention.” Prof. Newman said.

The new Committee was chaired by Mr. Aristotle. Prof. Newman believed that Mr. Aristotle had “a conflict of interest”, as he is one of the “architects of this appalling situation.” He is being “asked to review the damage that his own recommendations have created. I think that is deeply troubling.” Prof. Newman said.

Prof. Newman returned to speak when Mr. Matthew Batsua, who co-chairs the committee set up to oversee the centre, told the A.B.C. AM on 1 December 2012 that there was a small group of detainees who were causing trouble and were inciting others to join in. “When [the centre’s health workers] were trying to offer the help that [a detainee] obviously required, they were being obstructed by others who were keen to see a negative outcome.” he said. “To me and to the Nauru Government, this is sadly behaviour that concerns us seriously. ... If they have their issues they should pursue those issues individually, but they should not be compromising others as well.”

Mr. Batsua said that the island is well-equipped to cope and local authorities have not been surprised by the tactic. “We went into this with our eyes wide open.” he said. “We did expect that there’ll be a strong resistance to being processed in Nauru.”

The Nauruan Government meanwhile had begun interviewing asylum seekers to process their refugee claims.

Prof. Newman repeated that the people inside the centre were under extreme pressure. “I’ve heard reports from detainees and from staff that there have been some elements of coercion where some individuals who are very determined to engage in protest and hunger striking have encouraged others to be involved.” she said. “Sadly, [that is] very typical in those sorts of very emotionally charged environments where people are at high levels of tension and high levels of distress. “What we probably have is a minority group who are extremely

determined to continue protesting because really they see themselves as having very little other option or ways of influencing the situation they find themselves in.”

On 29 November 2012, Omid, the Iranian man on 50 days hunger strike, was finally flown to an undisclosed Australian hospital. A statement from the Immigration Department said that he “will be returned to the Nauru Regional Processing Centre as soon as he is deemed medically fit to travel.”

Prof. Newman worried that others could follow. “I understand there’s at least one other person where transport to the mainland for medical treatment is being considered.” she said. “I’m not sure of the current urgency but I am aware that recommendations have been made that the person should be transferred.”

The Immigration Department and the company contracted to provide medical services on Nauru would not comment on whether a second detainee had been recommended for evacuation.

Prof. Newman would soon return to the subject of asylum seekers’ mental health. Writing on 12 December 2012 she would say: “In my own clinical practice, I treat several former detainees who remain preoccupied with their experiences in detention and are constantly troubled by traumatic memories and anxiety. Their chronic post-traumatic stress conditions are persistent, difficult to treat, and severely limit their capacity to work, relate to others, or create.

These mental disorders are related, in large part, to experiences of prolonged detention, increasing hopelessness, lack of resolution of anxiety and feelings of abandonment. Coupled with previous trauma and the need to flee, the risk of mental disorder is high.

Research over the past decade has clearly demonstrated the association between prolonged detention and mental deterioration. ... Worryingly, children were found to have a tenfold increase in psychiatric disorder subsequent to detention. Exposure to trauma in detention was common and most experienced intrusive traumatic images of these experiences and ongoing anxiety. The majority of parents felt they were unable to effectively care for and support their children.

The implications of these findings are clear - prolonged detention ... has damaging effects on mental health. This impact is likely to be increased in particularly vulnerable groups such as torture and trauma survivors, children and unaccompanied minors. ... Again, mental disorder was seen to increase after 12 months in detention. While this relationship and risk is now accepted by government, it has been difficult to limit the period of time in detention and to facilitate community processing of asylum claims.

Recently, overcrowding in centres and lack of offshore facilities had contributed to processing of asylum claims under community arrangements.

Anecdotal reports of poor treatment in immigration detention are common, with individuals' autonomy and sense of control routinely eroded. Where the asylum seeker feels abandoned and powerless, unrealistic wishes about rapid processing and positive outcomes may compound the situation.

For survivors of torture and trauma, the risk of mental deterioration is exacerbated as the immigration system itself is experienced as tormenting and unsympathetic. Suicidal ideation is common and self-harming behaviour is simultaneously a form of protest and an expression of distress and despair.

Given past experiences in the detention environment and significant evidence of harm, it's alarming to see a re-enactment of the conditions known to result in behavioural and emotional breakdown. ... The government has focused on maintaining a harsh regime to send a message of deterrence and is seemingly reluctant to negotiate or compromise.

Increasingly we're seeing a form of political sloganeering from both major parties which chooses to ignore human suffering and even accepts harm to asylum seekers as "collateral damage" necessary for the overall goal of deterrence. Harsh, inhumane and punitive treatment is tolerated in a morally unacceptable system.

The provision of health and mental health services in remote locations is also problematic. Staff face complex ethical dilemmas as they attempt to provide care and support within a traumatising environment to those without hope.

There are real limitations to "treatment" in a setting where recovery relates to resolution of a refugee determination process which may be delayed, halted or protracted. Under the so-

called “no advantage” provision, individuals, including children, may spend several years in detention and their mental deterioration is predictable. ... Attempts to argue that this is acceptable on the grounds of deterrence or prevention of deaths are weak and ignore a decade’s worth of evidence. Back to the future.”

It was revealed on 3 December 2012 that the flow of asylum seekers to Australia and the impact of the border protection ‘operations’ on Navy personnel were exacting an increasingly heavy toll, with stress levels among personnel as high as those in combat zones such as Afghanistan.

This was confirmed by the Chief of Navy, Admiral Ray Griggs. “He has seen for himself how border protection operations work and he knows how difficult the job can be.” a source close to Admiral Griggs said. “He wants to ensure the right measures are in place to assist those sailors who may be having difficulty coping.”

Sailors on what the Navy calls ‘Operation Resolute’ had experienced people-smugglers' boats exploding into flames beneath them, searching for drowning asylum seekers after overloaded boats sank in storms, and recovering decomposing bodies which had been in the water for days.

As a frigate captain in 2001, Admiral Griggs was one of the few Australian commanders ordered to turn boats away. In a Senate estimates hearing in October 2011, he detailed the dangers to defence personnel and asylum seekers of turning back boats at sea.

As two new asylum seeker boats were intercepted in Australian waters at the weekend after sending distress signals, other Navy sources said the crews on ‘border protection’ duties were under constant pressure as they faced the threat of physical danger and verbal abuse.

“They are dealing with it every day as more and more boats are coming.” one source said. “There’s the constant tension of knowing what might happen and being on the alert for something going wrong that leaves the scars - and it’s happening on a daily basis. “Sailors as young as 19 are pulling bodies out of the water. That sort of thing stays with you but it's not politically expedient to talk about it.”

It was known that some personnel who were ordered to turn around boats in the 1990s were still carrying the emotional scars of having to lift children back on to vessels not knowing for certain that they would make it back to Indonesia.

An Australian Defence Force spokeswoman said about 8 per cent of Defence personnel who had been on any deployment reported significant PTSD symptoms and the rate for Navy personnel was 7.7 per cent. “Limited data to date [show] similar rates of referral for detailed assessment and support for mental health symptoms of personnel deployed on ‘Operation Resolute’ when compared with other ADF operations.” she said. The Navy was so concerned about the pressures on its sailors on ‘border protection’ duties that, "In response to unique stressors associated with ‘Operation Resolute’, a programme of mental health support commenced in July 2011.” the spokeswoman said.

While the Australian Greens were demanding the Federal Government set clear legal requirements for the interview process undertaken to determine whether an asylum seeker has a legitimate refugee claim, on 4 December 2012, 56 asylum seekers avoided being sent back to Sri Lanka after a Gillard Government back-down. Many others had been forcibly deported after being arbitrarily classified as “economic migrants”. Sri Lankan asylum seekers have been especially targeted. As at early December 2012 more than 540 refugees had been sent back to Sri Lanka since August.

A group had mounted a last-minute High Court challenge, arguing they should stay because they made valid claims for asylum and some were not aware what officials were interviewing them about. The Government agreed to let the asylum seekers stay and have their claims processed either in Australia or offshore.

The case highlighted the Gillard Government’s procedure of ‘screening out’ asylum seekers, *i.e.* deporting people after an interview which is sometimes conducted by a solitary immigration officer and lasts only a few minutes. The process involves no investigation of the person’s asylum claim, and is not subject to judicial oversight or scrutiny. Asylum seekers are deported as quickly as just 48 hours after arriving in Australian waters. This appears to be a deliberate strategy aimed at ensuring that the process is not subject to legal scrutiny. If lawyers do get involved, the Gillard Government retreats.

The press reported on 6 December 2012 the case of one group of Sri Lankan asylum seekers who were deported after being 'screened out'. The men were awoken at 4 a.m. by guards employed by the private security firm *Serco*, which operates the detention centres within Australia. Refugee Council of Australia chief executive Mr. Paul Power said that the men "did not have the opportunity to discuss the matter properly with case managers beyond a first interview in which, they believed, their fear of return was ignored." He explained: "Some of the men began to cry, others were begging the Serco staff to act and an older man began vomiting."

Greens Senator Sarah Hanson-Young said that the interview process must be set out in law. "I've been very concerned that this process is so informal, that there's no proper legal representation in these interviews." she said.

On 7 December 2012 the Immigration Minister, Mr. Chris Bowen told a Federal Court that he has the power to remove asylum seekers from Australia even if they have been found to be genuine refugees. Mr. Bowen's lawyers had appeared to challenge an injunction on an Afghan asylum seeker's deportation, that he won in September. The *Hazara* man, from Ghazni in Afghanistan, arrived in Australia in 2010, claiming that he risked being killed if he returned because of his ethnicity, religion and imputed political opinion.

He was one of three failed asylum seekers whom Mr. Bowen had been prevented from deporting because of pending Federal Court cases. Mr. Bowen had a number of personal powers under the *Migration Act* to allow an unlawful citizen to apply for a protection visa if he thought it is in the public interest to do so. He decided not to exercise them in the case.

The lawyer for the Gillard Government submitted that Mr. Bowen had no duty to exercise the powers and that an offshore-entry person had "no right" to compel him to do so. He added that the minister's decision was entirely discretionary and could not be reviewed by a court or Parliament.

Federal Court Justice Geoffrey Flick questioned: "You say ... he can decide whether to exercise [the power] irrespective of Australia's international obligations? For example in a country where torture is known to be rampant and the minister knows all about this and can say, 'I don't care, I'm not going to exercise [this] power,' and ... there's no need to explain it to Parliament?"

“Yes” said the Government’s lawyer.

“So the [minister] has been given a power which cannot be examined by this court and without having to account to Parliament ? “ Justice Flick said.

“Yes” said the lawyer.

The asylum seeker’s protection claims were rejected by an independent merits review and an international treaty obligation assessment in 2011, although his lawyers said that they had been made without procedural fairness.

The Government’s lawyer said that Mr. Bowen’s decision to return the man to Afghanistan was made “irrespective of whether or not any legal or factual error was made by the [earlier refugee assessments].”

Justice Bruce Lander asked the Government’s lawyer “what is the point ? ” of such assessments and judicial reviews of those assessments if the minister was not obliged to consider them.

“The minister may choose to rely on them.” he replied.

“Just in case he does ? ” Justice Lander asked.

“There may be an expectation he will take it into account but it is not a legal duty.” the government’s lawyer said.

The asylum seeker’s lawyer said that refugee assessments were designed to help the minister decide whether to remove an asylum seeker. She said the *Hazara* man should remain in Australia until his status could be decided lawfully.

The Federal Court reserved its decision.

Towards the end of 2011, 150 asylum seekers had drowned in a boat accident off the coast of Indonesia. It served as a stark reminder of the extreme risks vulnerable people often take in seeking a safer life and the often fatal consequences. Twelve months later, the Gillard Government had outsourced its obligation to protect such vulnerable people - re-establishing the Pacific Solution in the name of ending these dangerous boat journeys and

saving lives. Under such ‘policy’, some of the world’s most vulnerable people are now languishing, on Nauru, in leaking tents, in repressive heat, and on malaria-infested Manus Island - with no end in sight. What Australian people were left with was a severe lack of accountability and a clear threat that the human rights abuses which were occurring on Nauru and Manus Island, less than ten years before, were set to be repeated.

Meanwhile, the boats had not stopped, lives continued to be at risk, and the Gillard Government’s undeniably punitive refugee ‘policy’ could no longer be legitimised as deterrence.

Nor was the situation any different at the Christmas Island detention centre. The ‘prison-like’ detention facilities on Christmas Island are not appropriate for asylum seekers, and there had been a rise in the demand for mental health services at the facility, according to a damning **report** released on 13 December 2012 by the Human Rights Commission.

The Commission President, Professor Gillian Triggs, visited the island in October 2012 and found that overcrowding remains a problem, with single adult men detained alongside families with children, posing a risk to safety, and potentially leading to a breach of Australia’s obligations under the Convention on the Rights of the Child.

The Commission also highlighted uncertainty among detained asylum seekers, with many unsure of when they might be transferred to a regional processing country under the Government’s new ‘asylum seeker policy’, and if they are transferred, how long they might expect to stay.

“What is alarming is this report documents the assistance of government and the department in creating conditions of detention we know are related to mental health problems, particularly in vulnerable groups like children.” said Professor Louise Newman on 13 December 2012. She added that the mental deterioration seen on Christmas Island was largely related to the circumstances of peoples’ detention.

“What they’re noting [in the report] is that those broader issues of uncertainty, including a sense of hopelessness and the indefinite and arbitrary nature of detention are major factors contributing to people’s mental deterioration.” Prof. Newman said.



The disempowerment which comes from living in a chronic state of uncertainty is a major mental health issue for asylum seekers, said Dr. Belinda Liddell, post-doctoral research fellow at the University of New South Wales. “There has to be some level of agency or control over the outcome. Asylum seekers are very driven people, they’ve had to do a lot to get here in the first place and being stuck in that limbo state without any certainty or decision-making power really does impact directly on mental health.” Dr. Liddell added that there was scientific evidence to show uncertainty is a real driver undermining mental health.

The Human Rights Commission said that in some areas conditions of detention on Christmas Island had improved since the Commission’s previous visit in 2012, including the introduction of week-long visits each month by a psychiatrist. However, it also said that the mental health service currently operating on Christmas Island may not have been able to meet the increased level of demand.

At mid-December 2012 the Gillard Government sent Foreign Minister Bob Carr on a four-day visit to Sri Lanka in order to intensify its collaboration with President Mahinda Rajapaksa’s regime, above all in stopping refugees fleeing from persecution in that country.

During his visit Senator Carr would hold talks with Rajapaksa himself, as well as senior Sri Lankan ministers. According to Sen. Carr’s media release, the discussions would have covered “aid, economic development, human rights and people smuggling issues.”

However, the central focus of the visit was indicated by the fact that Sen. Carr was accompanied by the head of the Immigration Department, as well as the head of the Foreign Affairs Department, and senior immigration and customs officials. Unnamed Government sources informed the press that the meetings would aim to “enshrine and formalise a mechanism for greater cooperation” on halting refugee voyages. In other words, the Gillard Government was stepping up its partnership with the Sri Lankan police-state apparatus in intercepting refugee boats sailing from Sri Lanka. Australian Federal Police based in Colombo was already working closely with the Sri Lankan Navy and Coast Guard.

Sen. Carr emphasised in his media release that Sri Lanka was “an important regional partner in the fight against people smuggling, having disrupted more than 60 separate people smuggling ventures this year involving around 2,900 people.” Those rounded up by the Sri Lankan authorities could be gaoled for up to three years for trying to leave the country

without permission. There is a proven record - documented by international human rights agencies - of returnees being interrogated, beaten, tortured and 'disappeared' at the hands of the police and the military.

Australia's collaboration in these operations is a blatant breach of the Refugee Convention, which recognises a right to flee persecution, as well as a violation of the basic legal and democratic rights of Sri Lankans.

Much of northern Sri Lanka remains under military occupation more than three years after the end of the protracted communal war conducted by successive Sri Lankan governments against the separatist Liberation Tigers of Tamil Eelam. Tens of thousands of civilians, mainly Tamils, were killed by the military in the final stages of the war, and those who survived have been subjected to systemic harassment, discrimination and police-military violence. Thousands of Tamils still languish in detention centres without trial.

Since September 2012, the Gillard Government has also worked hand in glove with the Sri Lankan regime forcibly to return more than 650 asylum seekers who had attempted to reach Australia. According to refugee lawyers, they include poor Sinhala fishermen from western Sri Lanka, as well as members of the persecuted Tamil minority.

These refugees have been deported from Australia in large groups, after being arbitrarily 'screened out' of the refugee visa application process. They have been systematically denied the right to apply for asylum, and prevented from access to legal advice. On arrival on Australian shores, they were subjected to intimidating official interviews, the sole purpose of which was hidden from them, and then bundled onto planes as soon as possible, sometimes within 48 hours. This procedure is another violation of the Refugee Convention, as well as of Australian domestic law, both of which require due process and procedural fairness. In order to evade court rulings, the Gillard Government has postponed deportations in numbers of cases where the asylum seekers had managed to contact lawyers and instigate legal challenges. After side-stepping a High Court injunction to halt the removal of 56 Sri Lankans in December 2012, the Government was continuing its unlawful process. On 13 December 2012 it deported another group of 48. Refugee lawyers reported that 92 more asylum seekers, including some who had been previously placed in 'community detention' within Australia, were facing imminent removal.

Sen. Carr's trip was bound up with reactionary political calculations. Both the Gillard Government and the Coalition Opposition had seized on the refugee issue, aided and abetted by the media. The relatively small numbers of boat arrivals were being depicted by the Opposition as a "tide" of asylum seekers, especially from Sri Lanka, accompanied by inflammatory media demands to "stop the boats."

An editorial in Murdoch's *Australian* underscored the political considerations behind Sen. Carr's visit. It praised the Government for making "a good call in sending Foreign Minister Bob Carr to Colombo ... to plot joint action to stop the boats from Sri Lanka." It urged the Government to pursue a proposal by the Opposition - which was planning to send its own delegation to Sri Lanka in 2013 - to assist Sri Lanka to intercept boats, even though the Government was already doing that.

Disgusted with the increasing draconian measures against asylum seekers, at mid-December 2012, one of Australia's leading mental health experts, Professor Harry Minas, quit the Gillard Government's Council on Asylum Seekers and Detention after more than a decade of service. He cited plans indefinitely to deny work rights to thousands of recent arrivals as "the last straw." He said that the gap between his own views on how Australia should honour its international obligations and the direction of policy in recent months had simply become too wide - and continues to widen.

Prof. Minas, who is the director of the Centre for International Mental Health at the University of Melbourne, told Immigration Minister Chris Bowen of his decision a few days before. He had also told the chairman of the council, Mr. Aristotle. Mr. Aristotle, said that Prof. Minas, had made "an outstanding contribution throughout the most difficult periods in this policy area for more than a decade."

Although he had considered resigning several times over the years, Prof. Minas said he had resisted because he felt that "on balance" he was able to influence outcomes for the better.

"If I feel that my views are so divergent from the directions that we are heading that I obviously can't be of any real use, the only reasonable thing to do in those circumstances is to resign and say I can't serve in that way." Prof. Minas said in an exclusive 14 December 2012 interview with *The (Melbourne) Age*.

He was especially disappointed at the focus on implementing measures aimed at deterring boat arrivals without all the safeguards proposed by the Government's Expert Panel. "The thing that is so disheartening about it is that there is no really strong principle underlying decisions," he said. "We know very clearly where the Coalition stands and what they're proposing to do and, in some of the things that have happened, particularly in recent months, the current government has accepted that they are going to be no different."

Prof. Minas said that the intention to deny refugees work rights under the "no advantage" principle was worse than the Coalition's support for temporary protection visas. "The kind of disregard that that represents for both the wellbeing of those directly affected and the long-term consequences for them and health system is astounding."

After twenty years of mandatory detention, things had only got worse, with competition between the major parties to see "who can be the more hard-arsed" and no suggestion there was going to be "any really creative thinking about how to deal with a big problem."

Prof. Minas said that one of his major frustrations was *the inconsistency between the call for regional burden sharing and moves to avoid international obligations by excising the mainland from the migration zone.* "It's treating our neighbours as if they're idiots, as if they can't see what's happening, [but] the Indonesian leadership is pretty smart. "It's a sophisticated country. They can see what's happening very clearly." [Emphasis added]

Another matter to which Prof. Minas objected was the cost of detention. "We spend billions of dollars on building and running detention centres. If we had spent the last 20 years on actually putting that kind of money into working on the regional approach we are talking about now, we might be well down the track." He welcomed additional mental health support on Nauru and at other facilities, but said: "You create a set of arrangements that tip already vulnerable people over the edge, and then say, 'No problem, we've got a mental health team here to look after you when that happens.' It's not a sensible way to go."

Like Mr. Aristotle, Prof. Minas remained involved in the hope of limiting the harm done to asylum seekers. He said other key proposals, including safeguards and development of a more durable regional approach, were neglected because of the focus on deterrence.

Prof. Minas' departure coincided with news which reminded why the post-war Refugee Convention came into being. A ship which picked up 40 Burmese shipwreck victims after 30 hours in the sea had spent a week trying to find a port to accept them. These desperate people saw the drownings of up to 160 of their fellow Rohingya, a persecuted minority group, had not received medical treatment, were short of food and lacked clothes. Nearby countries are not convention signatories and so feel no obligation to accept them. They well know, as Prof. Minas noted, that even Australia, a signatory, had frustrated the operation of the Convention by excising the mainland from its migration zone. Rather than lead the way in sharing the load, which is the key to a regional approach, Australia had joined countries which nations that say to refugees: "Go away, you are not our responsibility."

On 14 December 2012 the U.N.H.C.R. released its report on a 'Mission to the republic of Nauru'. On 3-5 December 2012 the U.N.H.C.R. had undertaken the mission pursuant to its monitoring and advisory role under Art. 35 of the Refugee Convention.

In the Report the U.N.H.C.R. repeated its longstanding view on any transfer arrangements: effective protection safeguards need to be reflected in the formal arrangements of the State parties and must be implemented in practice. Assessed as a whole, U.N.H.C.R. was of the view that the transfer of asylum seekers to what are currently harsh and unsatisfactory temporary facilities, within a closed detention setting, and in the absence of a fully functional legal framework and adequately capacitated system to assess refugee claims, do not meet the required protection standards.

The Mission also made the following points:

1. There is a lack of clarity as to the legal and operational roles and responsibilities of the two States parties to the transfer arrangements. Despite formal advice to U.N.H.C.R. from the Government of Australia that it considers its legal responsibility for transferees extinguished at the time of physical transfer, the terms of the arrangements and the practical arrangements on Nauru indicate a high degree of *de facto* control by Australian officials and its contractors. This reinforces UNHCR's view that, under international law, legal responsibility for the care and protection of all transferees remains with both contracting States equally.

2. Despite the establishment by the Government of Nauru of a legal framework for processing asylum claims, a great deal of preparatory work needs to be done before it can be concluded that a functional, fair and effective system for refugee status determination is in place. Preliminary interviews are now being undertaken but further information needs to be provided to asylum seekers as to when, how and by whom proper and substantive decisions of refugee claims will be made, including appeal and review rights, and rights to legal advice and representation.

3. Delays in commencement of substantive processing arrangements for asylum seekers may be inconsistent with the primary and, arguably, sole purpose of transfer to a “Regional Processing Centre”, namely, to undertake refugee processing in a fair, humane, expeditious and timely way.

4. The insertion of the ‘no advantage’ concept as a basis for delaying or postponing the proper and timely assessment of refugee claims is not appropriate and is inconsistent with both States’ responsibilities under the Refugee Convention to accord refugees with the full protection of rights set out in the Convention.

5. It is apparent that a number of transferees are suffering the effects of pre-existing trauma and torture. The capacity of current health providers to deal with these issues on Nauru is limited and questions are raised about the effectiveness of the pre-transfer assessments undertaken by Australian officials prior to selection and transfer.

6. The current uncertainty about responsibilities for different aspects of processing and ongoing delays in the commencement of such processing are likely, together, to have a significant and detrimental impact on the mental and physical health of asylum-seekers transferred from Australia to Nauru over time. Unless these issues are addressed without delay, this impact is likely to be exacerbated by the currently unsatisfactory reception conditions within the detention settings of the Processing Centre on Nauru.

The U.N.H.C.R. made the following fundamental recommendations:

1. More information should be provided to asylum seekers about their situation, including better counselling on the procedures which will be followed to assess their claims for refugee status, on what basis, by whom and the indicative time frames for these various steps.
2. Asylum-seekers should be provided with adequate reception conditions. Freedom of movement in line with international law must be provided, unless there are compelling circumstances which warrant restrictions on liberty in the individual case, and which are determined to be necessary, reasonable in all the circumstances and proportionate to a legitimate purpose, such as health or security.
3. The legal framework, rules and procedures for processing of transferees' substantive claims for international protection should be completed as a matter of urgency. Substantive assessments, with appropriate legal advice and representation, should be commenced without delay by suitably qualified, experienced and appropriately resourced officials. The identification and training of qualified decision-makers is therefore a priority.
4. The pre-transfer assessments conducted in Australia need to be reviewed to ensure that they fully take into account the vulnerabilities of individuals who may have suffered torture or trauma and include a realistic assessment of the quality of support and capacities of service providers on Nauru.

The U.N.H.C.R. is not a signatory to the bilateral arrangement between Australia and Nauru relating to the processing of asylum seekers. The refugee agency's preference has always been an arrangement which would enable all asylum seekers arriving by boat into Australian territory to be processed in Australia. This would be consistent with general practice.

However, the U.N.H.C.R. would have continued to fulfil its monitoring and advisory role under the Refugee Convention and remained committed to supporting Nauru in strengthening its capacity to protect asylum-seekers and refugees.

*A Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill* was introduced and read a first time on 31 October 2012. It provided for amendments to the *Migration Act 1958* with a view to implementing a recommendation of the Expert Panel to provide that asylum seekers who unlawfully arrive anywhere in Australia are subject to the same regional processing arrangements as asylum seekers who arrive at an excised offshore

place; ensuring that a person does not cease to be a transitory person if s/he has been assessed to be a refugee; providing for discretionary immigration detention of Papua New Guinea citizens who are unlawful non-citizens and are in a protected area; and providing for an annual report on the 'Bali Process' and aspects of the Regional Cooperation Framework.

Read a second time on the 31 October 2012, the Bill was debated on 27 November 2012, amended and passed on that day by the House of Representatives and was ready for presentation to the Senate for its concurrence. Once arrived at the Senate, the Bill was introduced and read for a first time on 5 February 2013. On that day the second reading was moved.

The Bill had been referred to a Committee on 1 November 2012 and the Senate Legal and Constitutional Affairs Legislation Committee is - at the time of writing - due to report on 25 February 2013.

On the very day of the first tabling, the U.N.C.H.R. expressed itself briefly and poignantly on the Bill. It said: "UNHCR's longstanding view is that under international law any excision of territory for a specific purpose has no bearing on the obligation of a country to abide by its international treaty obligations which apply to all of its territory. This includes the 1951 Refugee Convention, to which Australia is a party.

UNHCR's preferred position has always been for all asylum-seekers arriving into Australian territory, by whatever means, and wherever, to be given access to a full and efficient refugee status determination process in Australia. This would be consistent with general practice, and in line with the principle of non-discrimination.

If asylum-seekers are transferred to another country, the legal responsibility for those asylum-seekers may in some circumstances be shared with that other country, but such an arrangement would not relieve Australia of its own obligations under the Convention.

In this respect UNHCR considers it imperative that all asylum-seekers affected by the '13 August' arrangements be provided with a fair and effective asylum procedure, with due process, as soon as possible, and that any detention of asylum-seekers be strictly in accordance with Australia's refugee and human rights law obligations.



UNHCR is increasingly concerned about the unresolved status of the more than 5,700 people who have arrived in Australia since 13 August and who are being held in detention in Australia and Nauru. This effective suspension of processing raises serious legal issues, as well as concerns for the health and wellbeing of those affected.”

On 17 December 2012 the Australian Human Rights Commission presented a submission to the Senate. The submission was highly critical of the Bill and observed that, if passed the Bill would have the effect of 1. extending the scope of the third country processing regime to asylum seekers who arrive without authorisation at the Australian mainland by boat; 2. providing that ‘transitory persons’ can be returned to a designated ‘regional processing country’ even if recognised as a refugee; and 3. including an express Ministerial power to vary or revoke a determination that a person is exempt from transfer to a third country, if it is deemed to be in the public interest to do so.

The focus of the Commission’s analysis in the submission was the impact of the Bill in terms of subjecting a new category of people to the existing scheme for the transfer of asylum seekers to designated third countries for processing of their claims for protection. The Commission was concerned that in doing this the Bill risks breaching numerous rights and obligations, including: 1. the right to equal protection of the law and non-discrimination; 2. the right to liberty and security, including freedom from arbitrary detention; 3. the right to humane treatment while detained; 4. the right to be free from torture and cruel, inhuman or degrading treatment; 5. rights relating to children and families; 6. the obligation not to penalise asylum seekers for unauthorised arrival; and 7. the obligation not to expel or return asylum seekers to countries where their life or freedom would be threatened.

Another submission reached the Senate on 17 December 2012; it was from the Australian Tamil Congress, and expectedly highly critical.

On 19 December 2012 the Law Institute of Victoria presented a lengthy submission in which it detailed its opposition to many provisions contained in the Bill.

In essence the Institute said that: “The LIV supports efforts to develop a regional approach to refugee protection. A comprehensive regional protection framework must be a multilateral protection regime that ensures the processing of asylum claims meets international standards,

that asylum seekers can live in dignity while their claims are determined and that timely resettlement options are available. Australia's recent designations of Nauru and Manus Island as regional processing countries do not, however, meet these requirements and do not constitute a regional approach to protection but rather, are really an attempt at offshore processing by Australia.

In this Issues Paper, the LIV raises a number of concerns with the government's implementation of regional processing: 1. Excision of all Australian territories from the migration zone for unauthorised boat arrivals is a legal fiction; 2. Removal of asylum seekers pursuant to s 198AD(3) of the Migration Act breaches Australia's international obligations; 3. Discretion to designate a regional processing country risks *refoulement* of refugees; 4. The mechanics of regional processing arrangements are unclear; 5. Bar on legal proceedings is contrary to Refugee Convention; 6. Transfer of unaccompanied minors would be contrary to the *Convention on the Rights of the Child*; and 7. Application of the 'no advantage' test to post-13 August arrivals is unworkable.

The LIV therefore urges the government to: 1. immediately desist from transferring asylum seekers to regional processing centres until a comprehensive regional protection framework has been established; 2. process the claims of all asylum seekers who have arrived in Australian territories without delay and according to international law; and 3. ensure that people assessed as refugees are provided with durable protection outcomes, either by permanent protection in Australia or by immediate resettlement in a suitable third country."

There were many other submissions from organisations such as Refugee Action Committees and private persons.

In the end the Gillard Government remained unmoved.

Foreign Minister Bob Carr concluded the four-day visit to Sri Lanka on 17 December 2012, during which he announced direct military cooperation, training and intelligence-sharing. Under the banner of fighting 'people smuggling' - that is, stopping asylum seekers fleeing persecution - the Gillard Government was boosting its links with the Rajapaksa's regime.

Amid talks with Rajapaksa and his senior ministers, Sen. Carr disclosed what he described as a plan to stop refugee boats sailing from Sri Lanka to Australia. It features intelligence sharing and other forms of cooperation with the Sri Lankan military, including Australian-based training programmes in “intelligence expertise” and “maritime air surveillance.” Under the plan Australia will also supply additional resources to strengthen “the Sri Lankan navy’s on-water disruption capacity.”

By forging links with the Sri Lankan military, Sen. Carr’s package would go beyond the collaboration that the Australian Government initiated in November 2009, when it signed a statement in Colombo to cooperate in anti-refugee and ‘counter-terrorism’ policing, technology and intelligence-sharing. That agreement involved the Australian Federal Police and the Australian Secret Intelligence Service - Australia’s overseas spy agency - working in tandem with their Sri Lankan counterparts. The deal was initialled just six months after the Sri Lankan military defeated the separatist Liberation Tigers of Tamil Eelam, LTTE following weeks of intensive bombardment in which tens of thousands of Tamil civilians were killed, including by the shelling of hospitals and summary executions. Nearly a quarter of a million Tamils were then herded into detention camps.

Since the 2009 agreement, thousands of Sri Lankans - both Tamils and Sinhalese - have been intercepted on refugee boats by the Sri Lankan Navy, with documented cases of detention, interrogation, torture and disappearances. In 2012 alone, according to the official figures, boat voyages involving 2,900 people have been “disrupted,” and as at late December 2012 the Gillard government had arbitrarily deported more than 700 Sri Lankan asylum seekers since August.

Those operations will now be enhanced by giving the Sri Lankan military access to intelligence data, possibly including information derived from questioning refugees in Australian immigration detention facilities. Sri Lankan officials have long sought access to the trove of information gathered by Australian officials who debrief Sri Lankans on Christmas Island.

In the lead up to next election, the Gillard Government and the Coalition Opposition are involved in a cruel bidding war over who is tougher on refugees. The collaboration of the Gillard government with the Rajapaksa regime is another demonstration of Australia’s indifference to international law and basic human rights.

In a sign of closer ties, Sen. Carr declared that Australia would support Sri Lanka, both politically and technically, for the forthcoming Commonwealth Heads of Government Meeting in Sri Lanka. “Australia will be at the Commonwealth Summit next year and will provide Sri Lanka with the technical assistance necessary for a successful summit.” he told local journalists.

*The (Colombo) Daily Mirror* reported: “When asked whether Australia would support Sri Lanka in the face of Canadian pressure not to attend the summit here, the minister said Canada needed to engage with Sri Lanka on issues of human rights.” Sen. Carr added: “There needs to be engagement with Sri Lanka by way of the Lessons Learnt and Reconciliation Commissions, LLRC report to resolve any issues it may have with regards to human rights.”

The Sri Lankan Government’s LLRC report whitewashed the mass killings and other abuses committed during the war against the LTTE. Sen. Carr’s stance is in line with that of the Obama Administration, which in March 2012 supported a U.N. Human Rights Council resolution which sidelined international human rights allegations against Sri Lanka by simply urging Colombo to abide by the recommendations of its own LLRC report.

The United States has exploited the issue of ‘human rights’ in Sri Lanka to put pressure on the Rajapaksa regime. In March 2012 the former United States Secretary of State, Ms. Hillary Clinton declared her government’s readiness to work with the Sri Lankan regime, and removed a ban on selling maritime and aerial surveillance equipment to its military. This shift was part of the Obama Administration’s aggressive ‘pivot’ to Asia to counter China’s growing influence. Countries with close ties to China, such as Burma, Cambodia and Sri Lanka, are under pressure to re-align with the United States.

As well as sending Sen. Carr to Colombo, the Gillard Government dispatched Vice Admiral Ray Griggs, the Australian Navy chief, to address a in Colombo of representatives of 28 countries - the Galle Dialogue - on the “role of navies in collective prosperity.” Griggs’ participation highlighted the fact that Australia’s strategic location on the Indian Ocean, and its proximity to the vital shipping lanes through South East Asia, mean that the United States regards it as vital in its moves against China.

On 31 December 2012 the Gillard Government dismissed a long, heartfelt, collective letter of complaint from refugees detained on Manus Island, and instead stepped-up its transfer of asylum seekers to the remote island. Another 25 single males, who arrived there on 29 December, are believed to include unaccompanied teenagers who arrived on refugee boats without other family members.

More than 155 people, including about 30 children, were by then detained on the island, with many housed in tents and shipping containers. About 400 asylum seekers are being held in similar conditions on Nauru, in the middle of the Pacific Ocean. Within months, the two camps will be filled to their planned combined capacity of 2,100.

The Manus Island letter, passed around and signed by detainees, demanded answers about how long they would be incarcerated, and when the processing of their refugee claims would begin. It also protested against their living conditions, saying that the heat and dust were affecting them badly. The letter detailed a range of objections, including the lack of air conditioners and fans, especially for the children. One woman with asthma had twice become unconscious, the letter stated.

The asylum seekers demanded a response from the Immigration Department of Immigration by close of business on 28 December 2012. Refugee advocates warned that mass protests could follow, including the resumption of hunger strikes, if the deadline was not met.

Asylum seekers were reported on 30 December 2012 to have rejected the Immigration Department's reply to their letter. The Department confirmed that no refugee processing arrangements were in place but said they may "commence in early 2013." One detainee told the Refugee Action Coalition: "[The Department letter] has made us disappointed and sad. We did not get an answer to our questions. One lady collapsed from the stress after she was told about the letter and had to be carried to the medical centre. We will have other protests."

The Gillard Government has repeatedly refused to place any limit on how long asylum seekers will be kept on the two Pacific islands, even if they are classified as refugees -effectively sentencing them to indefinite imprisonment without trial. The Government has declared that the detention will last for as long as the asylum seekers would have to wait in the massive refugee camps in places such as Pakistan, Turkey and Iran, where people can languish for decades.

The appalling conditions in Australia's detention centres further expose the Government's claim that its refugee policy is motivated by humanitarian concerns to stop people risking their lives by joining dangerous voyages to Australia. It is increasingly obvious that the Government's punitive regime is designed to intimidate refugees and deny them the basic right, enshrined in international law, to seek asylum. As limited as it is, the Refugee Convention not only prohibits governments from *refouling* asylum seekers to face persecution, but also outlaws punishment of, or discrimination against, refugees for seeking asylum without official permission.

Just a week before the end of 2012, the Gillard Government sought to clamp down on the ability of detainees to communicate with the outside world, by restricting their Internet access. The Salvation Army informed asylum seekers that it would limit their Internet usage to 30 minutes each, every two days, not allow the swapping of allocated time between them, or even allow one friend to help another with the Internet. Previously, asylum seekers had been allowed to swap with each other, which helped them communicate with their families at appropriate times. Detainees had also agreed among themselves, that Mahdi Vakili, an Iranian asylum seeker who manages the *Facebook* page 'Asylum Seekers on Nauru', could have two hours every morning and evening to get their stories out.

Nauru detainees gathered over 300 signatures on a petition calling for their previous Internet use arrangements to be reinstated. The Internet has often been the only means by which they could expose their intolerable conditions and publicise their protests and hunger strikes, because the media have been barred from the detention centres.

Throughout November and December, the Government defied repeated hunger strikes, refusing to make any concessions on living conditions or the length of detention. On 10 December the Government even returned a hospitalised hunger striker to Nauru. Omid Soroush, who had been fasting for over 50 days, had been evacuated to Australia on 30 November, two weeks after he had been taken to the Nauru hospital, excreting blood.

The decision underscored the Gillard Government's determination to enforce its policy at all costs, regardless of the possibility of hunger striker deaths. As of mid-December, at least two more Nauru detainees, who had either been on hunger strike or attempted suicide, remained in hospital in Australia.

Another disturbing aspect of the Gillard Government's anti-refugee policy came to light a week before the end of the year when it was revealed that 976 unaccompanied teenagers were among the asylum seekers who had been released to live temporarily within Australia, because detention centres had become over-crowded. The Gillard Government has refused to permit any of those released to work, forcing them to live on poverty level welfare benefits of about AU\$430 a fortnight. Youth welfare groups warned that teenage refugees could spend months either homeless or "couch surfing". They included orphans whose relatives and parents were lost at sea in refugee boat disasters. Government-sponsored programmes had helped some to settle into new homes with appropriate guardians or carers. Others have had to use *Facebook* and social media sites to find their own carers.

A spokeswoman for Immigration Minister, Mr. Chris Bowen said that the government could not say how many teenagers were failing to find safe accommodation, but would try to provide answers in the near future. "Such information requires substantial resources to collate."

On 5 January 2013 the first pictures emerged of daily life on Manus Island, taken from the camp and sent to refugee activists on the mainland. The Immigration Department had previously released stock photographs of the island's processing camp, but since asylum seekers began to arrive on the island in November, the media have been unable to access the camp to verify conditions. People are living in shipping containers without air-conditioning - the sole ventilation being provided by the absence of a door.

While Australia was sweltering in rolling heatwaves, the photographs showed that asylum seekers on Manus are living in *dongas*, or transportable accommodation, in intense humidity. The humidity regularly tops 90 per cent on the island. Malaria and dengue fever are endemic. The photographs showed people sleeping outside the metal and weatherboard *dongas* on stretchers to escape the heat inside. Despite the prevalence of mosquito-borne malaria - one in six locals was infected in 2009, according to the then-acting C.E.O. of Manus' hospital - those sleeping outside did so without mosquito nets. There are mosquito nets on the beds inside, but the structures shown have just loose flywire screens covering the doorways. Some of the screens have fist-sized holes in them.

In one photograph, children are shown reading in a group on the floor of a small *donga*, with two fans pointing to sleeping and sitting areas. There were then 155 people on Manus Island, including 30 children.

A spokesman for the Immigration Department refused to answer questions about conditions in the camp, but said that they were comparable to those Papua New Guinea locals lived in.

In December 2012 a group of asylum seekers had written to the Department to outline their grievances. “Why they place us in a high-risk area to get a disease (malaria).” the group wrote. “People are being bitten and have sores all over their arms and legs ... Water [is] not hygienic [and] not [of a] high quality standard. [We have] run out of water. We are suffering mentally and we think we are going insane and will be psycho in the future.” A Department official had replied to the group on 28 December, saying damage to an electrical cable bringing power to the water treatment plant had been repaired and there were no longer water restrictions. He said that construction on a permanent facility would begin soon, and the Department was working with local authorities and Save the Children to arrange for children to go to local schools later in 2013.

By early January 2013 no one had yet been to Manus - no Ombudsman's office staff, no-one from the Human Rights Commission, no-one from the M.C.A.S.D. - the latest incarnation of the Ministerial advisory group.

Australia and Papua New Guinea are acting as collaborators in this abuse of human rights.

The photographs sent by asylum seekers on Manus were the first opportunity for the Australian public to assess the actual conditions endured by the detainees. Amnesty International had been [prevented](#) from taking photographs on its November visit to Nauru. As a result, the Manus pictures garnered substantial [attention](#).

This publicity was not to the Immigration Department's liking. In what they were told was explicit punishment, Manus detainees were deprived of all Internet and phone contact for three days. Afterward, the tablet cameras had been disabled, and the detainees' web allocation had been more than halved to only three hours per week. Detainees also believe that their phone calls were now being monitored.



Increased restrictions on refugees had not been confined to Australia's offshore camps. At *Villawood* detention centre in January 2013 access had been cut to a refugee rights website. The blackout coincided with that website's advocacy for Ranjini - a pregnant refugee in *Villawood* currently facing lifelong detention after receiving a negative assessment from A.S.I.O.

No sooner was that website restored than access to *Facebook* was blocked. At a click of a mouse on 10 January 2013, asylum seekers in *Villawood* were deprived of one of their principal means of communicating and socialising with the outside world. Detainees believe that the ban was due to their use of the platform to communicate with advocates about the situation in *Villawood*. Access was only restored on 14 January 2013.

Public indifference to the plight of refugees is strikingly reflected by the mainstream media. Often, advocates have difficulty even getting journalists interested in major developments. The recent suicide of a Tamil man on a bridging visa received only minimal media attention.

This cannot simply be explained as a 'January holiday' effect; the mass hunger strikes on Nauru last year were also patchily reported at best. No journalist maintains regular phone contact with detainees, even though, as the Immigration Department has acknowledged, it would be easy to obtain detainees' mobile numbers either directly or from advocates. With such slack coverage of refugee and detention issues, it is little wonder that the Department has a free hand arbitrarily to silence refugees when it chooses to do so.

The Immigration Department has persistently attempted to justify the restrictions on the spurious ground of a 'duty of care' to detainees, and the Department's determination to safeguard their privacy, and its general commitment to dignity and respect !

On 18 January 2013 lawyers acting for Papua New Guinea Opposition Leader, Mr. Belden Namah filed a summons with the National Court, challenging Australia's asylum seeker processing centre on Manus Island.

Mr. Namah said that he regretted taking the action against the government but he believed that the Howard-era processing centre, re-opened in November, was unconstitutional. "The ministers of the O'Neill-Dion government have now received a summons to appear and defend their conduct in the National Court." Mr. Namah said in a statement.

Because the case involved a constitutional issue, the legal challenge was expected to be referred from the National Court, which has one judge, to the Supreme Court, where there are up to five judges.

Mr. Namah said that the detainees on Manus were being held illegally. “This legal challenge also attempts to remedy the many abuses of PNG law and of ministerial powers which have given rise to the situation on Manus.”

Mr. Namah was challenging “the right of the Government to force people seeking refugee status in Australia to enter Papua New Guinea to be illegally and indefinitely detained under inhumane conditions” and the “manipulation of PNG migration law by the Minister for Foreign Affairs and Immigration in illegally allowing asylum seekers destined for Australia to come under the jurisdiction of PNG refugee laws and exempting them from immigration status.”

“We will take this matter as far as necessary to ensure that the values of our nation's constitution are upheld.” he said. Mr. Namah said that his main objection would be that the centre is illegal under [Section 42](#) of the constitution which lays down the limits under which people can be deprived of their liberty.

Mr. Namah said that the Opposition challenged the right of the Government to force people seeking refugee status in Australia to enter the country, where they were being held “illegally and indefinitely under inhumane conditions.” He said that his challenge asked the courts to declare that the memorandum of understanding was unlawful because it allowed Australia to force asylum seekers to enter PNG territory and allowed the PNG government to deprive them of their liberty as soon as they entered. “We challenge the right of the government to make this arrangement with the government of a foreign nation, again in contravention of our constitution.” he added.

“Our claim, that the asylum seekers detention scheme is unconstitutional and that the detainees on Manus are held illegally in PNG, has never been legitimately addressed by the government and must now be answered in our highest courts.” he said.

The injunction sought to have the detainees released and to prevent the Government from receiving or detaining any more asylum seekers from Australia.

Two Australian lawyers involved in the case said that Mr. Namah's challenge had a good chance of success. Mr. Julian Burnside, Q.C., who ran an unsuccessful challenge against the Howard Government's 'Pacific Solution', told Australian media that the case appeared to be solid. "I think it's got a fair chance of winning." Mr. Burnside said on 21 January 2013. "The real strength of the case is in the Papua New Guinea constitution, because that constitution has a guarantee of liberty." he said.

An Australian lawyer working in Papua New Guinea said that the challenge was likely to succeed, because the country's constitution had a strong bill of rights. The lawyer, who did not want to be named, said the right to "liberty of the person" applied to all people, not just citizens of the country.

A spokesman for Immigration Minister, Mr. Chris Bowen would not comment on the challenge's prospects and said it was unclear whether Australia would be required to have a role in the court case. "We are not going to comment on politics or court matters in another country." he said. The spokesman said that the memorandum of understanding was binding and working well.

Labor MP Mark Dreyfus, the federal cabinet secretary and a Q.C., questioned the motive behind the challenge. "I think when you've got the Opposition Leader in Papua New Guinea bringing a proceeding in the Supreme Court, it does smack of politics to me." he told the media. Pity, coming from a politician and future Attorney-General of the Gillard Government !

That Australia's migration policies could come under challenge by the Supreme Court of another country should be a serious ground for concern. The Gillard Government's desire to appear tough on border protection while simultaneously appearing to comply with the letter of the Refugee Convention has sent asylum seeker policy in all sorts of morally indefensible directions, with innocent people locked up, without charge, and in violation of the spirit of a six-decade old [international treaty](#) of which Australia was a founding signatory.

From the point of view of an independent observer - for instance, the *Al Jazeera* journalist who recently asked Immigration Minister Chris Bowen about Australia's growing reputation for cruelty in this area - the policy justification for all of this must seem slim indeed.

Asylum seeker 'policy' is also starting to bleed into areas of real national interest, as the Gillard Government's push to punish asylum seekers begins to embroil Australia in the domestic politics of key regional partners like Malaysia, Indonesia and Papua New Guinea.

The Manus challenge is another example of how the Government keeps running into barriers in its quest to deprive innocent people of their basic human rights. It was John Howard who famously [said](#) that "we will decide who comes to this country and the circumstances in which they come." Now the Gillard Government would be forced to wait nervously while Papua New Guinea's highest court decided exactly the same thing.

Asylum seeker transfers to the Australian-run Manus Island detention centre in Papua New Guinea could have been temporarily halted from 10 February 2013, when the controversial scheme would meet its first test in the nation's court.

Mr. Loani Henaio of Henaos lawyers, who was bringing the challenge on behalf of Mr. Namah, said that he expected the government to ask Justice David Canning for an adjournment.

"I will be asking the government not to bring in anymore intake [of asylum seekers] until the substantive hearing." Mr. Henaio said. "The court will consider that and we'll see how we go tomorrow."

There were at the time 274 detainees at the Manus - including more than 30 children - living in conditions that have been widely criticised as inhumane.

Attorney-General Kerenga Kua argued the site is legal under the nation's immigration law, which grants power to the Immigration Minister to set up a processing facility.

Mr. Henaio said that that was unconstitutional. "The memorandum of understanding between Australia and PNG is unconstitutional on the basis that it allows the PNG government to bring in asylum seekers from a foreign country, and the minute they put their foot on PNG territory, they are arrested." he said. "We're saying every person - whether you're a

national, PNG citizen or a foreigner - when you come into the country you have your personal liberty guaranteed under the constitution.”

Mr. Kua was not immediately available for comment; however, he had in the past rejected the definition of the site as a detention centre. “We are providing them with a place to live.” he said in January. “It’s not a detention centre, as people call it. There is no law in our country that authorises us to establish a detention centre. But under our migration act, the minister can set up a processing facility.”

The U.N.H.C.R. had recently labelled the centre unlawful. The refugee agency had released a damning report on 4 February 2013 condemning conditions at the facility - which mostly comprises tents - and called for the transfer of children there to be suspended. It said that the situation was at odds with Australia's international obligations, and children should not be transferred there until all appropriate legal and administrative safeguards were in place.

The Australian Greens Senator Sarah Hanson-Young, who visited the site in late January, said that children there were witnessing self-harm and suicide attempts by adults.

On 12 February 2013 Judge David Canning said that he regarded the matter as a human rights issue and he would have dealt with it as soon as possible.

At a preliminary hearing, Mr. Namah's lawyer, Mr. Loani Henao, said that he would ask the court to prevent any more asylum seekers being sent to Manus Island until the case was heard. He also said he would have asked the court to grant him access to the processing centre to talk to asylum seekers. Mr. Henao said a request to visit the centre had been rejected by PNG’s chief migration officer.

He said another issue which needs to be determined was whether asylum seekers should be represented in court and, if so, how. The matter was adjourned to the following day.

On 14 February 2013 the Papua New Guinea’s National Court rejected a bid to stop asylum seekers being sent to Manus Island. Justice David Canning said that he was not convinced that the request by Mr. Namah to have the centre declared unconstitutional should be heard in his court. He said that he was not convinced the asylum seekers on Manus would be subject to an “injustice” if the injunction went ahead. “I can by contrast see that the defendants

would reasonably perceive an injustice if the court were to, without being fully satisfied that something unconstitutional or unlawful had occurred, injunction arrangements that had been entered into in good faith by two independent governments.”

Justice Canning ordered that Mr. Namah’s lawyers be granted access to the Manus Island centre.

In Australia the Federal Police and the Gillard Government would soon face a massive lawsuit for damages from up to 48 under-age asylum boat crew from Indonesia, some of whom say they were abused when locked up in adult prisons in Australia.

Ms. Penelope Purcell, a Sydney lawyer, was working with Indonesian lawyers and human rights organisations to take statements from the young fishermen who said that they were tricked into crewing asylum boats to Christmas Island.

Under harsh laws introduced by the Rudd Government, many poor fishermen were given mandatory prison sentences of up to five years for “aggravated people smuggling”, even though some were as young as 14. They were gaoled as adults after the police used a discredited wrist X-ray procedure to establish that they were over 18.

Ms. Purcell said that the fishermen were often paid the equivalent of AU\$50 to AU\$100 by ringleaders and told they would be transporting animals between Indonesian islands. Once the asylum seekers were put on board in the middle of the night, the crew were given a GPS device and pointed towards Christmas Island without being told it was illegal. The ringleaders then abandoned the boat. Ms. Purcell said that their first contact after that was usually when Australian Navy personnel boarded the boats.

Most of the youngsters were released in 2011 after the release of a damning Australian Human Rights Commission report. Their cases won broad sympathy in Indonesia.

Ms. Lili Wahid, an MP and the younger sister of the former president Abdurrahman Wahid, said on 20 February 2013 that she would summon the Indonesian foreign minister before her parliamentary committee to explain. “We understand that people smuggling is a big burden for Australia but it is unacceptable that they treated our children in such a way.” Ms. Wahid said. “It seems the Australian Government has realised their mistake in this case. But it is not enough. We must stop this case from happening again. It takes both governments to talk

about it. ... Putting [minors] in the same place with adult criminals has done extremely bad things for the children's psychology that cannot be repaired even by compensation.” Ms. Wahid said.

Ms. Purcell said that she could not predict what compensation she would be seeking, because it would depend on each case and the level of abuse suffered.

On the day that Prime Minister Gillard announced the intended election date, the Opposition’s immigration spokesman, Mr. Scott Morrison, was discussing asylum policies in Sri Lanka, while the Greens’ immigration spokeswoman, Ms. Sarah Hanson-Young, was visiting the Manus Island processing centre.

It is a clear sign the divisive asylum debate would continue during the election period.

Mr. Morrison, who was on a five-day tour of Sri Lanka with the deputy opposition leader, Ms. Julie Bishop, and customs and border protection spokesman, Mr. Michael Keenan, told Australian media that he would raise the issue of Australia sending more federal police to Sri Lanka to disrupt and break up people-smuggling networks in the region, and prevent people coming to Australia by boat. In fact the Australian Federal Police has had a presence in Colombo since 2009.

Senator Hanson-Young said that asylum seekers on Manus Island were living in “primitive” and “oppressive” conditions, and that they were “acutely aware that they are being used as an example” in the Government’s asylum seeker policies to deter others making dangerous boat trips.

Meanwhile in Canberra, Ms. Gillard was proudly declaring: “I don’t accept criticism of our approaches to asylum seeker and refugee issues.” ... “We’ve got a lot to be proud of and I don't think anybody can maintain that we are somehow viewed badly around the world because of those things.”

The debate on asylum seekers had diminished of recent as a political issue because the boats have slowed. But the boats had slowed because it is monsoon season. What then ?

Whether it was pure coincidence or in reply to the vacuous claims by Prime Minister Gillard, on 1 February 2013 the U.N.H.C.R. regional representative, Mr. Richard Towle repeated that the recently adopted package of policies designed to deter asylum seekers from travelling to Australia by boat would have “a significant and deleterious impact on the international system of refugee protection” if other countries followed suit.

He said, yet again, that Australia appeared to be breaching international refugee laws by discriminating against asylum seekers on the basis of how they arrived in Australia, although he conceded that there were “no enforcement provisions under international law” for countries such as Australia which did not comply with the letter of international laws. “There is a court of public opinion, internationally.”

Mr. Towle said again: “We are concerned that measures to excise large portions of territory to set up systems which substantially reduce fundamental refugee protection rights does set a new precedent internationally.”

He intimated that “if all 148 countries that signed the Refugee Convention were to set up similar kinds of systems [as that established by Australia] which are, in essence, designed to deter and relocate asylum seeker populations on other territories, this would have a significant and deleterious impact on the international system of refugee protection.”

On 5 February 2013, in an interview with the A.B.C. programme *Lateline*, a nurse who had resigned in disgust over the conditions at the detention centre on Nauru described them as appalling and resembling a concentration camp.

As the presenter of the programme explained: “A concentration camp filled with despair paid for by Australian taxpayers. That’s an insider’s view of the offshore immigration detention centre on Nauru.”

Veteran nurse Ms. Marianne Evers had broken her silence about working at the Nauru facility after resigning in disgust late in 2012. She said that she witnessed misery and self-harm every day and was told disturbing stories of sexual assaults on vulnerable young men.

The reporter began: “Marianne Evers has been a nurse for more than 40 years and is a trained counsellor. Attracted by flexible hours and travel, she started working in Australia's



immigration system [in 2011] and the Dutch-born Australian citizen signed up for a six-week stint at Nauru in November 2012.”

Ms. Marianne Evers said: “I knew that conditions weren’t ideal, but conditions were less than ideal. In fact I would describe them as appalling.”

She also said: “There is absolutely nothing to do. There are no trees. There is not even that many birds there. So we live in that heat without air conditioning in tents.” ... “Well, it is just a desperation that I can’t get out of my head, of all of them. You know, I’ve seen people crawling on the floor like animals, and said ‘Please, let me die’, you know. These pictures don’t leave you.”

The reporter: “The veteran nurse said that she witnessed and helped treat cases of self-harm and attempted suicide.”

Ms. Evers: “I saw people hang themselves. I think in the three weeks that I was there there were three or four hangings that I witnessed and I don’t think that has stopped since. These people are desperate.”

The reporter: “... medical staff told her there were other disturbing incidents at the camp.”

Ms. Evers: “I have never actually witnessed that, but there have been rapes, as I have heard. I have never actually witnessed that, so I cannot confirm that or deny that.”

The reporter asked: “What have you heard?”

Ms. Evers: “That there were gang rapes. But I cannot elaborate on that.”

The reporter: “OK, but you’re hearing that from other staff?”

Evers: “Yes, from other people.”

The reporter: “That’s news to the Immigration Department, which tonight says it wants all allegations of criminality reported to local authorities.”

A top representative of the Immigration Department interjected: “I question why this person has waited until now, if in fact there’s anything to this claim.”

The reporter: “Marianne Evers worked for three weeks at the centre. Around the time she resigned, she says two mental health workers also quit. The veteran nurse has also worked at the Curtin, Yongah Hill and Darwin detention centres. She says all are not easy places, but Nauru is by far the worst.”

Ms. Evers: “I actually liken it to a concentration camp, but the Australians don’t have the guts to kill these people and put them out of their misery, because miserable it is.”

The representative of the Immigration Department: “I think invoking concentration camp is a disgrace, to be quite honest with you. I don’t think anyone should be throwing terms like concentration camp around with such abandon. Look, we understand that the temporary facility, part of which is now transitioning to permanent facility at the Nauru regional processing centre, is in a country that is hot, that is humid, but that the level of care that is being provided for the 450 men currently there is a very good level of care and it is important that we recognise this is consistent with the policy that the Government has announced around no advantage.”

And later on he added: “We are charged with the responsibility of looking after them, caring for them, feeding them, accommodating them, providing them with a range of facilities, both in Nauru and at Manus Island and we remain committed to that.”

On 4 February 2013 the U.N.H.C.R. handed down a scathing Report on the Manus Island facility, describing the living arrangements as “harsh” and the conditions for the 34 children there as a “particular cause for concern.” The U.N.H.C.R. had sent a three-person team to visit the Manus facility which, along with its sister facility on Nauru, was belatedly established by the Gillard Government in 2012 after the Parliament refused to authorise Labor’s Malaysia people-swap.

The U.N.H.C.R. Report detailed the appalling conditions endured by asylum seekers who are incarcerated by the Gillard Government on Manus Island.

The contents of the Report were a further indictment of the brutal and illegal policies enacted by the Gillard Government.

The Report described the 221 camp inhabitants as living in segregated areas. In the family compound, the asylum seekers were living in hot *dongas*, the size of a shipping container,

without privacy and exposed to malaria-carrying mosquitoes. When the U.N.H.C.R. personnel were visiting the island, 25 asylum seekers were holding a protest over conditions in the single men's area. The remaining 66 male asylum seekers were housed in "temporary accommodation" tents which were described as being unbearably hot. The men shared a single toilet.

Originally the asylum seekers were told that after a 30-day "quarantine period" they would be allowed outside the camp for excursions. However, the camp administration had cited security and operational issues for extending the "quarantine period" indefinitely, "until further notice", leaving the refugees effectively imprisoned without respite.

Of particular concern was the treatment of the 34 children, aged between 7 and 17. The U.N.H.C.R. Report explained that the stress from their boat journey to Australia and from the conditions on the island were causing signs of mental trauma, including insomnia and lack of concentration at the camp's limited educational facilities.

The Report noted that the asylum seekers camp constituted unlawful detention and was in breach of international law: "UNHCR found that asylum-seekers are being detained on Manus Island without any appropriate legal safeguards to ensure that their continued detention is lawful, proportionate and justified by their individual circumstances; no opportunity to challenge the administrative basis of their detention; and no opportunity to prosecute their refugee claims within any clear timeframe in the future."

The U.N.H.C.R. Report's finding stated that the U.N.H.C.R. "acknowledges the serious commitment and on-going efforts" by the Australian and Papua New Guinean governments "to put in place procedures and conditions of treatment for transferees that are consistent with their international obligations under the 1951 Refugee Convention." The Report's authors added that they hoped improvements would be made to the camp so that it could be established on a "more permanent, sustainable and accountable basis under international law." In reality, the appalling conditions on Manus Island have been deliberately established as part of the Gillard Government's efforts to create a 'deterrent' to other would-be asylum seekers. Far from any "serious commitment" to international legal conventions governing the treatment of asylum seekers, the Gillard government has ridden roughshod over the basic, legal right of people to claim asylum in Australia.

The U.N.H.C.R., which - the Gillard Government already noted - harboured a “longstanding position of opposition” to offshore processing, was particularly critical of the absence of any processing arrangements for testing the refugee claims of asylum seekers.

While P.N.G. is a signatory to the Refugee Convention, it lacks the experience and the expertise to process the refugee claims of the 254 asylum seekers detained there. The team found that while P.N.G. was drafting regulations that would establish a refugee-status-determination framework, there was no timeline as to when it would be done.

“There is no adequate domestic legal framework to implement PNG’s responsibilities under the 1951 Refugee Convention.” the Report said. The failure to process refugee claims meant asylum seekers, children included, were effectively subject to ongoing and mandatory detention. “The current PNG policy and practice of detaining all asylum-seekers at the closed centre . . . amounts to arbitrary detention that is inconsistent with international human rights law.” the United Nations body said.

According to the U.N.H.C.R., detainees complained of the arbitrary and random nature of their transfer to P.N.G., with other asylum seekers - sometimes from the same boat - being released into the community on bridging visas. The conditions, too, were frequently substandard, the U.N.H.C.R. found, noting that the site was envisaged as a temporary arrangement.

The U.N.H.C.R. urged the refugee claims of children be “prioritised” and that children be moved to child-friendly accommodation once preliminary health checks had been completed. “The current policy and practice of detaining children should be terminated as a matter of priority.”

A spokeswoman for the outgoing Immigration Minister, Mr. Chris Bowen said on 3 February 2013 that the Government remained committed to working with the U.N.H.C.R. in operating the facility. “The standard of the facilities and amenities in the temporary (centre) are in line with the living standards and amenities for local PNG residents on Manus Island.” the spokeswoman said. “Detainees have appropriate access to health, mental health, education and recreational services.”

The best that the new Immigration Minister, Mr. Brendan O'Connor could say is that he would visit the Nauru detention centre personally to investigate claims of self-harm and rape. Again, please ? : “personally to investigate claims of self-harm and rape.”

One would have thought that a short, detailed, up-to-date report, written in plain English - not in *bureaucratese* - on the situation (one executive summary and no more than three pages of explanation) by the Head of the Immigration Department of the Gillard Government would have sufficed ! Naaah ! not under the sub-tropical version of the Westminster System !

Mr. O'Connor said that the accounts were disturbing.

He said that the Government would work with the United Nations, Nauru and Papua New Guinea to prevent the reported things happening again.

“I will be visiting both Manus [Island] processing centre and Nauru as soon as I possibly can so I can actually be properly briefed and see for myself exactly the situation in those centres.”

Of course, what Ms. Evers had said was complete news to the Immigration Department, which could only say it wants all allegations of criminality reported to local authorities.

The Department's spokesman said that no allegations of rape had been raised at Nauru since the first asylum seekers were sent there five months ago. And anyway: “A nurse who was employed on contract for a short period of time on Nauru, who has a professional - if not a moral - obligation to report a serious allegation like this to the relevant authority and has not done so and is instead airing them on a TV program.” he said.

So there, it was all Ms. Evers fault, she had chosen the *wrong* venue, *wrong* time maybe ?, *wrong* words ?

“I question why this person has waited until now if in fact there's anything to this claim.” said the Department's spokesman. And the comparison of Nauru to a concentration camp ? That was a total “disgrace.”

It had been five months since the first asylum seekers were sent to Nauru, but immigration processing was still yet to begin. And whose fault was it ? The Immigration Department

said that the timetable to set up immigration processing is a matter for the Nauruan Government. So there !

The Gillard Government simply ignored the U.N.H.C.R. Report. A spokesman for outgoing Immigration Minister, Mr. Chris Bowen repeated an earlier statement in January, that the conditions on the island “were in line with the living standards and amenities” of impoverished local residents on the island. New Immigration Minister Brendan O’Connor, appointed on 4 February 2013, refused to issue a statement.

The release of the U.N.H.C.R. Report coincided with further revelations of the horrible conditions facing refugees in the other Pacific camp, on Nauru. A nurse, Marianne Evers, who worked there for three weeks late last year, told the A.B.C. on 5 February 2013: “I actually liken it to a concentration camp. But the Australians don’t have the guts to kill these people and put them out of their misery, because miserable it is.”

Ms. Evers, a nurse with 40 years’ experience, who had worked at the Curtin, Yongah Hill and Darwin detention centres, had courageously defied a confidentiality agreement that the Australian authorities compel everyone working in the detention camps to sign. She explained that she witnessed numerous suicide attempts and other so-called “self-harm episodes” in her short time on Nauru, and was told by colleagues about sexual assaults suffered by the detained asylum seekers.

And from the Immigration Department ? a “disgrace’ and, instead, the claim of “a very good level of care.”

The protracted election campaign, ahead of the intended 14 September federal vote, will feature a brutal ‘bidding war’ between the major parties over who can enact the most draconian and illegal anti-refugee measures. The leading protagonists rely more and more directly on inciting the always boorish nationalism and latent xenophobia - in homage to general and proud ignorance: that immigration detention is being paid for by the Australian taxpayer, with funds now being allocated from the aid budget due to a shortfall, never really matters. That greater cost is being paid by asylum seekers while they wait in limbo for such inhumanity may be the ‘right price’.

Shifting the debate from detention conditions to the appropriateness of Evers' comments, as the Immigration Department tried to do, is a mere distraction from the real issues at hand.

The whole Australian political stage smells of rancid hypocrisy.

In fact, the populace is not interested in serious matters: since its introduction in 1992, immigration detention has grown into a commercial arrangement costing hundreds of millions of dollars. From a modest number of facilities, run by the Immigration Department, there are now 19 immigration detention centres, alternative places of detention and transit centres in Australia as well as centres on Manus Island and Nauru. Centres are managed by private security companies - more often than not corrupt, but indispensable in a regime of Public-Private-Partnership - and health care staff are contracted by International Health and Medical Services - another private provider. Commercial-in-confidence arrangements restrict personnel from speaking out.

Immigration detention has been condemned for its inhumane treatment, disproportionate cost, mental health consequences and ineffectiveness as a deterrent.

If the conditions at Nauru are so bad that experienced health professionals such as Ms. Evers are forced to breach confidentiality agreements and speak out, one should be listening. As for her comments likening immigration detention to a concentration camp, this is not the first time someone has been compelled to compare the two contexts.

But any discussion, or debate on the subject should be beyond language. Australians should not be bamboozled with disquisitions and sophistry of, and on, language. There are more important questions to be asked. Australians should be asking about what occurs in immigration detention, however remote and far away it may seem, instead of arguing about whether concentration camp analogies are apt.

Whether motivated by the cost, by the adverse mental health consequences, by the human rights issues or by the plight of people facing indefinite detention, there are many matters for Australians to inquire about, deal with and learn.

Instead they do not know, and do not care !

The northern Australian monsoon, which ordinarily runs between December and March, will soon be over.

And there are signs that already more asylum seekers have attempted to reach Australia. On 29 January 2013 at least two Sri Lankan asylum seekers have drowned and a third was missing after their boat smashed into rocks and broke apart off the coast of Java as they headed for Australia. Twenty survivors, including a four-year-old boy and a 10-year-old girl, took refuge on the island of Nusa Kambangan near the coastal town of Cilacap after being rescued by fishermen. The group had been making their way to Australia when the boat's engine broke down. The vessel drifted for hours before it foundered on rocks near Nusa Kambangan. The head of the Cilacap immigration office, Syamsul Bahri, said that the survivors had confirmed that they had left Sri Lanka and made their way to Indonesian waters ahead of the final leg to Christmas Island. He said that the survivors would be moved to an 'immigration detention centre' in Semarang.

Border Protection Command has continued to intercept vessels: HMAS *Bathurst* intercepted a suspected 'irregular entry vessel' with 60 persons on board north east of Christmas Island on the night of 2 February 2013; HMAS *Maryborough* approached another vessel with 47 people on board and two crew members, in the same area, on 7 February 2013; HMAS *Maitland* met another vessel with 88 persons and one crew member on board on the same day; the *Maryborough* rendered similar assistance to a vessel carrying 132 passengers and three crew members on 9 February 2013; on 10 February 2013 ACV *Ocean Protector* encountered a vessel carrying 53 passengers and two crew members on board north-north-east of Ashmore Islands; HMAS *Albany* and *Pirie* captured two boat in Australian waters, carrying 35 persons and two crew members and 10 asylum seekers and two crew members, respectively, on 15 February 2013. The Gillard Government's instituted real disgrace continues !

Several hundred asylum seekers continue to be imprisoned on Christmas Island - only 5,203 kilometres, on Nauru at 4,257 kilometres, and on Manus Island at 3,702 kilometres from Canberra; turned back to Indonesia or sent to Malaysia on conditions which must be regarded as similar to concentration camps; or, after the success of Sen. Carr and distraction of money already budgeted to overseas aid and re-directed to the dictator of Sri Lanka, returned to that hell - where journalists who do not kow-tow get shot to death: Faraz



Shauketaly was working for the English-language *Sunday Leader*, never stopping to criticise the Rajapaksa regime, until 15 February 2013. Have you read about it, Sen. Carr ? On 9 February 2013, a deal was struck with New Zealand for that somewhat good, and truly hospitable, country to take up 150 fortunate asylum seekers. Success !

Asylum seekers and refugees - everywhere but in Australia !

The most tragic story in the drama surrounding asylum seekers and refugees is that involving the *Hazaras*. They are overwhelmingly *Twelver Shia* Muslims and comprise the third largest ethnic group of Afghanistan, forming about 9 per cent - or according to other sources up to 19 per cent - of the total population. More than 650,000 *Hazaras* live in neighbouring Pakistan - mostly settled in Quetta - and an estimated one million in Iran.

Easily recognisable for certain somatic characteristics, by-and-large well educated, industrious and conscious of their rights and duties, they have lived a precarious life for centuries amidst persecutions. There is a shameful silence in 'the West' and even on the part of the United Nations about the systematic ethnic cleansing of *Hazaras*.

*Hazaras* in Quetta have faced most terrorist attacks because of their distinct looks. The deadliest assault was on 10 January 2013, when a double bomb attack on a club killed 100 *Hazaras* and injured nearly 200. *Laskhar-e-Jhangvi*, a franchise group of *al-Qaeda*, carried out the attack; it has been responsible for killing about 1000 *Hazaras* and injuring 2000 in the past 10 years.

The massacre in Quetta shows a complete lack of will on the part of the Pakistan Government to protect the *Hazara* community. In the wake of the massacre, their frustration having turned to rage and desperation, *Hazaras* staged a remarkable protest in Quetta in freezing temperatures. They refused to bury their loved ones but stayed with the bodies out on the street for four days and nights until Pakistan's Prime Minister finally yielded to their demands and dismissed the provincial government.

Pakistan's Government is not only apathetic, it has also been accused of collaborating with the attackers, according to the Asian Human Rights Commission. All terrorist leaders have been released from prison, giving them free rein to attack *Hazaras*.

*Hazaras* have very few choices. Some, who saved enough money, have attempted the risky journey to Australia. Instead of giving them protection, the Gillard Government has indefinitely detained them on Nauru and Manus Island. “271 poets from 88 countries demanded halt to genocide against *Hazara* people” screamed the headlines on 10 February 2013. They signed an open letter addressed to the United Nations Secretary General Ban-Ki-moon, to the President of the European Commission José Manuel Barroso, to the President of the United States, Barack Obama, asking them to insure the security and safety of the *Hazara* people in Afghanistan and Pakistan. One can hear it, coming from the cesspit of the Labor Party in New South Wales, recently extended to Canberra: “What of it ?!?!”

What might have been the rejoinder by the Immigration Department when the news filtered out that advocates for asylum seekers had called an end to holding children in detention following a report that even in low security detention centres children continue to self-harm ? Oh, just another concoction by bleeding hearts which got up to the A.B.C. *Lateline* on 18 February 2013 !

“ Another ‘disgrace’ ? Well, yes, very much corroborated on 20 February 2013 by documents obtained under Freedom of Information laws by the Darwin Asylum Seeker Support Network. The documents recorded 26 self-harm incidents involving children which had occurred at Darwin’s two detention facilities between August 2010 and November 2011. Presently, there are 940 children in the Government’s Alternative Places of Detention - a fanciful, contrived and convoluted word-puzzle standing for: gaols.

A nine-year-old boy - the youngest child known to self harm during a 16-month period - overdosed on 10 painkiller tablets. He told an interpreter that he was aware of the potential harm. A 17-year-old boy had tried to hang himself and another 17-year-old had bashed his head against a metal pole after hearing a case review had failed.

The documents showed that staff of the detention-service provider, *Serco*, were unqualified to judge if the incidents were attempted suicides or self harm, and so all were listed as self harm.

The Immigration Department, which is charged “to care” said that there had been a “significant decrease” in self-harm incidents, but the spokeswoman was unable to say by what proportion incidents had decreased.

Professor Louise Newman said that the incidents were “entirely predictable.” Of course, and the Immigration Department ? a nano-second of embarrassment, maybe - and then back for the same spivvy mendacity !

Soon the electoral campaign will gain momentum; aspiring returnees and new voices on the stage will not tire to praise ‘the wisdom, decency and good heart of the Australian people.’

One may very well wonder !

Was D. H. Lawrence correct when he wrote: “The bulk of Australians don’t care about Australia ... And why don’t they ? Because they care about nothing at all, neither in earth below or heaven above. They just blankly don’t care about anything, and they live in defiance, a sort of slovenly defiance of care of any sort, human or inhuman, good or bad. If they’ve got one belief left, now the [first world] war safety over, it’s a dull, rock-bottom believe in obstinately not caring, not caring about anything. It seems to me they think it manly, the only manliness, not to care, not to think, not to attend to life at all, but just to tramp blankly on from moment to moment, and over the edge of death without caring a straw. The final manliness.” *Kangaroo* (1922).

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