

## Mandatory detention of refugee children: A public health issue?

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*The arrest, detention, imprisonment of a child shall be...used only as a measure of last resort and for the shortest appropriate period of time.*

– United Nation's Convention on the Rights of the Child

*Last night I couldn't sleep. I was worrying about [what the judge [would say]. I said to [my daughters] "when we're free for us it will be like New Year's".*

– Asylum-seeking mother held in detention in Canada with her daughters (three and 11 years of age)

In August 2010, the MV Sun Sea, a ship carrying 492 Tamil asylum seekers arrived off British Columbia's shores. Among the people on board were 49 children including six unaccompanied minors. They had spent nearly three months on the ship, and when they arrived, all 49 of these children and their 25 mothers were detained at the Burnaby Youth Secure Custody Centre (Burnaby, British Columbia) (1; Vasan L, personal communication). These families were detained for lengthy periods, some lasting up to seven months (Vasan L, personal communication).

The Harper government's response to the arrival was unequivocal: some of the asylum seekers were "human smugglers and terrorists" (2). The ship and the people it carried created "significant security concerns", Harper warned (3). This perceived threat fuelled the creation of Bill C-49 (which was staunchly rejected by all opposition parties in the previous government), and its reincarnation, Bill C-4, entitled 'Preventing Human Smugglers from Abusing Canada's Immigration System Act'.

The children who were detained after arrival on the MV Sun Sea are not the only asylum-seeking children subject to detention. The practice of detaining asylum-seeking children is common in Canada. In 2008, an average of 77 children were held in detention each month (4). Children are usually held in immigration holding centres, which resemble medium-security prisons, surrounded by high barbed-wire fences and staffed by guards. Detention is usually based on one of two grounds: either an immigration officer is unsatisfied with a person's proof of identity, or the officer believes the family is at risk of absconding (ie, a 'flight risk') (4). Fewer than 1% of asylum seekers who are detained are suspected of possible criminality (5). While Canada has ratified the United Nation's Convention on the Rights of the Child, which insists that "the best interests of the child" always be a primary consideration, and that a child should be detained only as a "last resort", these principles are a far cry from real life practice (4). Decision makers often do not consider the best interests of the child, and detention is routinely used, not as a last resort, but rather without exploration of alternative measures.

There is growing international literature on the detention of refugee claimant children. In Australia, before 2008, all children seeking asylum were faced with mandatory detention for an average of two years (6). Studies suggested that children's physical and mental health were significantly affected (7-11). Researchers noted a range of disturbances associated with detention including disruptive conduct, nocturnal enuresis, separation anxiety, sleep disturbance, nightmares and impaired cognitive development (10). Some children also developed severe symptoms including mutism, stereotypic behaviours, and refusal to eat and drink (10). In one study, of 20 children assessed, every child older than six years of age was diagnosed with post-traumatic stress disorder and major depression (8). Eighty per cent of those children attempted to harm themselves, and every child older than six years of age had contemplated suicide (8). In younger children, developmental delays were common, as were attachment and behavioural problems (7). Another study demonstrated an increase in psychiatric difficulties among detained children and their parents, leading to a self-reported decrease in the capacity to parent while in detention (7). These families also found that the experience of detention triggered memories of previous trauma, as well as feelings of humiliation and hopelessness (8). In the United Kingdom, findings have been similar. Lorek et al (12) found that child detention was associated with post-traumatic stress disorder, major depression, suicidal ideation, behavioural difficulties and developmental delay, as well as weight loss, difficulty breast-feeding in infants, food refusal and regressive behaviours, and loss of previously obtained developmental milestones. Importantly, these children were detained for relatively short periods of time (on average, 43 days), suggesting that even brief detention can be detrimental to children. The adult literature suggests that harmful consequences of detention may persist up to three years after release (13) – a question that remains to be examined in children.

A Montreal/Toronto (Ontario) study is currently underway in Canada investigating the experiences of detained asylum-seeking children. This investigation is nested within a large, multisite mixed-methods study examining the impact of detention on vulnerable adult refugee claimants. The preliminary results of nearly 20 indepth interviews with children and families are in keeping with international medical literature: detention is highly distressing for children and may have long-term consequences.

### CASE VIGNETTE 1

Three children (four, six and seven years of age) are detained with their mother and father – both asylum seekers – for five days in a Canadian immigration holding centre. They are brought to detention after being 'arrested' by several officers who force the children into a van when they resisted in fear. The mother and

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children are separated from their father who is kept in a separate men's section. Before detention, the children were in good health and functioning well, although the six-year-old had language delay. After detention, the two eldest children developed symptoms of post-traumatic stress disorder and separation anxiety including nightmares, sleep difficulties, tantrums, school refusal and selective mutism. For several months, the six-year-old regularly resisted leaving the house to attend school because of debilitating anxiety. After one year, the children are able to attend school, but remain symptomatic with ongoing anxiety, irritability and sleep difficulties.

### CASE VIGNETTE 2

An 11-year-old girl is detained for approximately one month with her three-year-old sister, mother and father. The whole family is seeking asylum in Canada. The mother and children are separated from the father in detention. Before detention, the 11-year-old child was healthy, a good student, with no previous psychiatric difficulties. During the detention, she developed profound withdrawal (speaking little and spending most days lying on a couch in the common area), food refusal, tearfulness and sleep difficulties. The child was not weighed while in detention, but the mother reported she had lost significant weight. She had no contact with other children aside from her sister. She received a few hours of language tutoring each day in the last weeks of detention. When an interviewer asked her what she understood of the situation, she replied, "we are here because they think we are terrorists". After release, many of the girl's symptoms improved, although she still had trouble separating from her mother, experienced regular nightmares and had difficulty sleeping.

### DISCUSSION

Research is progressing, however, at a slow pace compared with the political reality. With Bill C-4, it will be even easier for authorities to detain asylum-seeking children. According to this act, the Minister has the power to 'designate' any group of people entering Canada without official identity documents – including children – as 'irregular'. The legislation does not define 'group', meaning that any person who arrives with another person could be designated. The consequences of the designation are dire: mandatory detention without the right to a hearing for 12 months. Nowhere in the legislation are children or vulnerable persons exempt from detention. Although the Minister may order release in exceptional circumstances, this is purely discretionary. In Australia, discretionary powers to transfer detained refugee children to community facilities or release them on temporary visas were virtually never exercised, even in cases involving years of repeated self-harm and suicide attempts documented by treating physicians. Sadly, there is no assurance that such matters would be different in Canada.

One-year detention is not all designated claimants could face. The legislation contains several other elements designed to 'deter' claimants (14). Of most concern to child advocates is the five-year suspension of access to permanent residence status for accepted refugees who have been designated. Without permanent resident status, refugees will not be able to sponsor their family members to join them in Canada. All too often families – including parents and children – are separated in the process of fleeing persecution. This part of the bill will add a five-year delay to the unification of parents and children, mothers and fathers. Given the evidence in the literature about the harmful effects of family separation on any child and, in particular, on traumatized children (15,16), this aspect of the law is of grave concern.

Prominent voices have spoken out against the legislation. The Canadian Bar Association has voiced strong opposition to the bill, which "violates Charter protections against arbitrary detention... as well as Canada's international obligations respecting the treatment of persons seeking protection" (17). Amnesty International has also stated that the bill will lead to human rights violations (18). At the Refugee Health Conference held in Toronto, Ontario, in 2011, health professionals expressed their concern regarding current practices of detention, specifically the conditions under which asylum-seeking families are arrested, the disruption of children's schooling and support networks, and the potential reactivation of trauma in children who have suffered from organized violence in their homelands.

Paediatricians, child psychiatrists, family physicians as well as paediatric nurses, social workers and counsellors are committed to promoting the well-being of children and protecting the more vulnerable among them. There is an urgent need for collective advocacy for asylum-seeking children who may be adversely affected by these changes in policy. There is robust evidence that refugee children face considerable pre- and postmigratory adversity, and that this has important mental health consequences (16). Bill C-4's mandatory detention and delays in family reunification are very likely to increase the stress-related problems in this vulnerable group. As clinicians, we should advocate through our professional associations for the best interests of the child, much as our colleagues in the United Kingdom did in 2009, when they called on the government to stop detaining children (19). In keeping with Canada's obligations under the United Nation's Convention on the Rights of the Child, and with our professional duty to prevent harm, we must oppose the detention of asylum-seeking children.

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