

# Australian government denounces court for ordering release of refugee children

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The Howard government in Australia has attacked a court decision that challenges the indefinite imprisonment of children under the government's notorious policy of detaining all asylum seekers. Determined to keep children behind razor wire and prevent any breach in its policy, the government has announced it will appeal to the High Court against a Family Court decision to temporarily release five children.

The open-ended detention of refugee children is in clear violation of international law. Article 37 of the United Nations Convention on the Rights of the Child states that governments must not "arbitrarily" deprive a child of liberty. It specifies that the "arrest, detention or imprisonment of a child ... shall be used only as a measure of last resort and for the shortest appropriate period of time". The Refugee Convention also restricts the indefinite and unreviewable detention of asylum seekers.

The government's own Human Rights and Equal Opportunity Commission has declared that the policy of locking up child refugees is illegal. Moreover, the Full Family Court ruled in June, based on Australia's ratification of the Convention on the Rights of the Child, that the indefinite detention of children under the Migration Act was unlawful. The Court found that it had jurisdiction over the welfare of child asylum seekers and could release children it considered at risk of harm.

On August 25, the Full Family Court exercised this power for the first time. It ordered the temporary release of five children, aged 5 to 15, from the remote Baxter camp after 32 months in detention and placed them under foster care through a church welfare agency. The three judges found that detention was so "detrimental" that, even without their parents, the children would be better off in the community.

The court found evidence of "the children being exposed to violence and other inappropriate behaviour in the setting of the detention camp". A psychiatrist's report had warned that the elder boy was "at serious risk of long-term psychological harm and damage" and that for him to stay in detention would be "life threatening" due to suicidal

impulses. The judges concluded there were "serious risks to all of the children" and that they should begin rehabilitative therapy as soon as possible.

The ruling was only a preliminary one, pending a full hearing of the case at the end of this month. Whatever the final outcome, the parents will remain in detention, although the mother is currently in hospital with complications from her 32-week pregnancy. In the meantime, the children are confined to one residence, must be ready for deportation at any time and must report to a specified police station every week.

The Family Court made no challenge to the general operation of the mandatory detention policy, which has been in existence since the previous Labor government introduced it in the early 1990s. The family is one of a growing number who have exhausted their legal appeals against refusal of refugee status but who have not been deported because no country will admit them. As a result, they are being detained indefinitely.

Despite the family's insistence that they are Hazaras who fled persecution in central Afghanistan, they lost a final appeal in February to the High Court against deportation. They have been in a legal limbo since then. Australian authorities have arranged to escort them to the Pakistani city of Quetta because, unlike Afghanistan, Pakistan accepts refugees who have been forcibly removed. However, the deportation has been stalled due to security assessments that the city is unsafe for Australian officials.

Despite the extremely limited character of the Family Court decision, the government denounced the judges and immediately appealed to the High Court, which will hear the case on September 30. Immigration Minister Philip Ruddock charged the judges with "judicial activism", declaring on Australian Broadcasting Corporation radio: "Judges are unelected and they're in effect determining policy, rather than establishing what the law is."

Sweeping aside the copious evidence of imminent danger to the children, Ruddock accused the court of expediting the ruling for political reasons. "One's not supposed to impute

the integrity of judges . . . but they seem to have a desire to be involved in dealing with these matters and dealing with them quickly because they say people are in detention.”

The government is determined to continue its incarceration of hundreds of children, most of whom it has detained for over two years, despite growing concerns raised by psychologists, lawyers and health workers. A series of reports has found that the children are suffering not only severe educational and recreational deprivation but also serious mental health problems.

One report released in May, *The Politics of Exclusion and Denial: The Mental Health Costs of Australia's Refugee Policy*, (<http://www.chilout.org/information/reports.html>), concluded that “children in detention are at high risk of emotional trauma since parents are unable to provide for them adequately or to shield them from acts of violence in a degrading, hostile and hopeless environment”.

A team of 12 psychiatrists examined the mental health of 10 families, from one ethnic group, in one of the detention camps. Because the authorities blocked access to the asylum seekers, a series of standard tests was conducted over an eight-day period via telephone.

Most of the 22 children tested, aged 3 to 19, had no mental health problems upon arrival in Australia. After being locked up by the government for an average of 28 months, all had developed at least one psychiatric disorder and 80 percent had developed multiple disorders.

There were sharp increases in post-traumatic stress disorder, oppositional defiant disorder (children who consistently show signs of anger and resentment, defy their parents' wishes, deliberately annoy people and lose their temper), separation anxiety disorder, enuresis (bedwetting while asleep), suicidal ideation (thoughts of committing suicide) and self-harm.

All 19 children who were old enough to report listed boredom, isolation and seeing people self-harm as distressing experiences in detention.

There are currently 101 children in mainland refugee camps—40 in Baxter, 21 in Port Hedland, 9 in the Woomera housing complex, 30 in Sydney's Villawood and 1 in Melbourne's Maribyrnong. The camps at Baxter, Woomera and Port Hedland are in desert and semi-arid locations. All the children at Port Hedland and Baxter have been detained for more than 18 months. One boy born in detention remained imprisoned for nearly five and a half years before being granted a Temporary Protection Visa.

Some 100 children and 300 adults are imprisoned on Nauru, a tiny former Australian colony in the Pacific. An artist, Kate Durham, who secretly visited the Nauru camp last year, said the conditions were filthy, with widespread skin and stomach infections. The water on Nauru is often

contaminated with high salt levels and is available generally for only six hours each day.

Acting on orders from Canberra, Nauru's government has banned journalists and lawyers from accessing the camps. The former head psychiatrist at the camp, Dr Maarten Dormaar, quit his position last year, describing the camp as “a psychiatrist's nightmare”.

A number of incidents over the past two months have further highlighted the destructive impact of Australia's immigration policy on children. An 18-month-old Australian-born boy could lose contact with his mother after Immigration Department lawyers won a case to deport her to Russia.

Immigration authorities have taken the boy from the woman, who is locked in Sydney's Villawood detention centre, and placed him in the custody of his Australian father. The infant visits his mother in the heavily-guarded centre three times a week. The woman, originally from Vladivostok, said she would rather stay in detention and have some contact with her son than be expelled. “If they don't want to release me, and I have only [one] choice to see my son, I will take the choice to live in Villawood,” she said.

Immigration officials have locked-up at least two other women with Australian-born children, one from Malaysia and one from the United States, in Villawood while they challenge their deportation orders.

The government is determined to maintain its cruel treatment of children in order to prevent families from seeking refuge in Australia. Ruddock and Prime Minister Howard have repeatedly insisted that the mandatory detention of asylum seekers is an effective “deterrent” against refugees, despite the fact that the Refugee Convention also prohibits any punishment or discrimination against people forced to flee persecution.



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