OP on Children in Immigration Detention

This year we celebrate two important anniversaries of direct relevance to mandatory detention of children in Australia. Twenty years ago, in May 1992, the Keating Labor government introduced the *Migration Reform Bill* that created Australia’s mandatory detention system. Gerry Hand, the then Minster of Immigration, argued it was needed to stop a perceived influx of Cambodian and Vietnamese refugees. Back then the actual number of people who arrived by boat was limited to 158 in 1990-91 and 78 in 1992, and the legislation removed access to judicial review and mandated a detention period for boat people of up to 273 days. Two years later the 273 days limit was removed, allowing for indefinite detention.

Eight years ago, in April 2004 the Human Rights Commission transmitted to then Attorney General Philip Ruddock a report of my inquiry into mandatory detention of children who arrived on boats over the period 1999-2002. On Budget day in 2004 Tony Abbott, then Leader of the House, tabled the “*A Last Resort?”* report in Parliament. The inquiry found that between 1 July 1999 and 30 June 2003, 2184 children were detained after arriving by boat to seek asylum in Australia. Approximately 14 % of those children came to Australia with no parents, and most of them came from Iraq, Iran and Afghanistan.

The inquiry found that many children spent a very long time in immigration detention without proper schooling and health care – the longest time a child spent in Australian immigration detention before being found to be a genuine refugee and released was five years, five months and twenty days. The inquiry also documented that children detained for long periods of time were at a high risk of acquiring mental illness. In fact, the face to face meetings with severely traumatized and mentally unwell children and their parents was the most traumatizing experience of my work as Human Rights Commissioner.

The report concluded that Australia was clearly in breach of the Convention on the Rights of the Child which it ratified in 1990, which mandated that detention of children should be “*a* ***measure of last resort”*** and “*for the* ***shortest appropriate period of time”***;and that any detention of childrenmust be a **proportionate response** to achieving a legitimate aim. In my view, Australia’s mandatory detention policy, which allowed the long term imprisonment of children in harsh outback prison camps, was one of the worst human rights violations in Australia’s post World War II history.

The inquiry also found that the vast majority of children were recognised as refugees and subsequently released into the Australian community with their parents. For example, almost 98 percent of the Iraqi children and well over 95% of Afghani and Iranian were recognised as refugees. We have since discovered that children damaged by their time served in detention require mental health support for years, and that some of them have won large government compensation payouts.

The key recommendations of the Inquiry were that children with their parents be released immediately into the community and that detention laws should be amended to comply with *the Convention on the Rights of the Child.*

The initial response was a press releaseby the then Minister for Immigration Hon. Amanda Vanstone MP who stated the Report was backward looking and unfair to the Department of Immigration**.** But Contrary to popular expectations, on 11 June 2004 the then Prime Minister John Howard publicly declared that: *"It is the Government's intention to dwindle the number of children in immigration detention to zero",* and in fact soon after this the government released the vast majority of children and their families. On 24 August 2004 an announcement was made by the Prime Minister that “*there are only two children in immigration detention centres”*. And here I wish to acknowledge the positive role in influencing government decision played by Petro Georgiou and his “Gang of Four”, and by the then Prime Minister’s Chief of Staff and now Senator Arthur Sinodinos.

In response to my report, the former Coalition government also introduced a range of changes to the *Migration* *Act 1958*. The most significant change was the inclusion into the Act of a principle that “*a minor shall only be detained as a measure of last resort.”* The harsh Howard’s border protection policy has also ensured that boats stopped arriving. In 2003-04, only 53 people arrived in Australia by boat without a visa. Consequently in 2005, we all held hope that the mandatory, long term detention of children in Australia was a thing of the past. In fact, for the three years following those changes, children were not been detained in anything other than exceptional circumstances and for very short periods of time.

The Labor government, since coming to power in late 2007, has dismantled the harsh border protection measures inherited from the Coalition Government – it abolished the Pacific Solution, closed detention centres on Nauru and Manus Islands and abolished Temporary Humanitarian Visas. As a result we are again witnessing a growing number of refugees arriving by boat on our shores and a growing number of children as immigration prisoners in Australia. The assurances given by both the Prime Minister Gillard and Immigration Minister Evans that no children will be held in detention centres have proved to be hollow. Today, on the 20th anniversary of mandatory detention, and eight anniversary of my report, some 428 children are locked up in secure detention facilities around the country. This is despite the fact that there are existing well functioning community based alternatives for child asylum seekers, as demonstrated by the 691 children currently living in the community facilities.

Looking at The Australian’s analysis of the current budget, the government proposes to spend over $1 billion in 2012-13 on asylum seekers. It is further projected that this cost will increase to $3.5 billion by 2015-16. This is the outcome of a sharp increase in boat arrivals – in this FY we can expect over 7000 people arriving by boat; just in the past fortnight 670 arrived. That means that the number of children in immigration detention will continue to grow as the government continues its inhumane and ineffective policies of mandatory detention. This also means, based on the past track record, that the vast majority of them will be released into the Australian community after their health has been damaged.

International examples show that detention of children can be prevented altogether. Holland and Belgium recently adopted policies preventing the detention of children and their families. We once again need the Prime Minister to assert some leadership and intervene decisively to release all the children held in detention with their families. Long term, mandatory imprisonment of children is certainly not a Labor party value. It is certainly un-Australian and in breach of international human rights agreements that we voluntarily entered into. It is a time now to release the children, like Howard did single-handedly in 2004 and to show some compassion and common sense.

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