

FREE CHILDREN IN DETENTION

The Prime Minister should show leadership and do what former PM John Howard did

SEV OZDOWSKI

YET again mandatory detention is under challenge in the High Court. David Manne, a human rights lawyer, acts on behalf of an unnamed Sri Lankan man who has been in detention for more than three years after receiving a negative security assessment. Mandatory detention also affects children. Recently, also because of a negative ASIO assessment, a Sri Lankan refugee, Ranjini, and her two young sons were indefinitely detained in Sydney's Villawood Detention Centre. Mandatory detention "is like being sentenced to life imprisonment without even having been charged, tried and convicted," says Manne.

This year we celebrate two anniversaries. 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 minister of immigration, argued it was needed to stop an influx of Cambodian and Vietnamese refugees. The actual number of people who arrived by boat was 158 in 1990-91 and 78 in 1992, and the legislation removed access to judicial review and mandated a detention period for boatpeople of up to 273 days. Two years later the 273-day 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 July 1, 1999 and June 30, 2003, 2184 children were detained after arriving by boat to seek asylum in Australia. Approximately 14 per cent 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 — up to 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. Meetings with severely traumatised and mentally unwell children and their parents was the most traumatising experience of my work as human rights commissioner.

The report concluded that Australia was in breach of the Convention on the Rights of the Child, 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 children must 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 per cent of the Iraqi and well over 95 per cent of Afghani and Iranian

children 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 release by the then minister for immigration Amanda Vanstone, who stated the report was backward-looking and unfair to the Department of Immigration. But on June 11, 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. On August 24, 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". Howard's border protection policy 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 after those changes, children were not being detained in anything other than exceptional circumstances and for very short periods of time.

The Labor government has dismantled the border protection measures inherited from the Coalition government. As a result we are again witnessing a growing number of children as immigration prisoners in Australia. The assurances given by the Prime Minister that no children will be held in detention centres have proved to be hollow. More than 420 children are in detention despite the fact that there are community-based alternatives, as demonstrated by some 690 children at present living in community facilities.

The government proposes to spend more than \$1 billion in 2012-13 on asylum-seekers increasing to \$3.5 billion by 2015-16. In this financial year we can expect more than 7000 people arriving by boat so the number of children in detention will continue to grow.

We need the Prime Minister to show leadership and intervene decisively to release all the children held in detention with their families, like Howard did in 2004. If she does not do it, the High Court will soon order her to do it.

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