

Lepers, Witches and Infidels & It's a Bug's Life

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An eyewitness account of a court case regarding the lawfulness of children in Australian immigration detention.

Lepers, Witches and Infidels – Or Shall We Just Call Them Refugees?

In the space of four hours on 28 July 2003 the blue Adelaide winter morning turned to bleak rain and wind. In the climate-controlled windowless Room R, on Level 5 of the Family Court, the elements didn't have any impact upon the crowd of 60 human rights observers, indigenous elders, refugee activists, lawyers, spooks in ill-fitting suits, journalists, translators, detention centre drones and burly Federal Police. Just like the five Afghani children¹ whose futures were at stake were unable to move us directly by their actual presence. Like the weather, the infamous five existed outside of this impersonal room, imprisoned for two-and-a-half years in the liminal space of immigration detention, between the floor and the sky.

Their appearance in the courtroom could have provoked a very different atmosphere, an interruption of the theatre of justice in the British colony² with its high church signs of gowns, deep bows, and learned friends. The children's absence mirrored the way the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) consistently referred to them as "unlawful non-citizens"³ who, since the failure of their appeal to the High Court in February 2003, "have no rights of protection" under Australian law.

In recent years the government has waged a crushing, highly racialised propaganda campaign⁴ against a few thousand asylum seekers, 'boat people' who arrive after arduous

and dangerous journeys⁵ from mainly Middle-Eastern countries – Iran, Iraq and Afghanistan. Mandatory detention of asylum seekers in often remote secure facilities was brought in by the Labor government in 1992, replacing the community-centred system of open migrant hostels, and has been vigorously pursued by the conservative Liberal government. A strong body of existing evidence points towards direct government involvement with the sabotage and sinking of the SIEV X, causing the deaths of 353 refugees, mainly women and children.⁶

Options for those seeking shelter from persecution have worsened: years of detention in prison camps, legal challenges followed by forced deportation, or a begrudging recognition that the original claim for asylum status was valid. Or release on a Temporary Protection Visa (TPV) valid for three years, after which the onus is on refugees to prove that it is unsafe to return home. Thus, applicants are kept in a continual state of uncertainty.⁷ These kinds of grossly unjust, immoral and illegal acts have provoked thousands of Australians, in big cities as well as small country towns, to establish connections and friendships with refugees in and out of detention, working together to change the laws.

Looking around the courtroom, I wonder if some here have been involved in illegal direct action such as assisting escapes from the infamous Woomera camp, and harbouring ‘escapees’ in safe houses.⁸ I definitely see advocates who tirelessly chip away at the mechanics of power, who form part of the net of people who engage inside and outside law, as situations require.

The children’s father was present, flanked by three tagged Australasian Correctional Management (ACM)⁹ guards in civvies and another company man looming in front of the courtroom door. Mrs. X, seven months pregnant, had been rushed to hospital.

All rise for the entry of Justice Stephen Strickland.

Today is the hearing of two interim applications. The first recommends the children reside in a suburban home provided by a welfare agency, with regular parental contact. The second seeks that, pending final determination of the legality of their detention, they be released from immigration detention.

There is a lengthy preamble whose phrasing is objected to by Mr. X on the grounds that he is an Afghani national, not a Pakistani. The government has disputed his nationality since two of his children attempted to seek refuge in the British Consulate in Melbourne.¹⁰

The applicants requested that before the Final Hearing the judge visit Baxter Detention Centre,¹¹ where the father and his two sons now live (and possibly the Woomera Housing Project¹² where Mrs. X and her three young daughters have been living since June). They claimed that photographs of the centre don’t represent the real circumstances in which the children are living.

Referencing the recent Full Court decision on the Palestinian refugee Al Masri,¹³ the judge clarified that the Family Court can release children on an interim basis from immigration detention.

The applicants declared, “On one side we have the best interests of the children and on the other the interests of the Minister”. Mrs. X won’t cooperate with regard to leaving Australia because of a fear of what would happen on her return to Pakistan. They noted that the DIMIA affidavit admits that the security situation in Quetta, a town in Pakistan near the Afghanistan border, is dangerous to any security officer who would accompany the family

in a forced removal. So the situation of detention rolls on indefinitely: it is unclear for how long Quetta has been unsafe, or if it will ever be deemed safe. DIMIA could force the issue if they find a willing nation to accept the family, but they are getting no closer to finding this place, and therefore the detention appears to be indefinite.

Speaking on behalf of the family, David Haines, Queen's Counsel (QC), asked, "What constitutes the best interests of the children?" Although the Immigration Minister asserts that the children are in a stable situation and should not be separated from their parents, the two brothers are in Baxter and the three sisters have been in Woomera in 'home detention' with their mother – and the oppressive 24-hour presence of ACM guards. The status of 'family' has already been destroyed. The affidavit of psychologist Ms. Karen Fitzgerald recommended that the children be released to live with their parents in the community with help from a supportive network, and that restoration of the children's psychological well-being begin immediately.

The judge questioned the implications of DIMIA's High Court Appeal to overturn the recent empowerment of the Family Court.¹⁴ The Family Court has new power to give orders pertaining to the accommodation, health and education of asylum-seeker children who are deemed to be at "unacceptable risk" of "significant and/or permanent damage". The applicants noted that under the Migration Act the Minister has the power to authorise any person to act as a detention officer, and that many places can be defined as detention sites. For example, children can be placed under the charge of community workers even in their own homes.

DIMIA declared that the judge was unfairly being asked to "forcibly remove" five children from their parents and place them with two "non-professional carers". Protection visas have been refused because the family is from Pakistan, not Afghanistan. Mother and children have lost all rights. The father's visa has been cancelled. Family Court has the power to release the children if detention is found to be unlawful, but not otherwise. The detention of children will be unlawful if there is not a reasonable likelihood of removal from Australia. Indefinite detention is not the same as "not short" detention. The woman and children are from Pakistan. Obtaining the necessary travel documents for deportation can take a long or a short time. These are unlawful non-citizens who have no right to remain in Australia. The Minister is under a statutory obligation to remove them. They have no further right to stay; they will be removed. These children as a matter of law must be removed from Australia. It is important to bear in mind that immigration detention is not a punishment. Its purpose is to separate unlawful non-citizens from the Australian community.

Silence in the courtroom.

DIMIA continued...

Immigration detention is voluntary in that it can be ended by a refugee agreeing to leave the country. Mrs. X's unborn child will only be an Australian citizen if the parent is a citizen or permanent resident. Baxter is a purpose-designed centre, with improved accommodation. Medical facilities available. A balanced diet. None of the children has a need for psychological monitoring. They haven't seen a psychiatrist because they haven't needed one. The children are healthy and well-cared for. It will be a cruel psychological trick to release the children as it would give them false hope that they could stay in Australia.

The judge stressed that the applicants needed to provide more information on the proposed housing and schooling arrangements for the children, should he order their release. Because he had much new material to consider, he adjourned the handing down of his landmark decision.

The Judgment, or, It's a Bug's Life

Day 3.

Tuesday, 5 August 2003. 10.30 am

Courtroom R is crowded. Today the mother of the children is here in a hospital wheelchair. She is wearing blue, with a blue headscarf. The children, five small pockets of doomed Middle-Eastern anti-matter, five illegal non-citizens to the Australian government and its honchos, are not here. Aged between 6 and 15, each has so far been in detention for 947 days.

We are here for the handing down of Justice Stephen Strickland's decision as to whether it is in the children's best interests that they be immediately released from immigration detention. Aboriginal artefacts and paintings decorate the otherwise bland green room. Quiet conversations, greetings and bodies criss-cross this space of 'civilisation', far removed from Fortress Baxter and the rocket range 'dongas' at Woomera. The eldest two boys had sought, and gained, illicit freedom for a few days around 27 June 2002, before being shafted back to detention. Such impudence must be punished, and barring heads on pikes, detention and deportation is the state's preferred method.

Proceedings start at 11:05 am. The judge is unwigged and frocked up in a garment of Jacobean simplicity. DIMIA furnishes two affidavits – one by solicitor Katherine Bean attached to exhibits of the Case Management Plans by ACM officers for each child, the other the expert opinion of Helen Turner, an ACM contract nurse who allegedly has regular contact with the children.

Ms. Karen Fitzgerald, a psychologist and Director of Child Protection Services attached to the Department of Paediatrics and Child Health, School of Medicine, at Flinders University in South Australia is called as a witness, and swears an oath of honesty on the Bible. She is a woman of a certain age and grace who will maintain her professional resoluteness throughout the ensuing cross-examination by DIMIA barrister Charles Gunst, QC.

Ms. Fitzgerald describes the affidavits as observations of, not conversations with, the children. She states that it was difficult to comment on them, as "what is not here is probably as important as what is here".

Next is her cross-examination by Mr. Gunst, a portly being doing the devil's work, assisted by Martyn Kennedy, a well-scrubbed younger man, and the silver-streaked Ms. Bean. Gunst states that irrespective of where the children are staying, they will require ongoing expert monitoring and assessment. Ms. Fitzgerald counters that they need ongoing therapeutic help.

Mr. Gunst requests clarification of Ms. Fitzgerald's qualifications. She explains that she is a psychologist with a BA and a Masters in Criminal Psychology from Flinders University. Gunst notes that she is not a medical practitioner nor a psychiatrist nor a surgeon, and possesses no tertiary qualification in psychiatry, nor a Diploma of Psychological Medicine.

Her function is neither to diagnose mental illness nor to prescribe medicine. She is not a registered or mental health nurse. She cannot do medical examinations, nor diagnose neuroses or psychoses. Fitzgerald is unfazed.

Mr. Gunst has an existential moment. "Would you accept that psychiatry is the science of the medical treatment of diseases of the mind, and that psychology is the science of the study of the soul or the mind?"

It is curious to hear a digression on the soul in this most soulless of contexts. Fitzgerald says that psychology is more multi-faceted in its diagnosis, and that Gunst's description did not cover the range of assessments and treatment of disorders achieved by a variety of therapeutic techniques.

Mr. Gunst continues by stating that Fitzgerald had not been engaged in treating the children, her role being to interview the family and to provide a series of reports, dated 18/09/2002, 21/07/2003 and 1/08/2003, and that these reports had been prepared in knowledge of extant or potential court proceedings. His way of speaking gives a slightly dirty edge to everything. He rhetorically muses as to whether the role of an expert is to be impartial and objective. According to Fitzgerald, her role was to write a report with a view to developing a plan. Gunst asks if she was aware that Australian legislation provides for mandatory detention for visa-less non-citizens. He slides a second question in on this one's heels. "Are you a supporter of mandatory detention of unlawful non-citizens?"

You can almost see Ms. Fitzgerald suspended in the witch's chair above the icy black pond here. "Recant, and your eternal soul, if not your mortal body, shall be saved!" She replies, "I could talk about what I know, about mandatory detention in other countries, what it's for".

QC continues, "Are you a supporter of the method of mandatory detention used in this country? Dealing with children who are unlawful non-citizens, are you against the idea of their mandatory detention?"

Ms. Fitzgerald states that she believes mandatory detention is destructive for children.

QC queries, "Was that a view you held before you prepared these reports?"

Ms. Fitzgerald replies, "It is my responsibility to conduct assessments with a view to acknowledgement of my own views. [...] I am fastidious in being impartial".

QC Gunst barks, "Before you spoke to any child you had the predetermined view that their best interests would be being released from the detention that the Parliament of Australia has ordered?...You asked Mrs. X not only about herself but about her children? You've reported these comments because you accept them as true statements about the children?"

Ms. Fitzgerald replies, "I reported them because that's what she said".

Mr. Gunst declares, "You noted that Mrs. X talked about her second son who tried to hang himself. You accepted this. Putting aside the normal teenage-boy difficulties in eating and sleeping. The 12-year-old who tried to hang himself. The 12- and 14-year-old children stitched their lips together. These are dramatic assertions describing the behaviour of very disturbed children". The lawyer asserts that Ms. Fitzgerald had seen no evidence that any of the alleged events had indeed happened, and that the "comprehensive management plan" shows that no such events occurred. "If these most dramatic or florid episodes

described to you had never happened, you would have to rethink your report”.

Ms. Fitzgerald agrees.

“Florid” is a term used to describe aspects of delusions or episodes experienced by people in extreme mental states such as psychosis. Who is “florid” here – the ‘bad mother’ (bad because it is she who is responsible for her children’s situation, by seeking asylum), the gullible psychologist, or the children themselves, “illegals” who have possibly broken the law by escaping from immigration detention?¹⁵ The word ‘florid’ in its common usage could apply to Gunst himself with his rosy jowls and well-birthed girth.

Mr. Gunst complains that the witness provided no evidence of any previous trauma to which the children had been subjected. Ms. Fitzgerald says something about coming from another country.

The acoustics in the room are bad, and everyone in the gallery is leaning forward, straining to hear. This is a landmark human rights case and it is important to hear everything. But maybe the court administration has blown its budget on the safe Aboriginal art rather than efficient audio (no in-your-face Gordon Hookey artworks, no Indigenous artists making radical critique, just wooden artefacts).

QC (in an attempt at humour): “You’re not suggesting that arriving in Australia is a trauma?”

Ms. Fitzgerald didn’t laugh. “My assumption is that they did not travel easily to this country”.

QC: “Mr X. left for Australia without a word to his wife and children. Would this create trauma?”

Ms. Fitzgerald: “Yes”.

QC: “Your report suggests that the impact of the children being in Woomera has been superimposed by previous trauma”.

Ms. Fitzgerald: “My assumption is that seeking refugee status is going to involve trauma”.

Moving from the microscope to the dissecting table, Gunst polishes his scalpel, claiming that no attention had been given to existing family discord or pathology, and that there was a need to know whether it was a happy or violent relationship. Was Ms. Fitzgerald aware that Mrs. X had been assaulted by her husband recently, necessitating her transferral to Woomera?

The psychologist says she is not aware of this.

Mrs. X immediately asserts that her husband didn’t hit her. After the hearing, news circulates that Mrs. X was angry at this slander, describing her husband as “a loving husband” who had helped her transfer to Woomera so she could prepare the foods she needed during pregnancy.

Gunst, earnestly: “The release of the children is not entirely without risk [...] They are in Baxter or Woomera with their parents, people who speak the same language and have the same faith”. He goes on, “Releasing the children into an English-speaking community house which does not share the same faith poses a very great risk to their emotional well-being”.

(This is said about children who amongst them have shared 4,735 child days in a high-security immigration prison. How can they ever recuperate 4,735 days of childhood?)

Ms. Fitzgerald suggests that the experience of detention is the lens through which the children are dealing with the rest of the world. "There is not a lot of restoring capacity when the children can't see past that impediment. There is a tendency for children in general to blame themselves for their predicament, internalising responsibility, which causes a significant psychological impact. The most significant trauma is that the children think that they are responsible for being in detention. No amount of professional help administered within the detention centre environment will allay this; therefore, continuing detention for these five children is the very worst scenario".

Mr. Gunst returns to interrogation about schooling, homework, and bedtimes. Shooting his final arrow for the morning, he opines, "It is easy for children to be presented as flat and depressed, but when we look at these observations [Management Care Plans] we see 'happy carefree children'".

After lunch, the QC pulls out comments from the individual management plans on each little bug-child, creating a joyful fantasy world of magic faraway trees and Famous Five adventures.

We are told that Child A, the eldest, has a record of breaches of security, assaults and poor behaviour. At the same time he is a 'capable student', displays a 'keenness to learn', is 'increasingly approachable' and a 'polite, bright student'; all traits which DIMIA proposes are inconsistent with 'flat, depressed behaviour'. The psychologist responds that these observations are not surprising, as school can be a place where children present like this.

(In 2002 I attended two days of the Human Rights and Equal Opportunity Commission's [HREOC] public national hearings on Children in Immigration Detention.¹⁶ Amongst the witnesses were teachers who had been sub-contracted. They were not provided adequate books or materials, only offered six-week contracts lest they form meaningful relationships, were required to wear the regulation ACM guard overalls, and forbidden to act in a natural, warm manner. Conditions were so bad that even contract employees suffered stress-related illnesses.)¹⁷

Mr. Gunst continues with his fable of Child A, mentioning soccer and a trip to the cinema, literally saying, "A good time was had by all!"

Ms. Fitzgerald replies that it was difficult for her to comment on disconnected observations, often unsigned case notes offering no clue as to their authors, their expertise, or the context in which they were made. She states, "Depressed children don't necessarily always present in the same way. 'A' is passionate about learning. He has been in detention for some time. He's learnt how to respond, in an institution. These are things he adores".

Of the second eldest child, DIMIA claims that he is "pushing boundaries in terms of asserting independence". The psychologist reminds us that because "the children are living in a restricted and impoverished environment, to extrapolate from normal children is risky".

Ms. Fitzgerald says that she had worked for 15 years in child protection and has seen many situations of poverty. "It was still a shock for me to visit Woomera and see the conditions. When I saw Baxter Detention Centre, again I was shocked. If you look at these children out of detention, you would expect to see that children would move around the neighbourhood and home without going through security. All meals wouldn't necessarily be

at a set time. Think about a normal environment and look at how the children live; not even in a minimal way does detention come close. We are talking about psychological safety, where children grow up with parents in charge of their lives, not an institution”.

Gunst returns to his romper-stompering. “You came to your task with a predetermined view that no children should be in detention”. Ms. Fitzgerald disagrees, saying that assessment involves a complex mix of a number of aspects of a child’s life. Mr. Gunst, QC, retorts, “Gym, gardening, soccer, basketball – you don’t seriously call that impoverished?”

Ms. Fitzgerald replies, “The notes capture moments of activity. Children have a psychological life as well”. She claims that the case management notes were not diametrically opposed to what she had reported but formed part of a bigger picture.

Gunst contends, “These observations are of a happy boy having fun”. He moves on to Child C, the eldest of the family’s three daughters. He chooses observations from the ACM notes which generate a spooky Lucien Freud superrealist painting of “a well-behaved young girl”, “generally happy, polite, cheerful”, “doing well at school”.

The psychologist states, “This is a child who internalises her feelings. She is overly accommodating. I would be concerned. This list appears to describe a child who is compliant. I would ask questions about what that compliance means”.

DIMIA’s lawyer says that the notes show the children are coping well, and are happy and well looked after. Not having any new “evidence” to support this dogma, Mr. Gunst dredges up his pre-lunch shock-and-awe tactic, designed to intimidate a cautious judge into toeing the line. He asks reprovingly, “If the children are taken out of detention, put into a new school, then after one day, or a month, are uprooted again and taken back to immigration detention, isn’t there a very grave risk to their mental well-being?”

Ms. Fitzgerald repudiates this, saying the children needed ongoing therapeutic intervention away from detention.

Mr. Gunst declares very little benefit would accrue in a month of therapy. Here is the anomaly of DIMIA’s position – these are “happy and carefree children” and yet there is concern about the length of restorative therapy they need. Mr. Gunst suggests that Ms. Fitzgerald had a false view of the children and that there is no evidence of an attempted hanging. She replies that Family and Youth Services (FAYS) have documented the suicide attempt.

“Wouldn’t it be a cruel trick to release these children for a short period of time, only to be re-detained?” Gunst asks. Ms. Fitzgerald opines that this would not be the case if the children understood the context.

Mr. Gunst insists, “Do the children understand that they have no prospect of getting a visa? It poses quite a considerable risk letting a child – a fifteen-year-old young man – into the community. Isn’t he much safer being observed, rather than being out, unsupervised? A High Risk Assessment Team exists at Baxter”.

Thus ends the cross-examination.

David Haines, QC, the barrister for the children and their parents, asks Ms. Fitzgerald if any of Mr. Gunst’s questions gave her reason to change the opinions in her reports. She replies that the thought of the children being released for just a day or a week would give her pause.

Accusing DIMIA of being selective and only reading the happy parts of the Management Notes, Mr. Haines says that the documents in their entirety showed a different perspective on each of the children. He notes that at the end of each entry there was generally a name and a title; EO, Case Manager, Teacher, Detention Officer, etc. “How much weight should we give to Detention Officers employed by ACM to detain people? Their jobs depend on how they detain people”.

Mr. Haines raises a pertinent observation. “A plan is something that looks to the future. This is not the case of these individual Management Plans”.

Doggish Gunst refers to the nurse’s affidavit, saying ambiguously, “She is there to watch for symptoms of mental health and take steps to remedy. [...] These reports show normal ordinary teenagers who aren’t happy all the time, nothing more than that”.

He reiterates that this case was an Interim Application and that the judge has to be satisfied that, firstly, there is a *prima facie* case that the detention of children is unlawful; and secondly, that it is in the children’s best interests that they be released into the community. “Your Honour has been asked to take a leap in the dark. They are settled and in a known situation at Baxter and Woomera. If you release them, where will they be tomorrow? These children are far better off with their parents”.

The judge adjourns to prepare his judgment.

Crime and Punishment

We returned a few hours later and the judge summarised the evidence. Mrs. X’s affidavit declared she has made the children aware that if they are released they may be returned to detention, and possibly deported to Pakistan. The judge complained peevishly that her statement didn’t describe the children’s reaction, and therefore “it goes nowhere near to answering the concerns” that had been raised.

“I have far more information before me now. As a result I cannot take the same position as I did last Friday on my reasons for judgment regarding the preferred environment, because of the deleterious effects of detention on children. Because of the cross-examination I can’t simply say I take Ms. Fitzgerald’s report at face value. There is still not sufficient information to make a definitive decision”.

During this declaration, a visibly inconsolable Mrs. X was wheeled out of the courtroom. Before she left, a family friend approached to hug her goodbye and the ACM harpies swooped in, forming a human shield. But tenderness won, and a kiss slipped through.

Justice Strickland droned on, impervious to the oppressive atmosphere that had descended. “The cross-examination raised concerns about the soundness and justification of Ms. Fitzgerald’s opinion”. He said he wasn’t convinced by DIMIA’s argument that she held a pre-concerned notion about mandatory detention. “However, Ms. Fitzgerald has accepted what the mother has said about her children, and this has formed the basis of her conclusions”. The judge said that he doubted if the boy had attempted suicide, and had sewn his lips together, whilst acknowledging that



the written report by FAYS on “the most florid example of self-harm” had added to the psychologist’s acceptance of the mother’s words. Justice Strickland said that with regard to previous trauma experienced by the children, Ms. Fitzgerald had made various unsupported assumptions regarding their arrival in Australia.

Perhaps her reluctance to delve into the family’s past was deliberate. During the HREOC hearings, health professionals noted that asylum seekers have come from highly traumatic situations. Each time people must reiterate the circumstances that led them to flee they can become traumatised again, as to re-narrate a trauma is to relive that trauma.

The judge continued, saying he wasn’t satisfied about the children’s knowledge of their impending removal to Pakistan. He raised the issue of “pre-existing family violence”, asking whether the children’s psychological health could be attributed to this phenomenon.

Justice Strickland summarised the psychologist’s position – the children blamed themselves for their predicament. Detention has had a significant impact on how they view themselves, their parents and the world. Their mental health cannot be addressed whilst the children remain in continuing detention. He parroted DIMIA’s professed concerns about Centacare’s fostering arrangements, asking who would accompany the children to the mosque and school, how would their health needs be met? He painted a bizarre picture of five little ragamuffins and truants, abandoned by their foster carers, and presumably left to eat grass and twigs by the side of the road.

He reiterated that there was no evidence regarding the children’s views on the possibility of a re-detention, which would be inevitable if the family were to be removed from Australia. He pointed out the inconsistencies between the mother’s account of her children’s well-being and account presented in the Individual Management Plans, and refuted the inference by the applicants’ lawyers that observations written by ACM employees could be self-serving. The judge declared that he couldn’t assess the facilities at Baxter. He wanted more details on the proposed therapeutic intervention.

“These children are vulnerable. They will be separated from their parents in a strange environment. The family are being separated in this proposal”.

(This seems to suggest that detention itself is a normative environment, in which the children are not vulnerable. How dangerous is it for us as a society to normalise the material and human architectures of detention to the point where it becomes the favoured environment, on the basis that it is a known entity, whereas a life lived in freedom always involves choice and uncertainty and their consequences?)

The judge said that he was now even more concerned as to where the best interests of these children lay, and complained that there had been a “headlong rush to the interim proceedings. Not enough thought has been given to the children”.

His final words were, “On the evidence I have now, I am not satisfied that it is in the best interests of the children to release them. These children remain the innocent victims in this whole scenario. I dismiss the application”.

Postscript, 19 December 2004

Deeply unhappy with this result for the children, a legal team took the matter to the Full Family Court which ruled for the children’s release into a home under the care of the

Catholic welfare agency Centacare and Iranian foster parents.¹⁸ The children's beloved uncle was forcibly deported in 2003 and arrested upon arrival at Karachi; he had to bribe his way back to Afghanistan. Mrs. X remained in detention in a motel in Adelaide with three ACM guards until the birth of her baby. Family friends were prevented from visiting Mrs. X and her newborn in hospital, and flowers and cards were not delivered, implicating the government-run Women and Children's Hospital in the continuing cruel treatment of the family. Mrs. X and the baby were kept under guard in the motel for a further eight months. Mother and infant were then reunited with the elder five children. Mr. X remains in Baxter Detention Centre. On 29 April 2004, the High Court ruled that the Family Court did not have the power to release the children from detention.¹⁹ In November 2004, the Minister denied another application for refugee status and told the family they would be sent "home" (to Pakistan). And yet another legal failure:²⁰ In an act of the greatest cowardice ever seen in an Australian suburb, 20 prison guards and immigration officials stormed the suburban home of the family on 18 December at 7 am, dragged them out of bed and sent them back to Baxter.²⁰ The family was forcibly deported to Rawalpindi on 30 December.²¹ After their arrival, they were refused accommodation in a Rawalpindi hotel as they had not been issued with passports, or appropriate travel or identity documents. The family has been presented with a bill for \$1 million by the Australian government, which is one-third of the estimated cost of their detention, according to DIMIA.²²

(Original text written in August 2003 and published under a pseudonym on Adelaide Indymedia, various mailing lists and as an illustrated text on Refugee Media Space (<http://refugee.autonomous.org>). This shorter version was edited for the *Sarai Reader 05: Bare Acts* in December 2004)

NOTES

1. The family requests that their name not be published.
2. As Indigenous activist and historian Gary Foley explains in *Assimilating the Natives in the U.S. and Australia*: "In 1788 the imposition of British sovereignty on Australia was justified by the notion of *terra nullius*, which was a convenient means to avoid the problem of just reparations for the indigenous inhabitants who, in the process of being dispossessed, were thereby deemed sub-human. Ironically, at the same time these sub-humans were instantly transformed into 'British subjects' who were now 'protected' by, and expected to conform to, British law. Thus the Aboriginal and Islander people of Australia were denied the opportunity to establish treaties and have some measure of control over both their land and future destinies". Source: http://www.kooriweb.org/foley/essays/essay_15.html
3. Legal definition "unlawful non-citizen" under the Migration Act 1958: http://www.austlii.edu.au/au/legis/cth/consol_act/ma1958118/s14.html
4. See for example the election-winning "children overboard" saga at <http://truthoverboard.com>.
5. The Tampa narrative is a striking example, with the Australian government doing its utmost to prevent Arne Rinnan, the captain of the Norwegian vessel MV Tampa, from rescuing 438 people from their sinking boat, Palpa. See for example <http://www.wsws.org/articles/2001/sep2001/refu-s01.shtml>; and rescue account by refugee Juma Khan Nazari at <http://www.safecom.org.au/tampa.htm>. In 2002 the United Nations High Commissioner for Refugees awarded the Tampa crew and owner the Nansen Refugee Prize.

See Marr, David and Marian Wilkinson, *Dark Victory* (Allen & Unwin, 2002, Sydney). Along with “children overboard”, the Tampa incident played a major role in the government’s re-election in 2001. The asylum seekers, mainly from Afghanistan, were eventually dumped on the impoverished island of Nauru, as part of Australia’s “Pacific Solution”.

See http://www.adelaide.indymedia.org.au/newswire/display_any/6442/index.php

and an Amnesty report at <http://www.scoop.co.nz/mason/stories/W00401/S00029.htm>

6. Meticulous documentation at <http://sievx.com>, and continuing research at <http://tonykevin.com>. See also Kevin, Tony, *A Certain Maritime Incident: The Sinking of SIEVX* (Scribe Publications, 2004, Melbourne). The name of the boat has never been stated – it carried no name markings. Tony Kevin called it SIEV X – ‘Suspected Illegal Entry Vessel, Unknown’ – in March 2002, very early in the Senate enquiry. That name quickly became generally accepted as the identifying name of the boat in the enquiry, by the authorities as well.
7. Immigration Minister (now Attorney-General) Philip Ruddock introduced the Temporary Protection Visa (TPV) in October 1999.
See <http://www.immi.gov.au/facts/64protection.htm>; and critique by Peter Mares, “It’s Time to Clean Up the Mess of Temporary Protection Visas” at <http://www.apo.org.au/webboard/items/2004/06/00711.shtml>
8. On 1 December 2004, the Federal Police raided homes of activists suspected of arranging false passports for refugees. The following day the government introduced a new parliamentary bill increasing the penalties for passport fraud from \$5,000 and two years jail, to \$110,000 and a maximum of 10 years jail.
9. Australasian Correctional Management (ACM), a subsidiary of the US Wackenhut, ran all of Australia’s Detention Centres. The tender was awarded in August 2003 to the security giant Group 4 Falck Global Solutions. See <http://www.group4securicor.com/>
10. British Foreign Minister Jack Straw refused protection and threw the kids back. Straw was exonerated of charges of violating the boys’ human rights in a recent case to the British Court of Appeal. The court ruled that British authorities wouldn’t expect children to be exposed to inhumane and degrading treatment in Australia.
See <http://www.abc.net.au/news/newsitems/200410/s1223562.htm>
See <http://www.adelaide.indymedia.org.au/newswire/display/7636/index.php>
regarding possible government involvement in identity fraud to discredit Family X.
11. Baxter, a purpose-built immigration prison facility opened in July 2002, is situated near Pt. Augusta, four hours due north of Adelaide, on the edge of the desert. On 1 December 2004, 252 people were imprisoned there.
12. The now decommissioned detention camp at Woomera is a seven-hour drive north of Adelaide in the Great Victorian Desert. It is close to Maralinga where the British tested atomic bombs between 1953-56, causing the deaths and radiation sickness of hundreds of nomadic Aboriginal people. Situated close to the closed US Narrungar military base/listening post, the town now services a rocket testing range.
See <http://www.iratiwanti.org>
13. A landmark ruling of *habeas corpus*, as the detention of this stateless Palestinian from the Gaza Strip, imprisoned as a refugee for five years in Australia, was deemed to be indefinite and therefore unconstitutional. See <http://www.austlii.edu.au/au/cases/cth/FCAFC/2003/70.html>
14. See the original judgment at

http://www.austlii.edu.au/au/cases/cth/family_ct/2003/451.html

See also <http://www.aph.gov.au/library/intguide/SP/Childrendetention.htm>

15. There have been a number of challenges concerning whether escape from detention is in itself a crime. On 6 August 2004 the High Court of Australia ruled 6 to 1 that a refugee had no right to escape from Woomera even if he could show that conditions of detention were harsh. The one dissenting judge, Justice Michael Kirby, argued that a substantial body of disturbing evidence exists to indicate detention centre conditions were inhumane and intolerable. "We should not give a legal answer that future generations will condemn and that we ourselves will be ashamed of", Kirby said. The judgment is online at <http://www.austlii.edu.au/au/cases/cth/HCA/2004/36.html>.
See media report at <http://www.smh.com.au/articles/2004/08/06/1091732062324.html?from=storylhs>
16. See *A Last Resort?*: the extensive final report resulting from the HREOC enquiry at http://www.humanrights.gov.au/human_rights/children_detention_report/index.html
17. See *Four Corners*, TV documentary transcripts online at http://www.abc.net.au/4corners/content/2003/20030519_woomera/default.htm
18. See media report at <http://www.theage.com.au/articles/2003/08/25/1061663734924.html?from=storyrhs>
19. The High Court ruled that laws relating to mandatory detention of "illegal non-citizens" included children. See the judgment at <http://refugee.autonomous.org/docs/bakkids-judgment-250803.pdf>
Media report at <http://www.smh.com.au/articles/2004/04/29/1083103589964.html> 29 April ruling at http://www.austlii.edu.au/au/cases/cth/high_ct/2004/20.html
This has been unsuccessfully challenged, and recently in a ruling of October 2004. http://www.austlii.edu.au/au/cases/cth/high_ct/2004/49.html
20. See media report at http://www.theaustralian.news.com.au/common/story_page/0,5744,11704639%255E2702,00.html
21. <http://www.smh.com.au/news/National/Bakhtiari-family-deported-under-cover-of-darkness/2004/12/30/1104344932116.html>
22. <http://www.theage.com.au/news/Immigration/Bakhtiyaris-head-for-Afghan-home-report/2005/01/04/1104601331085.html>