



ChilOut - Children Out of Immigration Detention

Committee Secretary
Senate Legal and Constitutional Committees
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Secretary,

Chilout is pleased to present this submission to the Inquiry into International child abduction to and from Australia.

ChilOut (Children Out Of Immigration Detention) is a group of parents and citizens campaigning on behalf of children in Australian immigration detention centres.

Our submission will focus on one case of the deportation of an asylum seeker child away from her custodial parent. This matter is related to terms of reference *(c) the roles of various Commonwealth departments involved in returning children who were wrongly removed or retained, to their country of habitual residence*. In this case, the Commonwealth Government itself wrongly removed the child from Australia without authority.

This case was covered in a submission I presented as National Director of A Just Australia, to the People's Inquiry into Immigration Detention. I have included that original submission as an attachment.

In short, in July 2003, officers of the then Department of Immigration and Multicultural Affairs (DIMIA, now DIAC) arranged for the secret removal of an asylum seeking child from Australia without the knowledge of her custodial parent, her father. The child was in immigration detention with her father. The father alleges that a DIMIA officer regularly threatened him with the removal of his daughter.

The father was put into the Management Unit at Baxter Immigration Detention Centre (isolation unit). While he was there, DIMIA officers told him his daughter was being cared for by DIMIA, but instead they removed his daughter from Australia and returned her to her mother in Iran. The father was not informed until after the removal was effected.

DIMIA has claimed that the mother had provided a court order from Iran granting her custody and they were simply returning the child to her rightful parent. However, Iran was not a signatory to the Hague Convention, and any custody dispute would have to be determined by the Family Court of Australia. DIMIA made no application to the Family Court and there was no involvement of the Attorney-General's Department in the removal.

DIMIA officers took it upon themselves to determine a child custody dispute and remove a child from one parent to another – without the custodial parent even knowing they were losing custody of their child. They took efforts to ensure the custodial parent did not know what was taking place, so he would be unable to assert his right to have the custody determined lawfully.

The father's case for a protection visa was still underway at the time of his daughter's removal. He has since been granted refugee status on the grounds of being persecuted in Iran. Given that persecution is often inflicted on entire family units, it is hard to comprehend why the Department of Immigration thought it in the child's best interest to be returned to a place where, as her father's daughter, she may well face persecution herself.

The Immigration Minister at the time, Phillip Ruddock, has said that he did not know of this child's removal. However, there is a requirement to inform the Minister of the removal of any child under the Migration Act.

A subsequent Minister for Immigration, Senator Amanda Vanstone, informed parliament that the removal of this child was done with the approval of FAYS. However, FAYS does not have the authority to determine custody matters, and would be aware of their lack of authority. We would assume that a child welfare authority would also take into account the father's claim of persecution in the country to which DIMIA proposed to send the child.

Since that time, DIMIA has acknowledged the injustice of the case and have granted the mother and daughter humanitarian visas to return to Australia.

However, attempts to investigate possible criminal issues raised by actions taken by DIMIA officers have been frustrated. The secret removal of a child away from the custodial parent without relevant authority is quite likely to be a breach of South Australian criminal law. While DIMIA have the authority to remove a person from Australia, they do not have the authority to remove a child from their custodial parent in order to do so.

In 2009, DIMIA appointed an independent investigator, to whom I presented the facts of the case. He recommended the matter be handed to the Australian Federal Police for criminal investigation. The AFP advised DIMIA that the matter was not within their jurisdiction, as it was a South Australian criminal matter. DIMIA has never informed me if the issue was then passed to the South Australian Police.

The broader issue raised by this case is whether or not officers of the Commonwealth are above the law. Are they beholden to the same criminal laws as any other person? If officers of the Commonwealth are not above the law, then why was this case not referred to the relevant authority for investigation? If they are above the law, then that is surely a matter to be rectified.

I have in-depth knowledge of this particular case, and would be available to present evidence on this case to the Committee if required.

Yours sincerely,

Kate Gauthier
Chair
ChilOut – Children Out of Immigration Detention