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Not without my baby: Russian defies deportation

Cynthia Banham and Penelope DeBelle

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It also distinguished the Russian woman's case from another recent case in which the Family Court ordered it could release children from detention.

The woman, who cannot be named for legal reasons, said she fled Russia after witnessing a murder in a nightclub and after being raped by casino security guards and police.

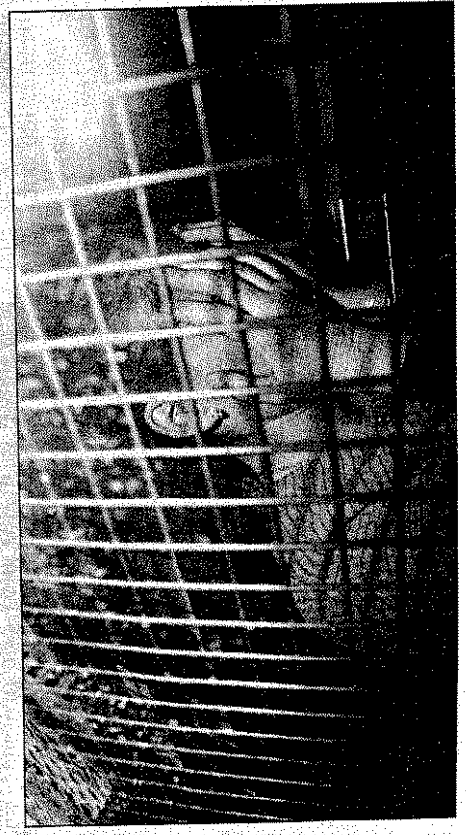
The toddler was taken from her when she was picked up by immigration authorities and put in detention in May last year.

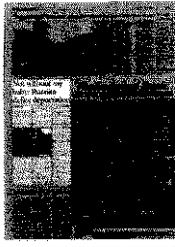
He now lives with his Australian father, visiting his mother three times a week.

The woman's case will be back in court today when the bench decides whether to halt deportation while she appeals.

In South Australia, a detainee was flown from Port Augusta to Adelaide last night, reportedly in labour. Lawyers say the birth of Roqia Bakhtiar's child should delay or prevent the return of the controversial family to Pakistan.

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The 30-year-old woman, an illegal immigrant with an 18-month-old son to an Australian father, made the declaration after the full bench of the Family Court upheld the Federal Government's right to deport her without her child.

The unanimous decision, by Chief Justice Alastair Nicholson and Justices John Ellis and Stephen O'Ryan, found that the Migration Act overrode the Family Law Act. The Family Law Act enshrines a child's right to know and have regular contact with both its parents.

While the judges said they felt sympathy for the mother and son, they said she could not rely on the rights granted to

children in Australian law and international conventions to avoid being deported.

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At least two other foreigners in the centre have Australian children and are fighting deportation orders.

One is a Malaysian mother of two who has not seen one of her children in three years.

Another is an American woman, with a three-year-old son, who overstayed her visa.

Acknowledging it might be difficult for her to get a court order for contact with her son if she was sent back to Russia, the judges said "she may well be able to do so from a country like New Zealand".

The court said the Migration

Act operated to "negate fundamental rights conferred by acts such as the Family Law Act and international instruments", and that it was the role of Parliament - not the courts - to decide this.

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in labour. Lawyers say the birth of Roqia Bakhtiari's child should delay or prevent the return of the controversial family to Pakistan.

Refugee lawyer Jeremy Moore called on the Immigration Minister, Philip Ruddock, not to deport the family, most of whom are in the Baxter detention centre, and to give the baby Australian citizenship.

Mr Moore said Australia was a signatory to the United Nations High Commission for Human Rights' Convention on the Rights of the Child, which included an obligation to provide a child with nationality from birth.

"Roqia has told me this child is being born in Australia and she regards this child as Australian," he said.

A spokesman for Mr Ruddock said the child had the same immigration status as the parent, and the birth would not affect the family's likely deportation.



The tragedy of violence against women in the Russian federation

- > Every day 36,000 women in the Russian Federation are beaten by their husbands or partners.
- > Every forty minutes a woman is killed by domestic violence.
- > Official figures say domestic violence is part of the life of every fourth Russian family.

Olga was four months pregnant in December 1999 when she was reportedly tortured by police with electric shocks, beatings and cigarette burns. Her injuries and subsequent miscarriage were officially recorded in a medical statement, yet there has never even been an investigation into her allegations of torture.

The torture and abuse of women in Russia is rife, and abuse by authorities is virtually routine in police stations. Beatings with fists and batons along with kicking are the most common, however other forms which leave no visible marks are reportedly used. Additional methods of inhumane and degrading torture commonly reported include electric shock, rape, the use of gas masks to induce near-suffocation, tying detainees in painful positions, with the most extreme cases resulting in death.

The case of Colonel Yuri Budanov, a commander in the Russian army, who was on trial for the abduction and murder of 18-year-old Kheda Kungaeva illustrates the violent nature of abuse of women in Russia.

Despite an admission of guilt by the colonel, and post-mortem evidence that Kungaeva had been raped before her death, the court hearing absolved Colonel Budanov of criminal responsibility. This result was based on grounds of 'temporary insanity' despite earlier psychiatric assessments finding him sane and responsible for his actions.

Inexplicably the charge of rape against Colonel Budanov was ignored and to date no one has been charged with the serious offence of raping Kheda Kungaeva.

There are limited options in Russia for the victims and their families who pursue justice. They are bound by a legal system that largely ignores violence against women and protects perpetrators. Many offenders escape charge or are only charged with minor offences that receive minimal punishment. Cases are dismissed for lack of evidence as suspects and victims are rarely given a medical examination before or after interrogation.

Until abuse of women is condemned, their human rights will continue to be violated.

This article was based on the Amnesty International report, The Russian Federation: denial of justice, which is available from your local Activist Resource Centre on 1800 808 157.

You can visit www.amnesty.org.au for more information on the situation in Russia. ☎

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