better. Implicit in all the comments is the wish to be treated as children, as a human being.

The fundamental issue raised by many of the children, was the detention itself.

> "I think there should not be any detention for children at least. All these Afghans that are spending months or years in detention, they have not done anything wrong, they are not criminals and they should listen to them. But there should not be any detention for children. They should be free." (Teenage boy)

Accessing the publication:

The free publication

"*Ask the Children: Kids speak out about immigration detention experiences*"

is available by contacting the Commission on 02 9286 7276 or kids@kids.nsw.gov.au.

It is also available in PDF format on the Commission's website at: www.kids.nsw.gov.au/ourwork/immigrationdetention.html

Family Court decisions on Howard government's asylum policy

The last few months have seen a number of developments in relation to court action in the Family Court and in the High Court over children in immigration detention.

In June, the full Family Court in a majority decision [B and B and Minister for Immigration] ruled unanimously that it had the authority to make decisions about the conditions under which children were held. It upheld the appeal of two boys and their three sisters against an earlier ruling that the Court had no jurisdiction over children in detention. The court ordered that the case of the children - boys aged 14 and 12 and girls 11, nine and six - be retried urgently.

In a direct challenge to the Howard Government's policy and practice on immigration detention, the Court ruled that it could order the release of children on welfare grounds, saying that its responsibility for their well-being overrode immigration law. The Court concluded the specific provisions of the Migration Act did not hinder the general provisions of the Family Law Act because it had a broad fiefdom for the welfare of children, akin to the ancient *parens patriae* jurisdiction of the English courts which exercised power on behalf of the sovereign to protect those who cannot take care of themselves.

As reported in *The Age* on 21 June 2003, Chief Justice Alastair Nicholson and Justice Stephen O'Ryan said that the (indefinite) detention of the children breached Australia's obligations under UN conventions and was probably "unlawful". The judgment referred extensively to the UN Convention on the Rights of the Child and claimed that the amendments to the Family Law Act in 1995 were intended "at least in part to implement the provisions of UNCROC" and is therefore also supported by the external affairs power in the Constitution" (p. 108).

Human Rights Commissioner Sev Ozdowski supported the judgment that the indefinite detention of children was a serious breach of Australia's international obligations and called for the immediate release of children and their families from detention. The Human Rights and Equal Opportunity Commission is still to present the results of its children in detention inquiry to Federal Parliament later this year.

The Government's response

The Government's response to this judgment was two-fold: to claim that it was in children's best interest not to be separated from their families, and to appeal against the decision to the High Court. The Treasurer Peter Costello defended the government's policy by claiming that it was better to keep children in immigration detention centres with their families, rather than taking them out into the community on their own, or with only one parent (The Age, June 27, 2003).

The government's appeal to the High Court has been set down for hearing on 30 September 2003.

Further developments re B and B

The Full Court has brought down its judgment on the appeal against the earlier decision by Justice Strickland in which he said that a 'prima facie' case existed that children were being detained unlawfully in Australian detention centres but deferred a decision as to whether the children currently should be released from detention. His concern was about the possible effects of a short-term release pending appeal to the High Court. The Full Court ordered that the children should be released. After 32 months in detention, they were taken to Adelaide on 25 August in the care of Centacare. They were able to be reunited with their pregnant mother, there for medical treatment. Their father remains in the Baxter Immigration Detention Centre but it was his reported wish that the children should be freed even if it was only temporary.

In allowing the appeal and ordering the release of the children, the Full Court found that the concerns about separating them from their father and their possible return to detention following a final hearing re possible deportation were "outweighed by the detrimental impact of detention on the children, which among other things, had exposed them to violence and other inappropriate behaviour".

Further cases

In the second case, an Iranian family (including three children), held in detention immigration at Woomera and at Baxter for more then two years, applied to the Family Court for an injunction restraining the Minister for Immigration from keeping them in detention and requiring proper medical treatment while in detention. In this case, the application was for the release of the whole family, not just the children. This would have overcome the government's objection that it was in the children's best interests to remain in detention rather than be separated from their parents.

The South Australian Family Court had heard from a number of experts that the family suffered varying degrees of post-traumatic stress, depression and were at risk of suicide because of their prolonged detention at Woomera. The parents and children - girls now aged 19 and 15 and a four-year-old boy - had appealed against the rejection of their visa applications which subsequently earmarked them for deportation. They asked the Family Court to release them on an interim basis into residential housing in Adelaide until their High Court appeal was decided. The father had mutilated himself and the oldest girl, 19, was sexually assaulted at Woomera in December 2001 in the presence of her family.

Justice Chisholm ruled that he did not have the power to release the parents and three children from detention, despite evidence of them suffering "highly damaging experiences in their time in Australia". But Justice Chisholm said he believed Mr Ruddock was not indifferent "to the great suffering and distress the two adults and three children had experienced".

Family Court Judge urges compassion

In his judgment in the matter *HR & DR vs Minister for Immigration*, Justice Chisholm stated:

> "I have come to the conclusion that I do not have the power or jurisdiction to make the orders sought by the applicants…"Nevertheless, I hope that now that all the evidence is available, the Minister might give further consideration to whether some alternative arrangements might be made that would help these unfortunate children. .. The evidence, although untested, strongly suggests that these children have had highly damaging experiences in their time in Australia. ... It is within the Minister's legal powers to arrange this …I express the hope that he will give careful and compassionate consideration to the urgent needs of this unfortunate family."

Family released

The family were released the day after the judgment (Friday 15 August 2003) on three year temporary protection visas and were being assisted by the refugee support group, the Circle of Friends.

According to the report in *The Age* by Penelope Debelle (15 August 2003), "the only official acknowledgement by Mr Ruddock that the family had been released came in a letter to Australian Democrats Senator Andrew Bartlett, who in May asked Mr Ruddock to intervene on their behalf. Mr Ruddock confirmed that he had granted a three-year visa but gave no explanation." Another Iranian family, of two adults and two children, was also unexpectedly released and given temporary protection visas.

JURISDICTIONAL ISSUES

Children's safety, welfare, and well-being appear to come in second best when the responsibility is vested in the Commonwealth government and when the supervision and detention is carried out by a private US owned company in correctional 'services'. The Minister for Immigration was reported in *The Age* (21 June 2003) as saying :

> "I have made it clear over a long period of time, that if . . . [those state] departments form a view that it is in the best interests of children to be removed from detention, and from their parents, to be cared for under supervision in the community, I would not stand in way of that outcome," he said. "The fact is I have not been given that advice by any state department of family and community services in relation to children being detained."

But a response to a question without notice in the NSW Parliament makes clear the restrictions on that "advice".

The question from the Hon. Dr ARTHUR CHESTERFIELD-EVANS asked about a memorandum of understanding between the Commonwealth and the NSW government about the welfare of children in immigration detention in NSW (eg Villawood Detention Centre), the Minister for Community Services, the Hon. CARMEL TEBBUTT replied**:**

I will respond to those aspects that I am able to. Although I appreciate the sentiments of the honourable member and know that he has strong feelings about children in detention centres—and they are feelings shared by many members in this House—nonetheless, as I have indicated previously to the honourable member, the Villawood Detention Centre is operated by the Commonwealth Department of Immigration, Multicultural and Indigenous Affairs and the New South Wales child protection legislation, known as the *Children and Young Persons (Care and Protection) Act 1998*, does not apply to children and young people in the Villawood centre. The department has provided me with that information based on legal advice.

I know that some people would like to use the New South Wales legislation to progress issues with regard to their concerns about the detention of children in the Villawood Detention Centre, but I do not think that is possible because the legislation does not apply. DoCS can investigate reports received about individual children confined in the Villawood immigration detention centre—and we have done so—but we can only do it if DIMIA invites DOCS in. When this occurs, as it has in the past, DOCS can only undertake assessments and make recommendations to DIMIA about required action.

Extract from NSW Legislative Council Hansard. Article No.14 of 27/05/2003.

Ahmadou Kourouma: Allah Is Not Obiged

Ahmadou Kourouma is one of the most prominent non-French authors writing in the French language. He became famous with his first book *The Suns of Independence* (1968). His fourth book *Allah Is Not Obliged* is written in response to a request from children to write a book about tribal wars and child soliders at a writer-reader meeting in Djibuti.

Allah Is Not Obliged To Be Just In All His Things Down There is the full name of the book. Birahima, the child soldier, tells his story about his involvement in civil wars in Liberia and Sierra Leone. He tries to find his aunt and during his search he changes factions, as it suits his purpose.

Writing from the child's viewpoint, he speaks without pathos. On the contrary, he uses irony and hyperboles to describe such a cruel war. Birahima faces life and the war as it comes. Army camps are bordered by impaled human skulls, hashish is used to remove chn from the horror of the war for a time, and everybody sleeps with a machine-gun. Superstition protects a priest from ripping bullets as he holds the The Holy Bible in one hand and The Koran in the other. Commander of the faction cuts out his opponent's heart and eats it and cries at the bodies of his fighters.

"And when man has nobody on the Earth, neither father, nor mother, nor brother, nor sister and when he is a boy, a kid lost in a barbarian country, where everybody slits the throats of others, what will he do? Of course, he becomes a child soldier to eat and, for a change, he too slits the throats of others : there is not another way."

It is an insight into a world with another mentality, in a time when there is no order, and there are no rules. One day, you have pockets full of diamonds, but lose them the next day. You fight with those who are going your direction against those who were your friends just yesterday. It all depends on who holds the power, and only their name differs - all holders of power are of the same kind.

It is not just about two civil wars, but what happens when civilization disappears and people lose their humanity.

Ahmadou Kourouma: Allah N'Est Pas Obligé, Seuil 2000, Paris
This review was written on basis of Czech translation by Petr Komers, Mlada Fronta 2003, Prague, David Major, Czech Republic