

Senate Legal and Constitutional Legislation Committee  
Parliament House  
Canberra ACT 2600

## **Submission to the Inquiry into the provisions of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006**

### **Introduction**

ChilOut (Children Out of Detention) formed in August 2001 by a group of parents deeply concerned about the impact of the federal Government's policy of mandatory, indefinite detention on children and their parents. The core strength of the organisation is its 3000 members, linked by email, who receive a weekly "Call To Action". The courage, commitment and generosity of members are a constant source of inspiration and testimony to the compassion that exists in every corner of Australia.

In 2005, ChilOut won the Human Rights and Equal Opportunity Commission's Community category award, at which time the Commission said:

"The judges credited ChilOut for their relentless campaign and for their contribution in pressuring the federal Government to remove children from immigration detention.

The group of "middle Australia mums and dads" that formed in 2001 after seeing the plight of a six-year-old Iranian boy in immigration detention has demonstrated the remarkable power of committed individuals to achieve change. They showed the faces of children behind razor wire and brought the suffering of those children into Australian living rooms – confronting us all with the reality of children in detention."

ChilOut is horrified by the Government's outrageous proposal to expand the Pacific Solution to prohibit boat arrivals from seeking asylum in Australia.

In September 2001, the Australian Government formulated a bizarre response to the "problem" of asylum seekers arriving in Australia by boat – the so-called "Pacific Solution". It applied to those whose boat was intercepted prior to reaching Australian waters. In what Human Rights Watch called "inhumane and

degrading conditions”,<sup>1</sup> the refugees (as most were subsequently found to be) were forced onto Navy ships and taken against their will to Nauru and Papua New Guinea.

The Bill before you proposes to amend the *Migration Act 1958* to greatly expand the Pacific Solution, to include all men, women and children arriving in Australia (land or sea) by boat, effective 3 April 2006.

All boat arrivals will be summarily expelled from Australia and forced onto off-shore detention camps, out of mind and out of sight of Australian parliamentarians, courts, legal assistance, support networks and detainees’ family members in Australia.

ChilOut believes that **if passed, this law will put Australia in breach of the United Nations Convention on the Rights of the Child (CROC)**, among other binding treaties. Australia ratified CROC on 17 December 1990 and is legally bound by it.

ChilOut’s submission focuses on the human rights of children and provides, as much as possible, testimony from children formerly detained in Pacific Solution detention centres.

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<sup>1</sup> Human Rights Watch, *By Invitation Only: Australian Asylum Policy* (2002), at <http://hrw.org/reports/2002/australia/> at Part VII, *Measures used by Australia to deter ‘uninvited’ refugees*,

# 1. The Government's arguments

## (a) They are only being “processed”, not detained

No-one who has seen footage of Nauru, Manus and Christmas Island detention centres can take this statement seriously. Regardless of the language used, the inmates are deprived of their liberty, which means they *are in detention while being processed*.

## (b) They will only be locked up at night

That makes it a detention centre!

“The gates to the asylum seeker's camp are open each day, but there is a lot of sea between Nauru and anywhere else”.<sup>2</sup>

In an email to ChilOut in November 2004, a detainee explained the lack of freedom of movement for Nauru detainees in the daytime:

“They allow us to go outside the camp at the particular area which is about 150 meters long and can go for shopping, swimming or internet and they telecast that in Australia that we are free and even we can go in Nauruan houses freely which are all lie.

If we go outside they send [security] guards with us so that we can't go any other places or cross the boundary which they provide us.”<sup>3</sup>

## (c) It is acceptable in international law to intercept boats of asylum seekers at sea then forcibly transfer and detain them in third states

No it is not. This practice is a flagrant violation of the Refugee Convention (1951) to which Australia is a party.

Also, the detention of children, as a first and only resort, is a violation of CROC.



photo: children at Nauru detention centre 2003, with living quarters behind them

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<sup>2</sup> ABC Radio Australia, “Nauru asylum seekers speak of growing rates of mental illness”, 29 October 2004, at <http://www.abc.net.au/ra/news/stories/s1230284.htm>

<sup>3</sup> Email from Afghan detainee to ChilOut dated 29 November 2004.

## 2. Boat arrival children's human rights

This list is not exhaustive. The key human rights are:

### (a) Non-discrimination

Boat arrival children's human rights are identical to all other children's human rights, as stipulated by CROC (article 2, non-discrimination, including on the grounds of immigration status)

### (b) Best interests of the child

Australia must ensure that the best interests of the child must be a primary consideration in all actions concerning children (CROC article 3(1)). It is hard to see how a child's best interests are served depriving them of their liberty and tearing their family apart by detaining them on a remote island.

### (c) Detention as the last resort

CROC requires that detention be a measure of last resort and for the shortest appropriate period of time (article 37(b)) Clearly the proposed legislation will make detention *the first and only* resort.

### (d) Recovery from trauma

Children have the right to enjoy, to the maximum extent possible, development and recovery from past trauma (CROC article 39). This is impossible while they are being detained,<sup>4</sup> and in fact the detention causes fresh trauma. A young girl of 7 or 8 detained on Nauru was traumatised from her parents' distress at being detained:

"Here was a child crying and tears rolled down her cheeks, I peacefully asked and touched her soft hands. She is gentle and I sense some kind of relief for her pain and simmered down a little as I walked a long inside of the camp with her. Then she meekly asked me, what is the meaning of freedom and peace which my parents and all people talking about. ... It has been a very interesting moment for me and I am somewhat surprised to find a child with 7 or 8 year old realizing that what is really life means and simply differentiates wrong from right and good from bad. I said, the peace and freedom just means to be with your parents and that's all.

Do you know what she said, "that is not true". Because I see my parents are weeping tears whenever I am not with them. I can see they are silent and distressed all the time and feeling absolutely disable. Because they can't bear to see their own children are going through so much uncertainty in front of their own eyes. She said that she wishes to be with someone who could explain more what freedom and peace means. ...

Because many people including children are looking awfully sad and suffering from different form of pain. I am desperately worried and it breaks my heart to see the little child is so sad...."<sup>5</sup>

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<sup>4</sup> See HREOC, *A Last Resort? Report of the National Inquiry into Children in Immigration Detention*, Chapter 9 at [http://www.humanrights.gov.au/human\\_rights/children\\_detention\\_report/report/chap09.htm](http://www.humanrights.gov.au/human_rights/children_detention_report/report/chap09.htm)

<sup>5</sup> ChilOut, Letter from a Nauru detainee, 2004, at [http://www.chilout.org/files/letters\\_from\\_nauru.html](http://www.chilout.org/files/letters_from_nauru.html)

**(e) Special protection and assistance for asylum seeking children**

“States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.” (CROC article 22(1)).

Like all offshore detainees, child asylum seekers in a Pacific Solution detention centre will not have access to Australian lawyers, courts, social workers, mental health professionals or paediatricians. They will receive no special legal assistance or special protection from, for example, witnessing violence including other detainees self-harming.

**(f) Safety**

Girls in detention centres have been compelled to live side-by-side adult male strangers. They do not feel safe as a result. In Nauru the issue has been no different: a 14 year old Afghan girl had to be accompanied everywhere as in her culture she could not share domestic quarters with men outside her family.<sup>6</sup> Not protecting girls is a violation of their human rights (CROC articles 19).

**(g) Health**

Children in offshore detention centres are entitled to enjoy the highest obtainable standard of health (CROC article 24). An absolutely basic human right for growing children is safe drinking water. There is no safe drinking water in Nauru – it is shipped in from the Solomons. A detainee reported in November 2003 that:

“The weather is very hot in Nauru, and the toilet’s going very dirty, no water for flush the toilet.... some of the toilets are broken and the rest of them are as dirty as unbelievable, we can’t use it, for us better to sit out of the toilet.

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<sup>6</sup> *Sydney Morning Herald*, “Nauru child detainees running on empty”, 16 April 2005.



photo: Nauru detention centre bathroom, November 2004

... We have brackish water in here only 12 hours [per day], for toilets and shower, and fresh water only 3 hours [per day] we have for wash our clothes.

The water which we drink in here is not much healthy.”<sup>7</sup>



photo: Clothes washing facilities, Nauru detention centre, November 2004<sup>8</sup>

The poor water quality gave people kidney diseases:

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<sup>7</sup> Email to Elaine Smith, November 2003

<sup>8</sup> Photos of the detention centre in May 2006 can be viewed here:  
<http://www.leftonnauru.com/photos.html>

"Most of the people are suffering kidney diseases because of the poor water we drink. We have to wait for the rain to get some water to drink otherwise we find it very hard even to find drinking water!"<sup>9</sup>

Nauru is practically on the Equator and many children suffered from the heat and unexplained illness such as scabies. Phosphate dust covers everything. A little girl wrote that

... it is hot, "like fire", on the island. ... Her letters dwell on illness; her own and her family's. "We aren't in mood, even my little sister," she writes.

"There are lots of disease here, both of my brothers have been suffering from asthma for a long time." Her mother, she says, has liver problems; her dad has "mental problems since he lost his mother and there is no good medical support for them".<sup>10</sup>

### **(h) Mental health**

Detention causes myriad mental health problems in children.<sup>11</sup> After being detained for months on Nauru without information as to when they would be released, many detainees become "psychologically spent and exist on a diet of sleeping tablets and other medication".<sup>12</sup> For parents this means a decreasing ability to look after their children and in some cases, role reversals where they children being to parent the adults.<sup>13</sup>

Children are severely affected by their imprisonment. A 14 year old Afghan girl, after two years on Nauru, wrote

"You know I hate Nauru, due to here is a jail. I'm in a cage. I have been here near two years, this is not fair. I'm not worried about myself I'm worried about my family. My mother is always ill, sick, she's always in bed, my father, too. You know, my life has been lots of sorrow, always, always, and now we come to this way to be peace and safe but they tell us to go back, anyway, now I feel like a crazy."<sup>14</sup>

She drew a picture of a weeping bird asking for help. Around its ankle is a huge ball and chain. In another, hands reach out imploring, "please help me, release". Beside them, she drew her broken heart, sobbing.<sup>15</sup>

Children detained in Nauru wanted to go on hunger strikes but their parents dissuaded them.<sup>16</sup>

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<sup>9</sup> Email to Elaine Smith, December 2003

<sup>10</sup> *The Age*, Nauru: the cage where life gets lost", 27 December 2003

<sup>11</sup> See HREOC, *A Last Resort?* chapter 9 at

[http://www.humanrights.gov.au/human\\_rights/children\\_detention\\_report/report/chap09.htm](http://www.humanrights.gov.au/human_rights/children_detention_report/report/chap09.htm)

<sup>12</sup> *Sydney Morning Herald*, "This is not detention, this is hell", 16 April 2005

<sup>13</sup> HREOC, *A Last Resort?* chapter 9, section 9.3.4, "Breakdown of the family unit", at

[http://www.humanrights.gov.au/human\\_rights/children\\_detention\\_report/report/chap09.htm#9\\_3](http://www.humanrights.gov.au/human_rights/children_detention_report/report/chap09.htm#9_3)

<sup>14</sup> *The Age*, Nauru: the cage where life gets lost", 27 December 2003

<sup>15</sup> *The Age*, Nauru: the cage where life gets lost", 27 December 2003

<sup>16</sup> *The Age*, "Hungry for an act of humanity" by Arnold Zable, 23 December 2003

### **(i) Education**

Australia has a legal obligation to ensure that children in offshore detention centres receive schooling (CROC article 28). In December 2003, a Nauru detainee wrote to a ChilOut supporter of the “education” provided since September 2001:

“We have many children in here who they didn’t any sin in their life, and they don’t know any thing about sin, so why keep them in this jail? They should go to schools same as other children....

We have big problems with education in here; no one is take care of Education very well. Yes, they named one person for Education, but he’s not the IOM Officers he was the IOM interpreter, but now they give this position to him, and he doesn’t know how to manage the classes and all Education programs, we have not any books since 19 September 2001, no good management in here, we are need Books, Pens, Note Books, good teachers for English classes and Computer Classes too, etc.....”<sup>17</sup>

Meanwhile, the lobby group A Just Australia reported that:

“Some children attend school at one of two primary schools outside the camp. They start at 7.30am and finish at 1.30pm. The Nauru schools are impoverished, lacking basic facilities and equipment. Teachers have gone months without pay. Children also have classes with the older detainees in the camp in the afternoons.”<sup>18</sup>

### **(j) Recreation and play**

Children have a human right to rest and leisure, play and recreation (CROC article 31). Kids held Nauru detention centre played soccer and volleyball, but there was no physical education program for them. For two children, aged 6 and 2, left on Nauru for months after all the others had been released, they had no-one to play with and were desperate for the company of other children, according to their father.<sup>19</sup> As more and more children got release over 2003-4, those remaining became increasingly depressed and lonely.<sup>20</sup>

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<sup>17</sup> Email to Elaine Smith, November 2003

<sup>18</sup> A Just Australia, *Nauru Detainees Briefing Paper*, December 2003

<sup>19</sup> *Sydney Morning Herald*, “Nauru child detainees running on empty”, 16 April 2005.

<sup>20</sup> *The Age*, “The forgotten”, 28 March 2005



## Conclusion

Australia has an international legal obligation to stop excising human rights. The government must reverse its policies of territorial excision and detention on foreign and excised territories. **All** asylum seekers – not just aeroplane arrivals – must be provided with access to independent legal advice and an independent review/appeal mechanism, both in terms of their asylum decisions and in relation to challenging the necessity of their detention.<sup>21</sup>

In addition, the Government must take seriously its obligations to children. The proposed amendment to the *Migration Act* puts Australia in breach of the Convention on the Rights of the Child in a large number of aspects as outlined above.

ChilOut urges the Committee to reject the Bill on these grounds.

22 May 2006

QuickTime™ and a  
TIFF (LZW) decompressor  
are needed to see this picture.

photo: living quarters in Nauru detention centre today<sup>22</sup>

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<sup>21</sup> Human Rights Watch briefing paper, "*NOT FOR EXPORT*": *Why the International Community Should Reject Australia's Refugee Policies* (September 2002) at <http://www.hrw.org/press/2002/09/ausbrf0926.htm>

<sup>22</sup> From <http://www.leftonnauru.com/>, a web site run by the remaining two detainees on Nauru.