



**SUBMISSION**

To the Transport and Industrial Relations Select Committee

From the Children's Rights Network  
of Amnesty International Aotearoa New Zealand

on the  
*Immigration Bill (2007)*

The New Zealand Section of Amnesty International (AINZ) is part of a worldwide voluntary movement in support of universal human rights. This submission is presented by Peter Sutton, co-ordinator of the Children's Rights Network of AINZ.

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The Children's Rights Network aims to protect the human rights of children in all states and to ensure that the provisions of the United Nations Convention on the Rights of the Child (CROC) are observed in all respects. The network supports the full and comprehensive submission made by AINZ to the committee on this Bill and makes the following submission on the rights of children in a supplementary, explanatory and supportive role. The term "children" is used throughout as defined by CROC for all persons under the age of eighteen years.

1. Applications by minors (for a visa)

Part 3. Clause 49.

This clause gives the Minister of Immigration or an immigration officer the power to decline the application if they are not satisfied that it is supported by the applicant's parent or guardian.

*This could clearly disadvantage children who are unaccompanied refugees or asylum seekers who, in most cases, will be unable to contact their parents or guardians, and may not even know if they are still alive. This clause should be deleted and the decision made on the normal criteria.*

2. Detention of Children.

Part 9. Clauses 294 to 296.

These clauses permit the detention of children who are asylum seekers.

*This is of great concern because this practice is condemned by both the provisions of CORC and by the United Nations High Commission on Refugees (UNHCR).*

*The relevant section of CORC reads:*

Article 37 (b). No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. (My emphasis)

*UNHCR clearly condemned the imprisonment of children, particularly unaccompanied minors, in its submission to "The National Inquiry into Children in Immigration Detention" May 2002 quoted in Amnesty International's main submission. It cited the detention of children (in Australia) as violating not only article 37(b) of CORC but also Articles 3(1) and (2), and Articles 37(a) and (c) of CORC as well as Australia's domestic law on the care of children.*

Article 3 of CORC reads: -

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

Article 37 of CORC reads: -

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment ...

(b) *(see above for text)*

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interests not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

*The UNHCR submission also stated that the imprisonment of children failed to provide the conditions necessary for their right to full development and for their right to live in an environment which fosters health. State Parties to CORC are required to provide those conditions under Articles 6(2), 19, 22(1), 24 and 39. The report also found that children in immigration detention for long periods of time are at high risk of serious mental harm and that continued detention might amount to cruel, inhuman and degrading treatment.*

*Although the concerns expressed specifically apply to the imprisonment of children in Australia, the Children's Rights Network believes that they also apply to the proposed detention of children contained in this Bill. We oppose these clauses as incompatible with New Zealand's commitments under CORC and call for their deletion from the Bill.*

3. Part 11. Clause 336 to 340

Immigration status of persons born in New Zealand on or after 1 January 2006.

These clauses propose that any child born in New Zealand, who is not a New Zealand citizen, would have the same immigration status as his or her parent(s) and be treated accordingly. We are concerned about the effect on children born to parents who are unlawfully in New Zealand (Clause 337(a)(vii) or 337(b)(iv).

*While we applaud Clause 340 which gives children the right to be heard, we are gravely concerned that the effect of the preceding clauses would be to render the children "stateless persons" in all cases where their parents do not have a nationality. We believe that this would be contrary to the provisions of CORC (Article 7) and the International Covenant on Civil and Political Rights (ICCPR) (Article 24).*

Article 7 of CORC reads: -

1. Every child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and to be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national laws and obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless. (My emphasis)

Article 24 of the ICCPR reads: -

1. Every child shall have, without any discrimination ....., the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality. (My emphasis)

We therefore call for the withdrawal and redrafting of these clauses to ensure that no persons, especially children, are rendered "stateless" by their application.