



AUSTRALIA

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 23RD SESSION OF THE UPR WORKING GROUP 2-13 NOVEMBER 2015

FOLLOW UP TO THE PREVIOUS REVIEW

Amnesty International is disappointed about the lack of progress the Australian Government has made in implementing the recommendations from the previous Universal Periodic Review (UPR) in 2011. Only a fraction of the UPR recommendations Australia accepted have been implemented.¹ Australia's second UPR in 2015 is an opportunity for the government to renew its human rights commitments.

Human rights treaties

The government has failed to implement a number of recommendations relating to international human rights treaties, including the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). This is despite accepting UPR Recommendations 1-6,² and receiving advice to do so from NGOs,³ the Parliamentary Joint Standing Committee on Treaties,⁴ the Australian Human Rights Commission (AHRC),⁵ the National Children's Commissioner,⁶ and the UN Committee against Torture⁷. Amnesty International is concerned that Australia's continued delay in ratifying the OPCAT may be motivated by the government's desire to avoid scrutiny of places of detention, particularly immigration detention centres and youth detention centres.

The government has also not implemented recommendations that it sign and ratify the Convention on the Protection of all Persons from Enforced Disappearance,⁸ and the ILO Indigenous and Tribal Peoples Convention.⁹ Australia has also not

¹ Australian Council of Human Rights Authorities, *Australia's Universal Periodic Review Progress Report 2014*, <https://www.humanrights.gov.au/sites/default/files/document/publication/upr-progress-report-2014.pdf>, p.3.

² Attorney General's Department, *National Human Rights Action Plan 2012*, <http://www.ag.gov.au/Consultations/Documents/NationalHumanRightsActionPlan/National%20Human%20Rights%20Plan.pdf>, p. 7.

³ Joint NGO Report to the UN Committee against Torture, *Torture and Cruel Treatment in Australia*, October 2014, <http://alhr.org.au/wp/wp-content/uploads/2014/11/141112-CAT-NGO-Report-Australia.pdf>, list of supporting NGOs pp.9-10.

⁴ JSCOT, *Report 125*, Chapter 6, tabled on 21 June 2012, http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jscot/28february2012/report/chapter6.pdf.

⁵ AHRC, Information concerning Australia's compliance with the Convention Against Torture, October 2014, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoQ6oVJgGLf6YX4ROs1VbzHbjPhQXE%2boWWmlrYFRkrdSVDi646tTx7wQuVtrg1RKEPhrAGEXJwJKqoJq>, http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AUS/INT_CAT_NGO_AUS_18690_E.docx, p. 7.

⁶ AHRC, Children's Rights Report 2014, https://www.humanrights.gov.au/sites/default/files/document/publication/Children%27s%20Rights%20Report%202014_2.pdf, p.2.

⁷ UN Committee Against Torture, *Concluding Observations on the combined fourth and fifth periodic reports of Australia*, 23 December 2014, available online at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoQ6oVJgGLf6YX4ROs1VbzHbjPhQXE%2boWWmlrYFRkrdSVDi646tTx7wQu2ScGTgf%2bJVP%2bu4P9RyggloFCclcBVtrg1RKEPhrAGEXJwJKqoJq>, p. 8.

⁸ UPR Recommendations 7-9, Thailand, France, Argentina.

withdrawn its reservations to Article 37(c) of the Convention on the Rights of the Child (CRC),¹⁰ and Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.¹¹ Australia should consider also acceding to the Third Optional Protocol to the Convention on the Rights of the Child as a matter of priority.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Constitution and national laws

The Australian Constitution retains discriminatory clauses which are inconsistent with international human rights law and standards.¹² The Constitution contains a provision which allows for the disqualification by States (within Australia) of “all persons of any race” from voting in federal elections.¹³ While in practice this provision is not used, its very existence is problematic. Section 51(xxvi) of the Constitution also enables discrimination on the basis of race, granting the Australian Parliament the power to make special laws for “the people of any race”.¹⁴

Absence of domestic human rights protection

Australia does not have overarching federal human rights legislation to reflect its international human rights obligations. In 2009, a national consultation took place on the need for a national human rights protection mechanism, and the consultation panel recommended a Human Rights Act.¹⁵ This was rejected by the government. Instead, a Human Rights Framework was announced in April 2010 and the National Action Plan on Human Rights followed in 2012.¹⁶ Amnesty International welcomed these developments, but now considers both to be largely defunct.

At its first UPR in 2011, the government rejected a recommendation to adopt a Human Rights Act¹⁷ because it considered that “...existing mechanisms, together with ... Australia’s Human Rights Framework” were sufficient to provide human rights protection.¹⁸

The Australian Human Rights Commission

Amnesty International is concerned at the government’s lack of support for the Australian Human Rights Commission (AHRC) and its current President. The government recently rejected a report by the AHRC that criticised the treatment of children in immigration detention centres by successive governments.¹⁹ The government failed to address the report’s concerns and recommendations, showing alarming disregard for the role of the AHRC in conducting independent

⁹ UPR Recommendations 11 and 12, Bolivia, Norway.

¹⁰ UPR Recommendation 18, ‘withdraw reservations to CRC’, Hungary and Denmark.

¹¹ UPR Recommendations 14-16, Republic of Korea, South Africa, Denmark.

¹² For example, the race provisions in the Constitution are inconsistent with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

¹³ Section 25, Commonwealth of Australia Constitution Act.

¹⁴ The Australian Constitution, Part V, Powers of the Parliament, Section 51 (xxvi): “The people of any race, for whom it is deemed necessary to make special laws”. See Amnesty International Australia, Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, 31 January 2015, http://www.amnesty.org.au/images/uploads/about/AIA_Constitutional_recognition_submission.pdf

¹⁵ Human Rights Consultation Committee Report, 30 September 2009, <http://www.ag.gov.au/RightsAndProtections/HumanRights/TreatyBodyReporting/Pages/HumanRightsconsultationreport.aspx>, Recommendation 18, p.34.

¹⁶ Attorney-General’s Department, *Australia’s National Human Rights Action Plan 2012*, <http://www.ag.gov.au/Consultations/Documents/NationalHumanRightsActionPlan/National%20Human%20Rights%20Action%20Plan.doc>.

¹⁷ UPR Recommendation 22, Canada, Ukraine, Russian Federation and Norway.

¹⁸ Attorney General’s Department, Australia’s formal response to the UPR Recommendations, <http://www.ag.gov.au/RightsAndProtections/HumanRights/UniversalPeriodicReview/Documents/AustraliasformalresponsetotheUPRrecommendations.pdf>, p. 2, Recommendation 22.

¹⁹ Australian Human Rights Commission (AHRC), *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014*, 12 February 2015, <https://www.humanrights.gov.au/news/stories/locking-children-taints-us-all-says-commission-president>.

inquiries into human rights abuses.²⁰ Australian Federal Police are currently investigating allegations that the government offered the AHRC President an inducement to resign from her role.²¹ Amnesty International also notes a 30 per cent funding cut to the AHRC announced in December 2014 which will significantly reduce the AHRC's capacity to undertake its work.²²

THE HUMAN RIGHTS SITUATION ON THE GROUND

The rights of Indigenous Peoples

Aboriginal and Torres Strait Islander Peoples still face discrimination in areas such as access to housing and health care and over-representation in the criminal justice system.

Indigenous justice

Indigenous Peoples continue to be significantly over-represented in the justice system in Australia. They comprised 27.4% of adults in prisons and 59% of juveniles in detention in 2013/14, despite accounting for just 2.3% of adults and 5.5% of youth in the general population.²³ Between June 2010 and June 2014, Indigenous young people across the country were 22-26 times more likely to be in detention than non-Indigenous youth.²⁴

Mandatory sentencing laws in Western Australia (WA) and the Northern Territory disproportionately affect Indigenous Peoples. Amnesty International is particularly concerned about legislation before the WA Parliament that expands the state's mandatory sentencing regime, including for 16-17 year olds, and will result in a significant increase in youth detention rates for non-violent home burglaries.²⁵

Amnesty International is also deeply concerned about the Queensland Government's 2014 amendments to the *Youth Justice Act*, which contravene the Convention on the Rights of the Child by stipulating that "in sentencing a child for an offence, the court must not have regard to any principle that a detention order should be imposed only as a last resort".²⁶

Access to justice for Aboriginal and Torres Strait Islander Peoples is further undermined by inadequate levels of funding for accessible community legal services.²⁷

²⁰ Following the release of *The Forgotten Children: National Inquiry into Children in Immigration Detention* report, the Prime Minister said that it was "...a blatantly partisan politicised exercise and the Human Rights Commission ought to be ashamed of itself" and that "it would be a lot easier to respect the Human Rights Commission if it did not engage in what are transparent stitch-ups" (<http://www.smh.com.au/federal-politics/political-news/human-rights-commission-should-congratulate-scott-morrison-tony-abbott-responds-to-report-on-children-in-immigration-detention-20150211-13cij.html>). Both the Prime Minister and Attorney-General have publicly stated that they have 'lost faith' in the AHRC President.

²¹ 'Police to probe Triggs Labor complaint', in *The Australian*, 25 February 2015, <http://www.theaustralian.com.au/business/latest/police-to-probe-triggs-labor-complaint/story-e6frg9of-1227239149652>.

²² See Human Rights Law Centre, 'Slashing funding for human rights watchdog is dangerous for human rights and democracy', 15 December 2014, <http://hrcl.org.au/slashing-funding-for-human-rights-watchdog-is-dangerous-for-human-rights-and-for-democracy/>.

²³ Australian Institute of Health and Welfare, 'Youth Detention Population Australia in Australia 2014', p 11 and Table s 10 <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129549675> (accessed 22 December 2014). Amnesty International Australia, *Indigenous Justice Report*, forthcoming (June 2015).

²⁴ Australian Institute of Health and Welfare, 'Youth Detention Population Australia in Australia 2014', p 11 and Table s 10 <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129549675> (accessed 22 December 2014).

²⁵ Criminal Law Amendment (Home Burglary and Other Offences) Bill 2014, <http://www.amnesty.org.au/news/comments/36664/>.

²⁶ *Youth Justice and Other Legislation Amendment Act 2014* (Qld) s 9, amending section 150(2)(e) of the *Youth Justice Act 1992* (Qld) and s 34 which inserts section 9A into the Penalties and Sentences Act 1992 (Qld)

²⁷ In 2014/15 Federal Budget the Australian Government cut \$13.41 million from Aboriginal and Torres Strait Islander Legal Services between 2013-14 and 2016-17 financial years, causing significant public outcry. On 26 March 2015 the Attorney-General announced the government would restore funding of \$11.5 million to Indigenous legal assistance over two years. While this is a welcome move, the community legal sector in Australia remains significantly underfunded. A 2014 Productivity Commission report recommended an additional \$200 million injection of funding for legal assistance services annually to meet the needs. See Productivity Commission, *Access to Justice Arrangements*, 3 December 2014, <http://www.pc.gov.au/inquiries/completed/access-justice/report>.

Homelands

Many remote communities across Australia are vulnerable to closure following the Australian Federal Government's decision in 2014 to discontinue funding their essential and municipal services.²⁸ The WA Government recently announced it will close up to 150 remote Aboriginal communities.²⁹ Between September and December 2014, the WA Government demolished the majority of buildings in the remote Aboriginal community of Oombulgurri following a 2011 forced eviction.³⁰

Removing Indigenous Peoples from their traditional lands places them at risk of homelessness and has many other serious cultural and economic implications.³¹ Amnesty International is concerned that the above measures threaten the rights of Indigenous communities to protection of their culture and identity,³² and do not conform to the principle of free, prior and informed consent.³³

The rights of refugees and asylum seekers

Amnesty International is deeply concerned that human rights protection for asylum seekers and refugees has been systematically eroded by successive Australian governments.

Offshore processing

Currently, all asylum seekers who arrive by boat are either sent back to their country of departure (including by boat "turnbacks" at sea) or are transferred to offshore immigration detention centres in Nauru or on Manus Island in Papua New Guinea.

An Amnesty delegation visited the detention facilities in Nauru in December 2012 and found the conditions for detainees there to be inhumane.³⁴ The organization visited Manus Island detention centre in November 2013 and March 2014 and documented a host of human rights violations, including arbitrary and prolonged detention, harsh conditions and treatment that may cause mental illness.³⁵ At 28 February 2015, 742 people were detained on Nauru (including 107 children) and 1,004 adult males on Manus Island.³⁶

In February 2014, largely peaceful protests by asylum seekers in Manus Island were violently suppressed by guards and other contractors at the centre, causing the death of one asylum seeker and injuries to hundreds of others.³⁷ Two guards have been charged with murder and are awaiting trial. No one else has been held accountable for the violence, despite an

²⁸ For example, the Governments of Western Australia and South Australia have indicated remote communities could close without an agreement on Federal government funding. See Dan Harrison, 'Remote Indigenous communities under threat', Sydney Morning Herald, 14 November 2014, available online at <http://www.smh.com.au/federal-politics/political-news/remote-indigenous-communities-under-threat-20141114-11mybg.html>

²⁹ ABC, 12 November 2014, 'Plan to close more than 100 remote communities would have severe consequences, says WA Premier', <http://www.abc.net.au/news/2014-11-12/indigenous-communities-closures-will-have-severe-consequences/5886840>.

³⁰ The Guardian, 27 November 2014, 'The trauma of Oombulgurri's demolition will be repeated across Western Australia', <http://www.theguardian.com/commentisfree/2014/nov/27/the-trauma-of-oombulgurris-demolition-will-be-repeated-across-western-australia>.

³¹ Amnesty International Australia, 2011, *The Land that Holds Us*, <http://www.amnesty.org.au/images/uploads/aus/AI-homelands-report.pdf>.

³² Article 8 and 11 of the UN Declaration on the Rights of Indigenous Peoples.

³³ Article 10 and 19 of the UN Declaration on the Rights of Indigenous Peoples and Article 6 of ILO Convention 169 on Indigenous and Tribal Peoples.

³⁴ Amnesty International Australia, Amnesty International Nauru Brief, 23 November 2012, <http://www.amnesty.org.au/images/uploads/news/NauruOffshoreProcessingFacilityReview2012.pdf>.

³⁵ Amnesty International, *This Is Breaking People*, November 2013, http://www.amnesty.org.au/images/uploads/about/Amnesty_International_Manus_Island_report.pdf.

³⁶ Department of Immigration and Border Protection, 28 February 2015, Immigration Detention Statistics Summary, <http://www.immi.gov.au/About/Documents/detention/immigration-detention-statistics-feb2015.pdf>.

³⁷ Amnesty International, *This is still breaking people*, 12 May 2014, ASA12/002/2014, available at: <https://www.amnesty.org/en/documents/ASA12/002/2014/en/> accessed 17 March 2015.

Australian Senate Inquiry finding that the violence was eminently foreseeable.³⁸

In 2014 the Australian government implemented legislative changes that removed parts of the Migration Act which ensured national implementation of the Refugee Convention. Australia continues to breach its international obligations under the Refugee Convention, including the customary international law principle of *non-refoulement*.³⁹

Mandatory detention

Australia continues to subject asylum seekers and refugees to mandatory indefinite detention, in contravention of Australia's obligations under international law.⁴⁰ Asylum seekers are detained in immigration detention until their claims are finalised, and there is no legislated maximum time limit on how long asylum seekers and refugees may be detained. As at 28 February 2015, the average time spent in immigration detention in Australia was 408 days.⁴¹

On 20 March 2015, the government released an independent review, undertaken by former Integrity Commissioner Phillip Moss, which examines allegations of sexual and physical assaults on asylum seekers in the Nauru Immigration Detention Centre. The review records reports of rape and other sexual assaults - including of children - and of guards trading commodities for sexual favours from female detainees, as well as cases of harassment and physical assault. The report concludes, among other things, that many asylum seekers living in the detention centre are apprehensive about their personal safety and have privacy concerns.⁴²

Children in detention

In its latest report, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, the AHRC found that "prolonged detention is having profoundly negative impacts on the mental and emotional health and development of children" and that "...the mandatory and prolonged detention of children breaches Australia's obligation under article 24(1) of the Convention on the Rights of the Child".⁴³

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the Australian Government to:

International treaty obligations

- Accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Third Optional Protocol to the Convention on the Rights of the Child, without reservations, at the earliest practicable time;
- Withdraw reservations to Article 37(c) of the Convention on the Rights of the Child, and Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.⁴⁴

Constitution and national laws

³⁸ Commonwealth of Australia, Senate Inquiry: Incident at the Manus Island Detention Centre 16 to 18 February 2014, 11 December 2014, available at

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Manus_Island/Report

³⁹ UNHCR, 4 February 2015, Legal position: Despite court ruling on Sri Lankans detained at sea, Australia bound by international obligations, <http://www.unhcr.org/54d1e4ac9.html>.

⁴⁰ Article 9 of the *International Covenant on Civil and Political Rights* prohibits arbitrary detention and provides that a detained person must be able to take proceedings before a court; Articles 3 and 9 of the *Universal Declaration of Human Rights* establish the right to liberty and freedom from arbitrary detention; and Article 31(1) of the *Refugee Convention* provides that refugees should not be subjected to any form of punishment due to their illegal entry.

⁴¹ Department of Immigration and Border Protection, Immigration Detention and Community Statistics, 31 December 2014, <http://www.immi.gov.au/About/Documents/detention/immigration-detention-statistics-jan2015.pdf>, p. 10.

⁴² Review into recent allegations relating to conditions and circumstances at the regional processing centre in Nauru: Final report, http://www.immi.gov.au/about/dept-info/_files/review-conditions-circumstances-nauru.pdf.

⁴³ Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf.

⁴⁴ UPR Recommendations 14-16, Republic of Korea, South Africa, Denmark.

- Facilitate a referendum to remove racially discriminatory provisions from the Australian Constitution;
- Expand the definition of 'human rights' in the *Australian Human Rights Commission Act 1986* to include the provisions in the following:
 - International Covenant on Economic, Social and Cultural Rights;
 - UN Convention on the Elimination of All Forms of Racial Discrimination;
 - UN Convention on the Elimination of All Forms of Discrimination against Women;
 - UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment;
 - UN Declaration on the Rights of Indigenous Peoples;
- Ensure the Australian Human Rights Commission has adequate funding and resources, in particular to investigate and report on human rights violations.

The rights of Indigenous Peoples

- Establish national Indigenous justice targets and a Justice Reinvestment strategy to reduce Indigenous incarceration rates and improve community safety, in partnership with Aboriginal and Torres Strait Islander communities;
- Provide increased long-term funding to Aboriginal and Torres Strait Islander Legal Services commensurate with community legal assistance needs;
- Implement policies to invest in remote communities and support Indigenous Peoples who wish to remain on their homelands to access essential services.

The rights of asylum seekers

- Remove all children and their families and other individuals at risk, including survivors of torture and trauma, from detention centres;
- End offshore processing of asylum seekers and ensure all asylum claims are processed on the Australian mainland;
- Allow asylum seekers to live in the Australian community while their claims are processed, following initial checks;
- End indefinite detention by legislating maximum limits to the time that asylum seekers can be held in detention.