



# General Assembly

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## Human Rights Council

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Agenda item 6

Universal Periodic Review

### **Written statement\* submitted by Amnesty International, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 May 2011]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **Australia must support recommendations made to it during the Universal Periodic Review and ensure their early and full implementation**

Amnesty International notes the constructive approach of the Australian Government towards the United Nations human rights bodies and congratulates the Government on its positive engagement with the Working Group on the Universal Periodic Review (the UPR Working Group) during the review of Australia in January 2011.

During its review, the Australian Government highlighted positive actions it has taken to support human rights, including its recent accession to several human rights instruments; its support of the *Declaration on the Rights of Indigenous Peoples*; and its signature of the *Optional Protocol to the Convention Against Torture (OP-CAT)*. The Government gave an undertaking to table in Parliament the concluding observations made by UN treaty bodies on Australia's human rights compliance, as well as the recommendations made during the Universal Periodic Review. The Government also announced the appointment of a full time Race Discrimination Commissioner. Amnesty International welcomes these positive steps.

However, concerns raised during the Universal Periodic Review also reflect repeated criticism of Australia's human rights record at the UN level over the last few years. Amnesty International therefore calls on the Australian Government to give careful consideration to and indicate a clear position on all of the 145 recommendations made by the members of the UPR Working Group that were taken under consideration by Australia, and to ensure the early and full implementation of those it supports. Given the concerns set out more fully in its submission to the Universal Periodic Review, Amnesty International considers of particular importance the recommendations listed below.<sup>1</sup>

### **Refugees and asylum seekers:**

More than 10 states made recommendations on the rights of asylum seekers and migrants, including on mandatory detention in harsh conditions and breaches of the principle of *non-refoulement*.<sup>2</sup>

However, in early 2011 the Australian Government announced the opening of five new detention facilities in Australia, thus indicating its continuing commitment to mandatory detention. In March 2011 riots broke out at the Northwest Point Immigration Detention Centre on Christmas Island. The Government's handling of the riots has raised serious questions about the management of the incident and the use of force against asylum seekers. Two former senior public servants have been tasked with conducting an independent inquiry into the incident.

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<sup>1</sup> Amnesty International's concerns and recommendations are fully set out in Australia: Submission to the UN Universal Periodic Review: Tenth session of the UPR Working Group of the Human Rights Council (Index: ASA 12/001/2010); <http://www.amnesty.org/en/library/info/ASA12/001/2010/en>

<sup>2</sup> Sweden, Slovenia and Norway made recommendations on the rights of refugees and asylum seekers [paragraphs 86.121 – 86.124 of the draft report of the Working Group on the Universal Periodic Review, Australia, 3 February 2011, UN A/HRC/WG.6/10/L. 8 (draft report of the UPR Working Group)]. Pakistan, Guatemala, Ghana, the Philippines, Brazil, Switzerland and Timor-Leste made recommendations on mandatory detention, maritime arrivals and children [paragraphs 86.126 – 86.132 of the draft report of the UPR Working Group].

Furthermore, the Australian Government is continuing its differential treatment of asylum seekers arriving by boat, thus contravening its international obligations of equal treatment and protection before the law.<sup>3</sup>

Amnesty International urges the Australian Government to support the UPR recommendations on refugees and asylum seekers. In particular, Amnesty International urges the Government to end mandatory detention of asylum seekers; detention of children in immigration facilities; and the discriminatory policy of using offshore processing centres for asylum seekers who arrive by boat.

### **Indigenous peoples:**

Five states recommended that Australia ensure the recognition and adequate protection of the culture, values and spiritual and religious practices of the Indigenous Peoples of Australia and that Australia implement the Declaration on the Rights of Indigenous Peoples.<sup>4</sup>

Aboriginal and Torres Strait Islander Peoples experience discrimination in areas such as housing, employment, education and healthcare, and they are over-represented in the criminal justice and prison system.

Amnesty International urges the Australian Government to support the UPR recommendations on Indigenous Peoples. Amnesty International particularly urges the Government to take action to address the high level of disadvantage and social dislocation experienced by Aboriginal Australians. The Government must reset the relationship with Aboriginal and Torres Strait Islander people through genuine consultation, engagement and partnership, and must implement the Declaration on the Rights of Indigenous Peoples in law, policy and practice.

### **Constitutional change to recognise Aboriginal and Torres Strait Islander Australians:**

Four states made recommendations suggesting the revision of the Australian Constitution to better recognise and protect the Indigenous Peoples of Australia.<sup>5</sup> Amnesty International supports the work of the Expert Panel on Constitutional Recognition of Indigenous Australians, which was set up by the Australian Government in December 2010 to lead a national public consultation throughout 2011.<sup>6</sup> Amnesty International encourages the Government to ensure that the Expert Panel be appropriately resourced and provided a sufficient timeframe to fulfil its task in a fully consultative and inclusive manner.

<sup>3</sup> In accordance with the UN Convention on the Status of Refugees, all asylum claims - regardless of the method of arrival - should be processed in the same manner. Amnesty International has repeatedly raised this issue, including in Australia: Submission to the UN Committee on the Elimination of Racial Discrimination: 77th Session, August 2010 (Index: ASA 12/002/2010) available at: <http://www.amnesty.org/en/library/info/ASA12/002/2010/en> and Australia: briefing for the Human Rights Committee (AI Index: ASA 12/001/2009) available at: <http://www2.ohchr.org/english/bodies/hrc/hrcs95.htm>

<sup>4</sup> Bolivia, Guatemala, Denmark, Hungary and Ghana made recommendations on the rights of Indigenous (paragraphs 86.106 – 86.109 of the draft report of the UPR Working Group).

<sup>5</sup> France, Columbia, Bolivia and Guatemala made recommendations on the revision of the Constitution (paragraphs 86.104 – 86.107 of the draft report of the UPR Working Group).

<sup>6</sup> For further information on the Expert Panel, see [http://www.fahcsia.gov.au/sa/indigenous/progserv/engagement/Pages/constitutional\\_recognition.aspx](http://www.fahcsia.gov.au/sa/indigenous/progserv/engagement/Pages/constitutional_recognition.aspx)

Amnesty International urges the Australian Government to support the UPR recommendations on revision of the Australian Constitution. Amnesty International in particular urges the Government to ensure appropriate recognition for Aboriginal and Torres Strait Island Australians.

### **Ratification of ILO convention 169:**

Two states recommended that the Australian Government ratify ILO Convention 169 (*Indigenous and Tribal Peoples Convention, 1989*).<sup>7</sup>

Amnesty International urges the Australian Government to support the UPR recommendation on ratification of ILO Convention 169 on Indigenous and Tribal Peoples. Amnesty International encourages the Government to ratify this Convention without delay.

### **Human rights act:**

Nine states recommended that Australia take steps to fully incorporate into domestic legislation Australia's international human rights obligations.<sup>8</sup> Amnesty International supports the introduction of a Human Rights Act to embed Australia's international human rights obligations in domestic law, and to set out ways of dealing effectively with human rights violations.

Amnesty International urges the Australian Government to support the UPR recommendations on the incorporation of international human rights obligations into domestic legislation. Amnesty International recommends the introduction of a Human Rights Act in this respect.

### **Implementation of the National Plan of Action to reduce violence against women and their children:**

Six states recommended Australia take urgent steps to implement the National Plan of Action to Reduce Violence against Women and Their Children.<sup>9</sup> While the National Plan of Action has been endorsed by the Australian Government, as well as by all State and Territory Governments, to date no details have been released on how it will be funded or implemented.

Amnesty International urges the government to support the UPR recommendations on the implementation of the National Plan of Action to reduce Violence against Women and Their Children. Amnesty International urges the Government to begin implementing the National Plan of Action immediately.

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<sup>7</sup> Bolivia and Norway made recommendations on ratification of ILO Convention 169 (paragraphs 86.11 - 86.12 of the draft report of the UPR Working Group).

<sup>8</sup> Sweden, France, Jordan, Argentina, Timor-Leste, Canada, Ukraine, Russian Federation and Norway made recommendations on the incorporation of international human rights obligations in domestic law (paragraphs 86.17 – 86.22 of the draft report of the UPR Working Group).

<sup>9</sup> Azerbaijan, Canada, Switzerland, Norway, Mexico and the Philippines made recommendations on the implementation of the National Plan of Action (paragraphs 86.76- 86.81 of the draft report of the UPR Working Group).

### **Ratification of the optional protocol to the Convention against Torture:**

Five states recommended that the Australian Government ratify the Optional Protocol to the *Convention against Torture* (OP-CAT).<sup>10</sup> Amnesty international noted the Government's stated commitment to ratifying the OP-CAT, and encourages the government to urgently take the necessary measures for its ratification.

Amnesty International urges the Australian Government to support the UPR recommendations on ratification of the OP-CAT. Amnesty International calls on the Government to ratify the OP-CAT without delay.

### **Discrimination based on gender or sexual orientation:**

Five states recommended that the Australian Government introduce further legislation to end discrimination based on sexual orientation or gender.<sup>11</sup> Lesbian, gay, bisexual and transgender communities in Australia experience discrimination in a number of areas. Most significantly, the Marriage Act prevents same sex couples from entering into a legally binding marriage.

Amnesty International urges the Australian Government to support the UPR recommendations on discrimination based on gender or sexual orientation. Amnesty International calls on the Australian Government to introduce further legislation to end discrimination based on sexual orientation or gender, and in particular to amend the Marriage Act to allow for same sex marriages.

### **Review of counter-terrorism legislation:**

Five states recommended that the Australian Government review Australia's counter-terrorism legislation to ensure its compatibility with Australia's international human rights obligations.<sup>12</sup> Amnesty International has identified significant shortcomings in Australia's national security legislation with respect to control orders, preventative or administrative detention, and in the Security Intelligence Organisation's broad powers to detain and question people, including persons not suspected of an offence. A key concern is a provision in law that allows for people to be kept in detention without charge.

Amnesty International urges the Australian Government to support the UPR recommendations on reviewing Australia's counter-terrorism legislation. Amnesty International in particular calls on the Government to review the human rights implications of the control order and preventative and administrative detention order schemes; the broad powers of the Australian Security Intelligence Organisation to detain and question people; the process for listing terrorist organisations and reviewing such lists; and the offence of association with a terrorist organisation.

<sup>10</sup> The Republic of Moldova, the Maldives, New Zealand, Mexico and Denmark made recommendations on ratification of the OP-CAT (paragraphs 86.1- 86.6 of the draft report of the UPR Working Group).

<sup>11</sup> Columbia, Switzerland, New Zealand, the United Kingdom and Norway made recommendations on discrimination (paragraphs 86.51 and 86.66 - 86.70 of the draft report of the UPR Working Group).

<sup>12</sup> Brazil, the Russian Federation, Belgium, the Republic of Moldova and Switzerland made recommendations on counter-terrorism measures (paragraphs 86.136 – 86.140 of the draft report of the UPR Working Group).

## **Concluding remarks**

The Universal Periodic Review provides a systematic and independent consideration of the strengths and weaknesses in Australia's human rights observance. As mentioned, concerns raised during the Universal Periodic Review reflect repeated criticism of Australia's human rights record at the United Nations over the last few years on particular issues, including those set out in this statement.

Noting the constructive approach of the Australian Government towards the Universal Periodic Review and the positive announcements made during the dialogue, Amnesty International expects the outcome of the Universal Periodic Review will provide impetus for the improvement of Australia's human rights record. As outlined above, Amnesty International urges the Government to support the recommendations made to it during the Universal Periodic Review and to ensure the early and full implementation of the commitments it made and the recommendations it accepts.

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