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resolution 16/21**

Australia

The present report is a compilation of the information contained in reports of the treaty bodies and special procedures, including observations and comments by the State concerned, in reports of the United Nations High Commissioner for Human Rights, and in other relevant official United Nations documents. It is presented in a summarized manner owing to word-limit constraints. For the full texts, please refer to the documents referenced. The report does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights other than those contained in public reports and statements issued by the Office. It follows the general guidelines adopted by the Human Rights Council in its decision 17/119. Information included herein has been systematically referenced in endnotes. The report has been prepared taking into consideration the periodicity of the review, and developments during that period.



I. Background and framework

A. Scope of international obligations¹

International human rights treaties²

	<i>Status during previous cycle</i>	<i>Action after review</i>	<i>Not ratified/not accepted</i>
<i>Ratification, accession or succession</i>	ICERD (1975)		OP-CAT (signature, 2009)
	ICESCR (1975)		ICRMW
	ICCPR (1980)		ICPPED
	ICCPR-OP 2 (1990)		
	CEDAW (1983)		
	CAT (1989)		
	OP-CAT (signature, 2009)		
	CRC (1990)		
	OP-CRC-AC (2006)		
	OP-CRC-SC (2007)		
CRPD (2008)			
<i>Reservations and/or declarations</i>	ICERD (reservation, art. 4 (a), 1975)		
	ICCPR (reservation, arts. 10 (2) (a) and (b) and (3), 14 (6) and 20; general declaration, 1980)		
	CEDAW (general reservation; reservation, art. 11 (2); general declaration, 1983, modification of general reservation, 2000)		
	CRC (reservation, art. 37 (c), 1990)		
	OP-CRC-AC (declaration, arts. 3 (2), minimum age of voluntary recruitment 17 years, and 3 (5), 2006)		
	CRPD (general declaration, 2008)		
<i>Complaints procedures, inquiries and urgent action³</i>	ICERD, art. 14 (1993)		OP-ICESCR
	ICCPR, art. 41 (1993)		OP-CRC-IC
	ICCPR-OP 1 (1991)		ICRMW
	OP-CEDAW, art. 8 (2008)		ICPPED
	CAT, arts. 20, 21 and 22 (1993)		
OP-CRPD, art. 6 (2009)			

Other main relevant international instruments

	<i>Status during previous cycle</i>	<i>Action after review</i>	<i>Not ratified</i>
<i>Ratification, accession or succession</i>	Convention on the Prevention and Punishment of the Crime of Genocide Rome Statute of the International Criminal Court Palermo Protocol ⁴ Conventions on refugees and stateless persons ⁵ Geneva Conventions of 12 August 1949 and Additional Protocols thereto ⁶		
	ILO fundamental conventions except No. 138 ⁷		ILO Convention No. 138 ⁸
	Convention against Discrimination in Education		ILO Conventions Nos. 169 and 189 ⁹

1. Australia was invited to become a party to ICRMW, ICPPED, OP-CRC-IC, OP-ICESCR, OP-CAT and the International Labour Organization (ILO) Domestic Workers Convention, 2011 No. 189.¹⁰

B. Constitutional and legislative framework

2. In June 2015, the United Nations High Commissioner for Human Rights warmly welcomed the recommendation by a parliamentary committee in Australia for an amendment to refer explicitly to indigenous peoples in the Constitution. The High Commissioner also welcomed proposals to remove section 25 of the Constitution, which disqualified all persons “of any race” from voting in State elections; include new anti-discrimination guarantees in the Constitution; and introduce a reference to the United Nations Declaration on the Rights of Indigenous Peoples in the Human Rights (Parliamentary Scrutiny) Act of 2011.¹¹

3. Greatly appreciating the establishment and work of the Parliamentary Joint Committee on Human Rights,¹² in 2014 the Committee against Torture encouraged Australia to implement its recommendations.¹³

C. Institutional and human rights infrastructure and policy measures

Status of national human rights institutions¹⁴

<i>National human rights institution</i>	<i>Status during previous cycle</i>	<i>Status during present cycle¹⁵</i>
Australian Commission on Human Rights	A (2006)	A (2011)

4. The Committee against Torture welcomed the release of the National Human Rights Action Plan in 2012.¹⁶ The Special Rapporteur on trafficking in persons, especially women and children, recommended that Australia develop a comprehensive national plan of action, together with stakeholders, delineating responsibilities and including benchmarks and indicators to measure progress and impact.¹⁷

5. Welcoming the work of the Australian Human Rights Commission, the Committee against Torture urged Australia to provide the Commission with statutory powers to monitor the implementation of the obligations of Australia under CAT.¹⁸

6. The Committee welcomed the establishment of a public online database of recommendations from United Nations human rights mechanisms.¹⁹

II. Cooperation with human rights mechanisms

7. In 2012, the Committee on the Rights of the Child urged Australia to effectively address the recommendations contained in its previous concluding observations that had yet to be implemented, including those on the reservation to article 37 (c) of CRC, legislation, corporal punishment, freedom of association and the administration of juvenile justice.²⁰

8. Australia submitted information, in 2012 and 2013, on the implementation of the recommendations from the universal periodic review, including through a new national human rights action plan.²¹

A. Cooperation with treaty bodies

1. Reporting status

<i>Treaty body</i>	<i>Concluding observations included in previous review</i>	<i>Latest report submitted since previous review</i>	<i>Latest concluding observations</i>	<i>Reporting status</i>
Committee on the Elimination of Racial Discrimination	August 2010	-	-	Combined eighteenth and nineteenth reports overdue since 2012
Committee on Economic, Social and Cultural Rights	May 2009	-	-	Fifth report overdue since 2014
Human Rights Committee	April 2009	-	-	Sixth report overdue since 2013
Committee on the Elimination of Discrimination against Women	July 2010	-	-	Eighth report overdue since 2014
Committee against Torture	May 2008	2013 (initially due in 2012)	November 2014	Sixth report due in 2018
Committee on the Rights of the Child	September 2005	-	June 2012 (including OP-CRC-AC and OP-CRC-SC)	Combined fifth and sixth reports due in 2018

Committee on the Rights of Persons with Disabilities	-	2010	September 2013	Combined second and third reports due in 2018
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2. Responses to specific follow-up requests by treaty bodies

Concluding observations

<i>Treaty body</i>	<i>Due in</i>	<i>Subject matter</i>	<i>Submitted in</i>
Committee on the Elimination of Racial Discrimination	2011	Australian Human Rights Commission; Northern Territory Emergency Response; racially motivated violence ²²	2011; ²³ further information requested ²⁴
Human Rights Committee	2010	Counter-terrorism legislation; Northern Territory Emergency Response measures; domestic violence; immigration detention policy ²⁵	2012; ²⁶ follow-up concluded ²⁷
Committee on the Elimination of Discrimination against Women	2012	Domestic violence and indigenous women ²⁸	2012; ²⁹ further information requested ³⁰
Committee against Torture	2009	Incorporation of CAT into domestic law; right to a fair trial; conditions of detention; non-refoulement ³¹	2010 ³²
Committee against Torture	2015	Violence against women; indigenous people in the criminal justice system; non-refoulement; mandatory immigration detention ³³	--

Views

<i>Treaty body</i>	<i>Number of views</i>	<i>Status</i>
Human Rights Committee	7 ³⁴	Further information requested and dialogue ongoing ³⁵
Committee against Torture	2 ³⁶	Further information requested ³⁷

B. Cooperation with special procedures³⁸

	<i>Status during previous cycle</i>	<i>Current status</i>
<i>Standing invitation</i>	Yes	Yes
<i>Visits undertaken</i>	Adequate housing (2006) Indigenous peoples (2009) Health (2009)	Foreign debt (2011) Trafficking in persons (2011) ³⁹

<i>Visits agreed to in principle</i>	Migrants Foreign debt	Migrants Racism
<i>Visits requested</i>	--	--
<i>Responses to letters of allegation and urgent appeals</i>	During the period under review, 20 communications were sent. The Government replied to 17 communications.	

C. Cooperation with the Office of the United Nations High Commissioner for Human Rights

9. The United Nations High Commissioner for Human Rights visited Australia in 2011. She welcomed the Government's Human Rights Framework as a mechanism for implementing the recommendations of international bodies and hoped that it would be a stepping stone to a fully fledged human rights act. She also urged Australia to integrate human rights more explicitly into its foreign policy and aid programmes. The High Commissioner stated that the two main human rights issues that were a constant source of friction in Australia and of attention abroad related to the treatment of indigenous peoples and asylum seekers, an issue which needed to be tackled through a human rights-based approach.⁴⁰

10. Australia contributed financially to the Office of the United Nations High Commissioner for Human Rights during the reporting period (2011-2014).⁴¹

III. Implementation of international human rights obligations, taking into account applicable international humanitarian law

A. Equality and non-discrimination

11. While welcoming the Multicultural Policy and National Anti-Racism Partnership and Strategy of Australia, the Committee on the Rights of the Child was concerned that racial discrimination remained a problem. The Committee called upon Australia to, inter alia, address disparities in access to services by Aboriginal and Torres Strait Islander children and their families.⁴²

12. In 2011, the United Nations High Commissioner for Human Rights referred to first-hand reports of how different groups faced discrimination and racism in the community, particularly associated with Islamophobia and fears of terrorism.⁴³

13. In 2013, the Committee on the Rights of Persons with Disabilities recommended that Australia strengthen anti-discrimination laws to address intersectional discrimination and guarantee protection from discrimination on the grounds of disability.⁴⁴

14. Concerned about the difficulties faced by Aboriginal persons in relation to birth registration, the Committee on the Rights of the Child urged Australia to review its birth registration process to ensure that all children are registered at birth.⁴⁵

B. Right to life, liberty and security of person

15. The Committee against Torture welcomed the Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act 2010, which enacted a new offence of torture in the Criminal Code and ensured non-reintroduction of the death penalty by a state or a territory.⁴⁶

16. Concerned at inappropriate or excessive use of conducted energy weapons (tasers), the same Committee urged Australia to consider abolishing their use.⁴⁷

17. Moreover, the Committee was concerned that the reported number of deaths in custody, including of indigenous persons, was high. It urged Australia to prevent deaths in custody and ensure that all incidents were promptly, effectively and impartially investigated and, on a finding of criminal responsibility, led to a penalty proportional to the gravity of the offence.⁴⁸

18. The Committee on the Rights of the Child regretted that corporal punishment remained lawful. It reiterated its previous recommendation that Australia explicitly prohibit corporal punishment and ensure that “reasonable chastisement” was not used as defence to a charge of assault of a child.⁴⁹

19. Concerned that overcrowding in places of deprivation of liberty remained a problem, the Committee against Torture urged Australia to bring conditions of detention into line with international norms and standards.⁵⁰

20. In a 2014 study submitted by the Expert Mechanism on the Rights of Indigenous Peoples to the Human Rights Council it was reported that, in Australia, indigenous youth aged 10-17 years were 15 times more likely than non-indigenous youth to be under community-based supervision and almost 25 times as likely to be in detention. It was also stated that indigenous persons with intellectual disabilities were often detained and assessed as unfit for trial, and their detention could become indefinite, and maximum security prisons had held indigenous persons with intellectual disabilities and reportedly subjected them to excessive restraint.⁵¹

21. Concerned that persons with disabilities were overrepresented in both the prison and juvenile justice systems, the Committee on the Rights of Persons with Disabilities recommended that Australia, as a matter of urgency, end the unwarranted use of prisons for the management of unconvicted persons with disabilities.⁵²

22. The Committee on the Rights of the Child was gravely concerned at the high levels of violence against women and children.⁵³ In 2013, the Committee on the Elimination of Discrimination against Women noted that aspects of its recommendations on domestic violence had been implemented. However, it had not received sufficient information to assess the implementation of measures taken to address homelessness driven by domestic and family violence and the implementation of specific strategies to address violence against indigenous women.⁵⁴

23. The Committee on the Rights of Persons with Disabilities recommended that Australia investigate without delay the situations of violence, exploitation and abuse experienced by women and girls with disabilities in institutional settings, and take appropriate measures on the findings.⁵⁵

24. Welcoming the establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse, the Committee against Torture urged Australia, inter alia, to ensure that the work of the Commission supplemented criminal prosecutions and court proceedings and was not a substitute for them.⁵⁶

25. The Committee on the Rights of the Child was concerned that there was a lack of measures to prevent the commercial sexual exploitation of children; that measures to protect vulnerable groups, such as Aboriginal girls and homeless children, were inadequate; and that root causes of the offences under OP-CRC-SC, such as poverty, were not sufficiently addressed. The Committee recommended taking measures to address such concerns.⁵⁷

26. The Committee also recommended that legal persons, including corporations, be held liable for offences related to OP-CRC-SC.⁵⁸

27. The Committee further recommended that Australia introduce legislation specifically prohibiting the sale of arms to countries where children were known to be, or could be, recruited or used in armed conflict and/or hostilities. It also strongly urged Australia to revise the proposed Criminal Code Amendment (Cluster Munitions Prohibition) Bill and amend the proposed legislation to prohibit investment in the development or production of cluster munitions.⁵⁹

28. The Committee urged Australia to establish an identification mechanism for children, including asylum-seeking and refugee children, who had been or might have been involved in armed conflict abroad and provide them with appropriate assistance for their physical and psychological recovery and their social reintegration.⁶⁰

29. The Special Rapporteur on trafficking in persons highlighted the country's strong commitment to combating such trafficking, as evidenced by the high level of government engagement and effective partnership developed with civil society organizations.⁶¹ The Special Rapporteur recommended that Australia improve coordination on trafficking; the monitoring of the implementation of anti-trafficking legislation;⁶² and support services for victims of trafficking and persons vulnerable to trafficking-related exploitation.⁶³ The Special Rapporteur also recommended that Australia consider extending the reflection and recovery period to 90 days for all persons identified or provisionally identified as having been trafficked; reconsider visa titles to avoid stigmatization and to ensure confidentiality and respect for the privacy and dignity of victims of trafficking;⁶⁴ and support a stronger investigation and enforcement capacity with respect to forced and exploitative labour.⁶⁵

C. Administration of justice and the rule of law

30. The Committee against Torture was concerned that mandatory sentencing continued to disproportionately affect indigenous people and at reports that legal assistance services were not adequately funded. It urged Australia to, inter alia, address the overrepresentation of indigenous people in prisons, in particular its underlying causes, review mandatory sentencing laws with a view to abolishing them, giving judges the discretion necessary to determine relevant individual circumstances, and guarantee legal and interpretation services were provided from the outset of deprivation of liberty.⁶⁶

31. While noting as positive that Australia had legislation requiring courts to take into account "the probable effect" of a sentence on a convicted person's family, the Committee on the Rights of the Child was concerned that Aboriginal Australians, particularly women, were severely overrepresented in prison. It recommended that Australia, inter alia, review all judicial and administrative arrangements to prevent imprisonment by providing support services to families at risk.⁶⁷

32. With reference to follow-up on the lack of culturally appropriate legal services for Aboriginal and Torres Strait Islander women, the Committee on the Elimination of Discrimination against Women, in 2013, stated that it was unable to assess the measures taken for indigenous women's access to legal literacy and justice.⁶⁸

33. Concerned, *inter alia*, at the lack of guidance on access to justice for persons with disabilities, the Committee on the Rights of Persons with Disabilities recommended that legislation and policy be amended to ensure access to justice for persons with disabilities.⁶⁹

34. The Committee on the Rights of the Child regretted that the juvenile justice system still required substantial reforms for it to conform to international standards and was concerned at reported abuse of child detainees in two youth detention centres. The Committee reiterated its previous recommendations relating to juvenile justice, including on abrogating mandatory sentencing in Western Australia and removing children from the adult justice system in Queensland.⁷⁰ In 2014, the Human Rights Committee, in its views, found that sentencing children to life in prison without genuine possibility of parole breached international law.⁷¹

35. The same Committee urged Australia to increase the protection of children involved in penal proceedings and to abolish legislation, such as the Prohibited Behaviour Orders Act 2010 (Western Australia), which allowed the publication of child offender details.⁷²

D. Freedom of expression, association and peaceful assembly, and right to participate in public and political life

36. The United Nations Educational, Scientific and Cultural Organization recommended that Australia decriminalize defamation.⁷³

37. In 2015, the Special Rapporteur on the rights to freedom of peaceful assembly and of association welcomed the introduction of a bill by the Victoria State government in Australia to revoke the State's 2014 controversial "move-on laws", which granted police extensive powers to move protesters who might be obstructing buildings or traffic or "causing people to have a reasonable fear of violence". The 2014 bill allowed authorities to impose harsh penalties on offenders, including arrest, fines and exclusion orders banning individuals from entering specified public spaces for up to a year.⁷⁴

38. The Committee on the Rights of the Child reiterated its previous concern about legislation in certain states and territories allowing police to remove children and young people who assembled peacefully in groups. It reiterated its recommendation on considering alternative measures to policing and/or criminalization and reviewing the legislation.⁷⁵

39. The Committee on the Rights of Persons with Disabilities was concerned that persons with disabilities, in particular those with intellectual or psychosocial disabilities, were automatically excluded from the electoral roll. It recommended that Australia enact legislation to restore presumption of the capacity of persons with disabilities to vote and exercise choice, and ensure that all aspects of voting in an election were made accessible to all citizens with disabilities.⁷⁶

E. Right to social security and to an adequate standard of living

40. The Committee on the Rights of the Child concurred with the Committee on Economic, Social and Cultural Rights that Australia should develop a holistic anti-poverty strategy, situating it socially and geographically, and adopt specific measures according to gender, age and other factors.⁷⁷

41. While welcoming the approval of the Paid Parental Leave scheme for 18 weeks, the Committee on the Rights of the Child noted with concern that the scheme was fixed at the national minimum wage. The Committee recommended that Australia ensure that parents, especially mothers, were still able to earn an adequate living while caring and breastfeeding

their newborn,⁷⁸ review its newly enacted Paid Parental Leave scheme and adequately fund the National Breastfeeding Strategy.⁷⁹

42. While welcoming the Closing the Gap strategy, the Committee on the Rights of the Child in 2012 was concerned that Australia had been unable to provide culturally appropriate housing services. It recommended that Australia, inter alia, improve its social services to strengthen their responsiveness to the needs of children and youth who were at risk of homelessness.⁸⁰

F. Right to health

43. The Committee on the Rights of the Child was concerned about the health disparities of children living in rural and remote areas, children in out-of-home care and children with disabilities, and particularly about the gap in the health status between Aboriginal and non-Aboriginal children. It reiterated its previous recommendation that Australia ensure that all children enjoy the same access to and quality of health services.⁸¹

44. The Committee was also concerned at the high rate of suicides among young people, particularly in the Aboriginal community, and that current diagnosis procedures might not be adequately addressing the underlying mental health issues linked to suicide. The Committee recommended that Australia, inter alia, allocate specific resources for improving the availability and quality of early intervention services and develop specialized health services and targeted strategies for children at particular risk of mental-health problems.⁸²

45. Deeply concerned at the marked increases in the rates of sexually transmitted infections among young people, the Committee recommended that Australia provide adolescents with education on sex and reproductive health and improve the accessibility of contraception, counselling and confidential health services, particularly among Aboriginal and socioeconomically disadvantaged communities.⁸³

G. Right to education

46. The Committee on the Rights of the Child welcomed the National Indigenous Education Action Plan 2012-2014 and the National Partnership Agreement on Indigenous Early Childhood Development. It reiterated its previous concerns about the serious difficulties in accessing education faced by indigenous children and children living in remote areas. The Committee recommended that Australia further improve the quality and coverage of its early childhood care and education and ensure adequate resources for implementing bilingual models of education.⁸⁴

47. With reference to ensuring access to good-quality education, including postgraduate education and vocational training for indigenous women, the Committee on the Elimination of Discrimination against Women reported that access and support for indigenous women, including funding and resources, continued to be a major obstacle to training and educational opportunities for Aboriginal and Torres Strait Islander women. The Committee considered that its recommendation on that issue had been partially implemented.⁸⁵

48. The Committee on the Rights of Persons with Disabilities was concerned that students with disabilities continued to be placed in special schools and that many of those who were in regular schools were largely confined to special classes or units. It recommended that Australia provide reasonable accommodation of the quality necessary in education and increase participation and completion rates by students with disabilities.⁸⁶

H. Persons with disabilities

49. The Committee on the Rights of Persons with Disabilities commended the adoption of the National Disability Strategy 2010-2020. It also commended Australia for introducing DisabilityCare Australia.⁸⁷

50. Concerned that Australian legislation allowed for disability to be the basis for rejecting an immigration request, the Committee on the Rights of the Child urged Australia to ensure that no legislation discriminated against children with disabilities.⁸⁸

51. The same Committee urged Australia to, inter alia, establish a clear legislative definition of disability, including for learning, cognitive and mental disabilities, with the aim of promptly and accurately identifying children with disabilities to effectively address their needs in a non-discriminatory manner.⁸⁹

52. Welcoming the commissioning of the Australian Law Reform Commission to inquire into barriers to equal recognition before the law and legal capacity for persons with disabilities, the Committee on the Rights of Persons with Disabilities recommended that Australia effectively use the current inquiry to take steps to replace substitute decision-making with supported decision-making.⁹⁰

53. The Committee also recommended that Australia repeal all legislation that authorized medical intervention without the free and informed consent of the persons with disabilities concerned, committal of individuals to detention in mental-health facilities or imposition of compulsory treatment, by means of Community Treatment Orders. Concerned that persons with disabilities, particularly those with intellectual impairment or psychosocial disability, were subjected to unregulated behaviour modification or restrictive practices, the Committee recommended that Australia end such practices.⁹¹

54. The Committee on the Rights of Persons with Disabilities was deeply concerned that the Senate inquiry report into the involuntary or coerced sterilization of persons with disabilities put forward recommendations that would allow that practice to continue. It regretted the failure of Australia to implement the recommendations made by the Committee on the Rights of the Child, as part of the universal periodic review⁹² and by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. The Committee on the Rights of Persons with Disabilities urged Australia to adopt uniform national legislation prohibiting the sterilization of persons with disabilities in the absence of their prior, fully informed and free consent.⁹³

55. While noting the 2002 and 2010 regulations to address accessibility barriers for persons with disabilities, the Committee on the Rights of Persons with Disabilities remained concerned at the level of compliance with accessibility standards and regulations and recommended that sufficient resources be allocated to ensure the monitoring and implementation of the disability standards and requirements.⁹⁴

56. The Committee was concerned that, despite the policy to close large residential centres, new initiatives were replicating institutional living arrangements. It encouraged Australia to implement a national framework for the closure of residential institutions and to allocate resources for support services that would enable persons with disabilities to live in their communities.⁹⁵

57. The Committee regretted that the medical model of habilitation and rehabilitation in Australia was not based on the human rights model. It recommended that Australia establish a framework to protect persons with disabilities from imposed habilitation and rehabilitation services without their free and informed consent.⁹⁶

58. The Committee recommended that Australia modify the Supported Wage System to secure correct assessment of the wages of persons in supported employment and increase employment participation by women with disabilities.⁹⁷

59. The Committee also recommended that Australia recognize Australian Sign Language as one of its national languages, and develop the use of other accessible formats of communication.⁹⁸

I. Indigenous peoples

60. The Committee on the Rights of the Child was concerned at inadequate consultation and participation of Aboriginal and Torres Strait Islander persons in the policy formulation, decision-making and implementation processes of programmes affecting them.⁹⁹ In 2012, within the follow-up framework, the Committee on the Elimination of Racial Discrimination reiterated the need to guarantee the free, prior and informed consent of the communities concerned.¹⁰⁰

61. In 2012, the Special Rapporteur on the rights of indigenous peoples noted the Government's position that the Stronger Futures legislation, which had been adopted, represented the Government's commitment to working in partnership with Aboriginal peoples. The Special Rapporteur remained concerned, however, about aspects of the new legislation that were similar to those of the Northern Territory Emergency Response Act of 2007 legislation that it replaced. He urged the Government to maintain ongoing consultations with Aboriginal peoples concerning the implementation of the Stronger Futures legislation and address concerns that had been expressed about the discriminatory, rights-limiting effects of the legislation.¹⁰¹

62. The Committee on the Rights of the Child was concerned at the large numbers of Aboriginal and Torres Strait Islander children being separated from their homes and communities and placed into care that, inter alia, did not adequately facilitate the preservation of their cultural and linguistic identity. It recommended that Australia review its progress in implementing the recommendations in the report "Bringing them home: national inquiry into the separation of Aboriginal and Torres Strait Islander children from their families" and observe the Committee's previous recommendations to fully implement the indigenous child placement principle and intensify its cooperation with indigenous community leaders and communities to find suitable solutions for indigenous children in need of alternative care within indigenous families.¹⁰²

J. Migrants, refugees and asylum seekers

63. The United Nations High Commissioner for Human Rights in June 2015 stated that the response of Australia to migrant arrivals had set a poor benchmark for its neighbours in the region. The authorities had also engaged in the "turn-around" and "push-back" of boats in international waters. Asylum seekers were incarcerated in centres in third countries, where they faced conditions that the Special Rapporteur on torture had reported as amounting to cruel, inhuman or degrading treatment as defined by CAT,¹⁰³ and which also violated CRC, as the Australian Human Rights Commission had justifiably declared. Even recognized refugees in urgent need of protection were not permitted to enter Australia, which had set up relocation arrangements with countries that might be ill-prepared to offer those refugees any durable solution. Such policies should not be considered a model by any country.¹⁰⁴

64. The Office of the United Nations High Commissioner for Refugees (UNHCR), in its detailed submission, expressed concern at any policy of pushing the boats of asylum

seekers back at sea without proper consideration of each individual's need for protection. UNHCR recommended that Australia cease its practice of interceptions and "push-backs", implement measures that complied with international law and standards and renew its efforts to strengthen regional cooperation to provide viable alternatives to dangerous boat journeys.¹⁰⁵ The Special Rapporteur on trafficking in persons also recommended that Australia fully integrate the issue of trafficking in persons into all aspects of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, taking care to guard against confusion between trafficking and migrant smuggling,¹⁰⁶ and that in all cases of mandatory detention adequate safeguards be in place to ensure that victims of trafficking were promptly identified and protected.¹⁰⁷

65. In 2014, the Special Rapporteur on torture sent a communication regarding allegations concerning the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 and the Migration Amendment (Character and General Visa Cancellation) Bill 2014. The Special Rapporteur acknowledged the comprehensive account of the Government in response to the concerns, legal obligations and questions raised in the initial communication and noted that the bills had passed both houses of Parliament. Notwithstanding, the Special Rapporteur surmised that both bills put Australia at risk of violating CAT. He indicated that the Migration and Maritime Powers Legislation Amendment, which had passed both the House of Representatives and the Senate of Australia, violated CAT because it allowed for arbitrary detention and the determination of refugee status at sea, without access to lawyers. The Migration Amendment (Character and General Visa Cancellation) Bill violated CAT because it tightened control on the issuance of visas on the basis of character and risk assessments.¹⁰⁸ The Committee against Torture urged Australia to ensure that it effectively met its non-refoulement obligations, with regard to all asylum seekers and other persons in need of international protection.¹⁰⁹

66. In 2011, the United Nations High Commissioner for Human Rights had reiterated the long-standing concerns expressed by the human rights treaty bodies that the mandatory immigration detention regime of Australia was in breach of its international human rights obligations. She stated that when detention was mandatory and did not take into account individual circumstances, it could be considered arbitrary. Mandatory detention was also a practice that could, and had, led to suicides, self-harming and deep trauma. The consequence of the constant political refrain that Australia was being "flooded" by people who were "queue-jumpers" had resulted in the stigmatization of an entire group of people, irrespective of where they had come from or from what dangers they might have fled. She urged the leaders of all Australian political parties to take a principled and courageous stand to break that ingrained political habit of demonizing asylum seekers.¹¹⁰

67. Concerned at mandatory immigration detention, especially of children, the Committee against Torture recommended that Australia, inter alia, repeal the provisions establishing the mandatory detention of persons entering its territory irregularly; establish statutory time limits for detention; ensure that persons in need of international protection, children and families with children, were not detained and ensure that detention should be only applied as a last resort; and ensure access to an effective judicial remedy to review the necessity of the detention.¹¹¹

68. While positively noting the provision by Australia for 13,750 refugees and others in humanitarian need to be settled in Australia each year,¹¹² UNHCR stated that it had undertaken periodic missions to third-country offshore processing centres in October 2013. It had found serious shortcomings and that the policies, operational approaches and harsh physical conditions at the centres did not comply with international standards. UNHCR expressed the view that the responsibilities of Australia under the applicable international instruments to which it was a party remained binding and could not be extinguished by the

physical transfer of asylum seekers to third countries. UNHCR recommended that Australia ensure that all asylum seekers and refugees who arrived in Australia were processed there regardless of their mode of arrival and that it take immediate action, together with third countries, to ensure that conditions at the offshore processing centres comply with international laws and standards.¹¹³

69. The Committee against Torture was concerned that stateless persons whose asylum claims had not been accepted and refugees with an adverse security or character assessment could be detained indefinitely.¹¹⁴ The Committee recommended that Australia guarantee that all asylum claims were thoroughly examined, that the persons concerned had a real opportunity to effectively challenge any adverse decisions adopted concerning their claims and that all asylum seekers had access to independent, qualified and free-of-charge legal assistance during the entire asylum procedure.¹¹⁵ UNHCR also recommended that Australia immediately cease transferring asylum seekers or their children who might be stateless.¹¹⁶

70. UNHCR recommended that Australia reconsider the policy that asylum seekers who arrived in Australia by sea on or after 19 July 2013 would not be permitted to settle in Australia and ensure that if refugees were recognized then Australia proceeded with relocating those individuals on a voluntary basis to a third country.¹¹⁷

K. Right to development and environmental issues

71. In 2011, the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, urged the Government to adopt a clear road map for the achievement of the internationally agreed official development assistance target of 0.7 per cent of gross national income.¹¹⁸

72. Concerned about the lack of a human rights-based focus in the aid programme of Australia, the Independent Expert on foreign debt endorsed the recommendation by the Australian Human Rights Commission to assist the Australian Agency for International Development with incorporating human rights in its development assistance programme.¹¹⁹

73. The Independent Expert on foreign debt was concerned at the lack of domestic legislation to curb the predatory activities of vulture funds and called upon the Government to urgently enact legislation to limit the ability of vulture funds to use Australian courts at the expense of both Australian taxpayers and the citizens of the poor countries for whose benefit it contributed to multilateral debt relief.¹²⁰

74. Concerned at reports of Australian mining companies' participation and complicity in serious human rights violations in third countries, including of children's rights, the Committee on the Rights of the Child recommended that Australia examine and adapt its legislative framework to ensure the legal accountability of Australian companies and their subsidiaries regarding human rights abuses committed in Australia or overseas and establish monitoring mechanisms, investigation, and redress of such abuses.¹²¹

75. The Committee also recommended that human rights impact assessments, including child rights impact assessments, be conducted prior to the conclusion of trade agreements and that mechanisms be established for the Export Credit Agency of Australia to deal with the risk of human rights abuses.¹²²

L. Human rights and counter-terrorism

76. The Committee against Torture welcomed the creation of the position of the independent national security legislation monitor. Remaining concerned about aspects of

Australian counter-terrorism legislation, the Committee urged Australia to adopt a more precise definition of a terrorist act and ensure that all counter-terrorism and national security legislation, policies and practices were in full compliance with CAT and that adequate and effective legal safeguards were in place.¹²³

Notes

¹ Unless indicated otherwise, the status of ratification of instruments listed in the table may be found on the official website of the United Nations Treaty Collection database, Office of Legal Affairs of the United Nations Secretariat, <http://treaties.un.org/>. Please also refer to the United Nations compilation on Australia from the previous cycle (A/HRC/WG.6/23/AUS/2).

² The following abbreviations have been used in the present document:

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
OP-ICESCR	Optional Protocol to ICESCR
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP 1	Optional Protocol to ICCPR
ICCPR-OP 2	Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
OP-CEDAW	Optional Protocol to CEDAW
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OP-CAT	Optional Protocol to CAT
CRC	Convention on the Rights of the Child
OP-CRC-AC	Optional Protocol to CRC on the involvement of children in armed conflict
OP-CRC-SC	Optional Protocol to CRC on the sale of children, child prostitution and child pornography
OP-CRC-IC	Optional Protocol to CRC on a communications procedure
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CRPD	Convention on the Rights of Persons with Disabilities
OP-CRPD	Optional Protocol to CRPD
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance

³ Individual complaints: ICCPR-OP 1, art. 1; OP-CEDAW, art. 1; OP-CRPD, art. 1; OP-ICESCR, art. 1; OP-CRC-IC, art. 5; ICERD, art. 14; CAT, art. 22; ICRMW, art. 77; and ICPPED, art. 31. Inquiry procedure: OP-CEDAW, art. 8; CAT, art. 20; ICPPED, art. 33; OP-CRPD, art. 6; OP-ICESCR, art. 11; and OP-CRC-IC, art. 13. Inter-State complaints: ICCPR, art. 41; ICRMW, art. 76; ICPPED, art. 32; CAT, art. 21; OP-ICESCR, art. 10; and OP-CRC-IC, art. 12. Urgent action: ICPPED, art. 30.

⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

⁵ 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 1954 Convention relating to the Status of Stateless Persons, and 1961 Convention on the Reduction of Statelessness.

⁶ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention); Geneva Convention relative to the Treatment of Prisoners of War (Third Convention); Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the

- Adoption of an Additional Distinctive Emblem (Protocol III). For the official status of ratifications, see International Committee of the Red Cross, www.icrc.org/IHL.
- ⁷ International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Worst Forms of Child Labour Convention, 1999 (No. 182).
- ⁸ ILO Minimum Age Convention, 1973 (No. 138).
- ⁹ ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), and Domestic Workers Convention, 2011 (No. 189).
- ¹⁰ See CRC/C/AUS/CO/4, para. 85, CAT/C/AUS/CO/4-5, paras. 22-23, and A/HRC/20/18/Add.1, para. 86 (a).
- ¹¹ Press briefing note of 26 June 2015 on Australian indigenous peoples. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16158&LangID=E.
- ¹² See CAT/C/AUS/CO/4-5, para. 5 (b).
- ¹³ *Ibid.*, para. 21.
- ¹⁴ According to article 5 of the rules of procedure of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) Sub-Committee on Accreditation, the classifications for accreditation used by the Sub-Committee are: A: voting member (fully in compliance with each of the Paris Principles); B: non-voting member (not fully in compliance with each of the Paris Principles or insufficient information provided to make a determination); and C: no status (not in compliance with the Paris Principles).
- ¹⁵ For the list of national human rights institutions with accreditation status granted by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, see A/HRC/27/40, annex.
- ¹⁶ See CAT/C/AUS/CO/4-5, para. 6 (a).
- ¹⁷ See A/HRC/20/18/Add.1, para. 80 (b).
- ¹⁸ See CAT/C/AUS/CO/4-5, para. 8.
- ¹⁹ *Ibid.*, para. 6 (d).
- ²⁰ See CRC/C/AUS/CO/4, para. 8.
- ²¹ Information can be accessed at www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx.
- ²² See CERD/C/AUS/CO/15-17, para. 32.
- ²³ See CERD/C/AUS/CO/15-17/Add.1.
- ²⁴ Letter from the Committee on the Elimination of Racial Discrimination to the Permanent Mission of Australia to the United Nations Office and other international organizations in Geneva, dated 9 March 2012, available from http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/AUS/INT_CERD_FUL_AUS_14202_E.pdf (accessed on 9 February 2015).
- ²⁵ See CCPR/C/AUS/CO/5, para. 29.
- ²⁶ Information provided by Australia in follow-up to the concluding observations, available from http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/INT_CCPR_FCO_AUS_11695_E.pdf. See also letters from the Human Rights Committee to the Permanent Mission of Australia to the United Nations Office and other international organizations in Geneva, dated 28 September 2010 and 19 October 2011. Available from http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/INT_CCPR_FUL_AUS_12176_E.pdf and http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/INT_CCPR_NGS_AUS_12173_E.pdf.
- ²⁷ See A/67/40 (Vol. I), p. 174. See also letter from the Human Rights Committee to the Permanent Mission of Australia to the United Nations Office and other international organizations in Geneva, dated 12 November 2012. Available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/INT_CCPR_FUL_AUS_12175_E.pdf.
- ²⁸ See CEDAW/C/AUL/CO/7, para. 50.
- ²⁹ Available from http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/FollowUp.aspx?Treaty=CEDAW&Lang=en.

- ³⁰ Letter from the Committee on the Elimination of Discrimination against Women to the Permanent Mission of Australia to the United Nations Office and other international organizations in Geneva, dated 3 September 2013. Available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/AUS/INT_CEDAW_FUL_AUS_15067_E.pdf.
- ³¹ See CAT/C/AUS/CO/3, para. 37.
- ³² See CAT/C/AUS/CO/3/Add.2. See also CAT/C/AUS/CO/3/Add.1 and letter from the Committee against Torture to the Permanent Mission of Australia to the United Nations Office and other international organizations in Geneva, dated 6 May 2010, available from http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AUS/INT_CAT_FUF_AUS_12052_E.pdf.
- ³³ See CAT/C/AUS/CO/4-5, para. 25.
- ³⁴ CCPR/C/102/D/1557/2007, CCPR/C/110/D/1885/2009, CCPR/C/112/D/1968/2010, CCPR/C/101/3, CCPR/C/108/D/2094/2011 and CCPR/C/108/D/2136/2012.
- ³⁵ See CCPR/C/102/D/1557/2007, para. 10; CCPR/C/110/D/1885/2009, para. 11; CCPR/C/112/D/1968/2010, para. 10; CCPR/C/101/3, pp. 2-3; CCPR/C/108/D/2094/2011, para.12; and CCPR/C/108/D/2136/2012, para. 13.
- ³⁶ CAT/C/49/D/416/2010 and CAT/C/51/D/387/2009.
- ³⁷ See CAT/C/49/D/416/2010, para. 9, and CAT/C/51/D/387/2009, para. 11.
- ³⁸ For the titles of special procedures mandate holders, see www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx and www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx.
- ³⁹ See A/HRC/20/18/Add.1 and 6.
- ⁴⁰ See statement by the United Nations High Commissioner for Human Rights, Canberra, 25 May 2011. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11062&.
- ⁴¹ Information can be accessed at www.ohchr.org/EN/PublicationsResources/Pages/AnnualReportAppeal.aspx.
- ⁴² See CRC/C/AUS/CO/4, paras. 29-30.
- ⁴³ See statement by the United Nations High Commissioner for Human Rights, Canberra, 25 May 2011.
- ⁴⁴ See CRPD/C/AUS/CO/1, para. 15.
- ⁴⁵ See CRC/C/AUS/CO/4, paras. 35-36.
- ⁴⁶ See CAT/C/AUS/CO/4-5, para. 5 (a).
- ⁴⁷ *Ibid.*, para. 13.
- ⁴⁸ *Ibid.*, para. 11.
- ⁴⁹ See CRC/C/AUS/CO/4, paras. 43-45.
- ⁵⁰ *Ibid.*, para. 11.
- ⁵¹ See A/HRC/27/65, paras. 47 and 58.
- ⁵² See CRPD/C/AUS/CO/1, paras. 31-32.
- ⁵³ See CRC/C/AUS/CO/4, para. 46. See also CAT/C/AUS/CO/4-5, para. 9.
- ⁵⁴ See letter from the Committee on the Elimination of Discrimination against Women to the Permanent Mission of Australia to the United Nations Office and other international organizations in Geneva, dated 3 September 2013.
- ⁵⁵ See CRPD/C/AUS/CO/1, para. 38.
- ⁵⁶ See CAT/C/AUS/CO/4-5, para. 19.
- ⁵⁷ See CRC/C/OPSC/AUS/CO/1 and Corr.1, paras. 20-21. See also, paras. 8-9, 26-27 and 30-33.
- ⁵⁸ *Ibid.*, para. 29.
- ⁵⁹ See CRC/C/OPAC/AUS/CO/1, paras. 28-30.
- ⁶⁰ *Ibid.*, para. 25.
- ⁶¹ See A/HRC/20/18/Add.1, summary, p.1. See also CAT/C/AUS/CO/4-5, para. 10.
- ⁶² See A/HRC/20/18/Add.1, para. 80 (c) and (e).
- ⁶³ *Ibid.*, para. 82 (c).
- ⁶⁴ *Ibid.*, para. 82 (a) and (b).
- ⁶⁵ *Ibid.*, para. 83 (c). See also A/HRC/20/18/Add.6 and www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx.
- ⁶⁶ See CAT/C/AUS/CO/4-5, para. 12.
- ⁶⁷ See CRC/C/AUS/CO/4, paras. 72-73.

- ⁶⁸ See letter from the Committee on the Elimination of Discrimination against Women to the Permanent Mission of Australia to the United Nations Office and other international organizations in Geneva, dated 3 September 2013, p. 3.
- ⁶⁹ See CRPD/C/AUS/CO/1, paras. 27-30.
- ⁷⁰ See CRC/C/AUS/CO/4, paras. 82-84.
- ⁷¹ See CCPR/C/112/D/1968/2010.
- ⁷² See CRC/C/AUS/CO/4, para. 42.
- ⁷³ See UNESCO submission for the universal periodic review of Australia, para. 45.
- ⁷⁴ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15638&LangID=E.
- ⁷⁵ See CRC/C/AUS/CO/4, paras. 39-40.
- ⁷⁶ See CRPD/C/AUS/CO/1, paras. 51-52.
- ⁷⁷ See CRC/C/AUS/CO/4, para. 69.
- ⁷⁸ *Ibid.*, paras. 68-69.
- ⁷⁹ *Ibid.*, para. 63.
- ⁸⁰ *Ibid.*, paras. 70-71.
- ⁸¹ *Ibid.*, paras. 59-60.
- ⁸² *Ibid.*, paras. 64-65.
- ⁸³ *Ibid.*, paras. 66-67.
- ⁸⁴ *Ibid.*, paras. 74-76.
- ⁸⁵ See letter from the Committee on the Elimination of Discrimination against Women to the Permanent Mission of Australia to the United Nations Office and other international organizations in Geneva, dated 3 September 2013, p. 3.
- ⁸⁶ See CRPD/C/AUS/CO/1, paras. 45-46. See also CRC/C/AUS/CO/4, paras. 57-58.
- ⁸⁷ See CRPD/C/AUS/CO/1, paras. 4 and 6.
- ⁸⁸ See CRC/C/AUS/CO/4, paras. 57-58.
- ⁸⁹ *Ibid.*, para. 58 (a).
- ⁹⁰ See CRPD/C/AUS/CO/1, paras. 7 and 25.
- ⁹¹ *Ibid.*, paras. 34-36.
- ⁹² See A/HRC/17/10, para. 86.39 (Belgium, Denmark, Germany, United Kingdom of Great Britain and Northern Ireland) and A/HRC/17/10/Add.1.
- ⁹³ See CRPD/C/AUS/CO/1, para. 40. See also CRC/C/AUS/CO/4, paras. 46-48 and 57-58, and CAT/C/AUS/CO/4-5, para. 20.
- ⁹⁴ See CRPD/C/AUS/CO/1, paras. 20-21.
- ⁹⁵ *Ibid.*, paras. 41-42.
- ⁹⁶ *Ibid.*, paras. 47-48.
- ⁹⁷ *Ibid.*, para. 50.
- ⁹⁸ *Ibid.*, para. 44.
- ⁹⁹ See CRC/C/AUS/CO/4, para. 29.
- ¹⁰⁰ See letter from the Committee on the Elimination of Racial Discrimination to the Permanent Mission of Australia to the United Nations Office and other international organizations in Geneva, dated 9 March 2012, p. 2.
- ¹⁰¹ See A/HRC/21/47/Add.3, paras. 10-11.
- ¹⁰² See CRC/C/AUS/CO/4, paras. 37-38 and 52 (g).
- ¹⁰³ See also CAT/C/AUS/CO/4-5, para. 17, and A/HRC/28/68/Add.1, para. 19.
- ¹⁰⁴ Statement by the United Nations High Commissioner for Human Rights at the interactive dialogue on the human rights of migrants at the twenty-ninth session of the Human Rights Council in Geneva, 15 June 2015.
- ¹⁰⁵ See UNHCR submission to the universal periodic review of Australia, pp. 6-7.
- ¹⁰⁶ See A/HRC/20/18/Add.1, para. 86 (d).
- ¹⁰⁷ See *ibid.*, para. 81 (b).
- ¹⁰⁸ See A/HRC/28/68/Add.1, paras. 27-31.
- ¹⁰⁹ See CAT/C/AUS/CO/4-5, para. 15.
- ¹¹⁰ See statement by the United Nations High Commissioner for Human Rights, Canberra, 25 May 2011.
- ¹¹¹ See CAT/C/AUS/CO/4-5, para. 16.
- ¹¹² See UNHCR submission, p. 1.
- ¹¹³ See *ibid.*, pp. 4-5.

- ¹¹⁴ See CAT/C/AUS/CO/4-5, para. 16.
¹¹⁵ Ibid., para. 15.
¹¹⁶ See UNHCR submission, pp. 12-13.
¹¹⁷ See *ibid.*, pp. 9-10.
¹¹⁸ See A/HRC/17/37/Add.1, para. 91.
¹¹⁹ Ibid., para. 93.
¹²⁰ Ibid., para. 100.
¹²¹ See CRC/C/AUS/CO/4, paras. 27-28.
¹²² Ibid., para. 28.
¹²³ See CAT/C/AUS/CO/4-5, paras. 6 (c) and 14.
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