



**DESTINATION  
JUSTICE**

# **Universal Periodic Review (UPR) 23rd Session**

(2<sup>nd</sup> to 13<sup>th</sup> November 2015)

## **Human Rights Situation in Australia**

**Joint Submission of :**

**Franciscans International**

**Edmund Rice International**

**Marist International Solidarity Foundation**

**Australian Catholic Religious against Trafficking in Humans**

**Destination Justice**

Geneva, March 2015

## INTRODUCTION

1. The organisations listed below present this submission concerning the human rights situation in Australia for consideration by the UPR Working Group at its 23<sup>rd</sup> session, November 2015. The human rights issues addressed are *the rights of asylum seekers and refugees, the rights of the child, rights of indigenous peoples, climate change and human trafficking*. This is a joint submission of **Franciscans International (FI)**<sup>1</sup>, **Edmund Rice International (ERI)**<sup>2</sup>, **Marist International Solidarity Foundation (FMSI)**<sup>3</sup>, **Australian Catholic Religious against Trafficking in Humans (ACRATH)** and **Destination Justice (DJ)**<sup>4</sup>.

### Asylum Seekers and Refugees

#### *First-Cycle UPR Recommendations*

2. In the previous UPR, Australia accepted recommendations on migrants, refugees and asylum seekers, including safeguarding the rights of refugees and asylum seekers, ceasing the practice of refoulement, and agreeing to improve the harsh conditions of custody centres particularly for minorities, migrants and asylum seekers.<sup>5</sup>

#### *Legal and Institutional Framework*

3. Australia is a State Party to relevant treaties.<sup>6</sup> Its federal laws, including the *Migration Act 1958*, regulate treatment of asylum seekers. According to that Act,<sup>7</sup> a non-citizen who arrives in Australia without a valid visa, whether on mainland Australia or at an “excised offshore place”,<sup>8</sup> cannot make a visa application unless the Minister makes a personal intervention, and is subject to mandatory detention.
4. Since 2012, the Australian Government has implemented a third-country processing regime under which asylum seekers’ claims will be processed in third countries, not within Australian territory. Australia signed Memoranda of Understanding (MoU) with Nauru on 29 August 2012<sup>9</sup> and Papua New Guinea (PNG) on 8 September 2012<sup>10</sup> designating them as regional processing countries. Initially, the use of such third countries was applicable only for asylum seekers arriving at an “excised offshore place”, such as Christmas Island.<sup>11</sup> In May 2013, however, the Australian

---

1 Franciscans International was founded in 1989 and has a General Consultative Status with the ECOSOC since 1995. FI supports Franciscans and partners working at the local and national levels and assists in bringing their concerns and expertise to the UN.

2 Edmund Rice International (ERI) is an international NGO, founded in 2005 and with consultative status with ECOSOC since 2012. ERI is supported by two Catholic Religious Congregations, the Christian Brothers and the Presentation Brothers. ERI has a special interest in the rights of the child, the right to education and in eco-justice.

3 Marist International Solidarity Foundation (FMSI) is an NGO in consultative status with UN ECOSOC and it has a special focus on promoting and protecting the rights of children. This organization was established in 2007 in Italy as a Not-for-Profit Organization with a Social Purpose (FMSI-ONLUS) and has a presence in nearly eighty countries.

4 Destination Justice (DJ) is an NGO founded in 2011 in France and Australia, and with a field office in Cambodia. DJ works to improve human rights and rule of law, with a particular focus on access to information and access to justice.

5 See UPR Australia recommendations 86.122-127, and 86.130.

6 Australia acceded to the *International Convention Relating to the Status of Refugees (CRSR)* in 1954 and ratified the *Convention on the Elimination of All Forms of Discrimination Against Women* in 1983 and the *Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment or Punishment (CAT)* in 1989.

7 Sections 46A and 189.

8 An excised offshore place is an Australian territory other than the Australian mainland (“offshore”) and “excised” or excluded from Australian territory for the purposes of legal interpretation as to the extent of Australian territory.

9 See the related document on the designation of Nauru at

[https://www.humanrights.gov.au/sites/default/files/Docs%20tabled%20with%20Instrument%20of%20Designation.Nauru\\_.pdf](https://www.humanrights.gov.au/sites/default/files/Docs%20tabled%20with%20Instrument%20of%20Designation.Nauru_.pdf).

10 See the related documents on the designation of Papua New Guinea at

[https://www.humanrights.gov.au/sites/default/files/Docs%20tabled%20with%20Instrument%20of%20Designation.PNG\\_.pdf](https://www.humanrights.gov.au/sites/default/files/Docs%20tabled%20with%20Instrument%20of%20Designation.PNG_.pdf)

11 Christmas Island is an island offshore of mainland Australia and forming part of its territory.

Government extended this policy to all asylum seekers who arrive by boat in Australia (whether to the mainland or to an excised offshore place) without authorisation.<sup>12</sup> In September 2014, Australia signed a further MoU with Cambodia, to resettle any asylum seekers held in Nauru who are eventually granted refugee status.

### *Promotion and Protection of Human Rights on the Ground*

5. We are concerned about conditions faced by individuals wishing to seek asylum in Australia, especially those detained in the Manus Island processing centre in PNG. According to Australia's Department of Immigration and Border Protection, there have been regular transfers of asylum seekers to Manus Island from Australia since July 2013. By January 2015, the centre held 1,023 asylum seekers.
6. UNHCR, UN human rights mechanisms<sup>13</sup> and national and international NGOs have been alarmed by allegations of human rights violations at the Manus Island facility. These include the death of Iranian asylum seeker Mr Reza Berati and injuries to 77 others following violent unrest at the centre on 17-18 February 2014. Another Iranian asylum seeker, Mr Hamid Kehazaei, was reported brain dead on 4 September 2014 due to a late response to his medical needs. A UN Special Rapporteur alleged that this treatment and Australia's failure to investigate, prosecute and punish it violates Australia's international law obligations.<sup>14</sup> The Australian Prime Minister, Tony Abbott, complained in response that Australia was "sick of being lectured to by the United Nations."<sup>15</sup>
7. The deaths of Mr Berati and Mr Kehazaei were completely mishandled and point to underlying issues of mistreatment and abuse at Manus Island. A former staff member reported that they witnessed the "mistreatment, abuse, and degrading treatment that asylum seekers transferred to Manus Island endure on a daily basis... The attacks, whilst brutal and utterly devastating, did not surprise myself or my colleagues... I believe whilst the centre remains open more deaths and serious injuries are inevitable."<sup>16</sup> Conditions continue to worsen while staff are conversely reaching a point where they cannot speak out.<sup>17</sup> This is because the Government and its contractors are keen to prevent leaks about the treatment of detainees and have created a "culture of secrecy and intimidation."<sup>18</sup> Recent reports from Nauru also indicate that women asylum seekers face particularly adverse conditions which may violate Australia's obligations under CEDAW.<sup>19</sup>

---

12 See the information provided by the Australian Human Rights Commission at <https://www.humanrights.gov.au/transfer-asylum-seekers-third-countries>

13 These include the Committee against Torture and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

14 The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, presented this report to the UN Human Rights Council on 9 March 2015: see, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Juan E. Méndez, *Advance Version: Addendum: Observations on communications transmitted to governments and replies received*, 6 March 2015, UN. Doc. No. A/HRC/28/68/Add.1, accessed 11 March 2015, [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A\\_HRC\\_28\\_68\\_E.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_68_E.doc), paras. 25-26, which read:

"The Rapporteur finds that the Government, in its reply, does not sufficiently address all of the concerns, legal obligations, and questions raised in the initial communication, which prompts him to infer that the Government fails to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in its resolution 25/13, as well as to comply with its obligation, under international customary law, to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified, inter alia, in the Convention Against Torture (CAT).

"In the absence of sufficient information to the contrary, the Rapporteur concludes that there is substance in the allegations presented in the initial communication, reiterated above, and thus, that the Government of Australia, by failing to provide any additional information or details of the investigation into Mr. A and Mr. B's allegations, has violated their right to be free from torture or cruel, inhuman or degrading treatment, as provided by article 1 and 16 of the CAT."

15 Ben Doherty and Daniel Hurst, 'UN accuses Australia of systematically violating torture convention', *The Guardian*, 10 March 2015, accessed 11 March 2015, <http://www.theguardian.com/australia-news/2015/mar/09/un-reports-australias-immigration-detention-breaches-torture-convention>.

16 Bec Zajac, *Speaking out*, *Guardian Australia*, Online Publication, 21 January 2015, accessed 2 February 2015:

<http://www.themonthly.com.au/blog/bec-zajac/2015/21/2015/1421797900/speaking-out>

17 *Ibid.*

18 Ben Pynt, Director of Humanitarian Research Partners in Bec Zajac, 'Speaking out', *The Monthly*, 21 January 2015, accessed 11 March 2015, <http://www.themonthly.com.au/blog/bec-zajac/2015/21/2015/1421797900/speaking-out>.

19 Reports indicate, for example, that "sanitary pads are [] issued in small numbers because they are deemed a fire hazard. There are long queues in the hot sun daily and there is no privacy ... [w]omen who are sick and who cannot stand in the queue for hours, miss their contraceptive pills and risk getting pregnant. [] Women are flown to Australia for abortions because these are illegal on Nauru. Many of these are first babies but they say that it

8. While transparency may not be politically convenient for the Australian Government, it is necessary to ensure that inhumane practices on Manus Island and other detention centres are identified and stopped or that “[centre] staff [do not] report a rape or an instance of child abuse because they’re afraid of legal action [against them] by the government.”<sup>20</sup>
9. Further concerns relate to asylum seekers detained at sea, especially a boatload of 153 Sri Lankan asylum-seekers intercepted near Cocos Island in July 2014 as part of the Australian military-led border regime Operation Sovereign Borders. Although the Australian Government argued that the boat was intercepted in the “contiguous zone”,<sup>21</sup> Australia’s High Court ordered an interim injunction against any transfer of the 153 asylum seekers to Sri Lanka on the basis that Australia was bound by the international law “freedom of the seas” principle by which it could neither intercept nor detain foreign boats.<sup>22</sup> However, the High Court ultimately ruled in January 2015 that these asylum seekers had been detained lawfully, in accordance with domestic law.<sup>23</sup> In another case, Sri Lankan asylum seekers were “screened out” at sea following telephone interviews with Australian officials, returned to Sri Lanka by Australian authorities, and subsequently went to Nepal, where the UNHCR eventually determined that they were genuine refugees.<sup>24</sup>
10. We are concerned about the large number of asylum seekers granted a Bridging visa E (BVE)<sup>25</sup> in Australia between 13 August 2012 and 19 July 2013, and who remain on it over two years later, although with the BVEs often having lapsed. As of 31 January 2015, there are 26,168 asylum seekers living in the Australian community on a BVE. BVEs permit asylum seekers only very limited opportunities to work, study or receive social security. They cannot leave the country while on this visa as they will be unable to return.<sup>26</sup> For two years or more, asylum seekers on BVEs have not been able to submit an application for protection visas since none had been available. Research indicates that prolonged periods waiting for the processing of claims can lead to mental illness. Extremely limited work rights combined with ongoing uncertainty can similarly lead to deepening mental deterioration.<sup>27</sup>
11. On 5 December 2014, the Australian Government enacted legislation to re-introduce Temporary Protection visas (TPVs), which allow visa holders to remain in Australia temporarily for renewable three-year periods<sup>28</sup> and reflect the Government’s “commit[ment] to not grant Permanent Protection visas to people who arrived illegally and engage Australia’s protection obligations”.<sup>29</sup> Since the re-introduction of TPVs, asylum seekers on BVEs have been able to submit an application for protection in small numbers. However, the December 2014 legislation

---

would be wrong to have a baby on Nauru and ask how they could keep such a baby alive in such conditions”: Pamela Curr and Brigid Arthur, *Sanitary Pads ‘A Fire Hazard’: The Realities of Life for Mothers and Children on Nauru*, New Matilda, 8 March 2015, accessed 11 March 2015, <https://newmatilda.com/2015/03/08/sanitary-pads-fire-hazard-realities-life-mothers-and-children-nauru>

20 Graeme McGregor, Amnesty International, in *ibid.*

21 The zone of sea just outside Australia’s territorial waters.

22 Article 87 of the UN Convention on the Law of the Sea, 21 ILM 1261 (1982).

23 However, this is not in accordance with international legal obligations and raises concerns about the rights of the asylum-seekers detained at sea, as they have no access to legal advice nor ability to be heard. If this were to be the case, it would be violation of the fundamental human rights of these asylum-seekers. These Sri Lankan asylum-seekers are currently detained in Nauru.

24 See the case as illustrated by news report at [https://www.thesaturdaypaper.com.au/news/politics/2015/01/31/sinhalese-asylum-seekers-water-claims-accepted-un/14226228001441#.VOMSW\\_IMDtV](https://www.thesaturdaypaper.com.au/news/politics/2015/01/31/sinhalese-asylum-seekers-water-claims-accepted-un/14226228001441#.VOMSW_IMDtV).

25 BVEs are temporary visas granted to asylum seekers while they await the outcome of longer term visa claims.

26 For more information, see, Australian Human Rights Commission, *Tell Me About: Bridging Visas for Asylum Seekers*, 2013, accessed 10 March 2015: <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/tell-me-about-bridging-visas-asylum-seekers>.

27 Kate Aubusson, New asylum seeker syndrome? *Psychiatry Update*, 25 May, 2012, accessed 16 February 2015: <http://www.psychiatryupdate.com.au/latest-news/new-asylum-seeker-syndrome>.

28 TPVs allow the visa holder to remain in Australia for three years, after which their situation must be reassessed to see if they still engage Australia’s protection obligations; if not, they will be required to leave Australia. According to the Australian Government, this is one of only two visas to which asylum seekers who arrived in Australia without authorisation are eligible. The second visa, yet to become available at the time of writing, is a Safe Haven Enterprise visa (SHEV), which will “encourage refugees to work and/or study in regional areas: Department of Immigration and Border Protection, *Temporary Protection visas*, 2014, accessed 11 March 2015: <http://www.immi.gov.au/About/Pages/ima/temporary-protection-visas.aspx>. As with TPVs, SHEVs offer only temporary protection.

29 *Ibid.*

reintroducing TPVs also introduced fast track processing for those on BVEs where time frames are short and appeal processes virtually non-existent.

12. We are concerned about punitive regulations introduced by the Australian Government in December 2013<sup>30</sup> which effectively prevent family reunions for asylum seekers<sup>31</sup> who arrived as “unauthorised maritime arrivals” but were subsequently granted protection by Australia.<sup>32</sup>

### 13. Recommendations

1. *To ensure the reception of asylum seekers and processing of their claims accords with Australia’s international law obligations;*
2. *To immediately close the Regional Processing Centre on Manus Island, PNG and on Nauru, and return to a policy of processing asylum seekers on the Australian mainland, and ban the practice of processing asylum claims at sea;*
3. *To reinstate the granting of Permanent visas for those found to engage Australia’s protection obligations and to reinstate without penalty the right to family reunion to those granted protection;*
4. *To impose a moratorium on returning any asylum seekers to their country of origin against their will until an impartial international assessment of the situation is conducted and their safety can be assured.*

### Rights of the Child: Children in Immigration Detention Centres

#### *First-Cycle UPR Recommendations*

14. In the previous UPR, Australia accepted several recommendations on the rights of the child,<sup>33</sup> including the commitment to address the issue of children in immigration detention; special protection and assistance for unaccompanied children; the implementation of UN recommendations with respect to asylum-seekers and irregular immigrants, especially children.

#### *Legal and Institutional Framework*

15. Australia is a State Party to relevant treaties.<sup>34</sup> However, in its effort to deter asylum seekers, it has implemented legislative changes to implement its third-country processing procedure, enabling it to detain asylum seeker children who travel to Australia without valid visas.

#### *Promotion and Protection of Human Rights on the Ground*

16. The conditions of the Nauru facility have been consistently criticised as unacceptable by national and international observers. In 2013, the Australian Parliamentary Joint Committee on Human Rights considered the legislation re-introducing detention on Nauru and concluded that the likely impact of the detention arrangements on physical and mental health was “contrary to the right to health in the ICESCR and the prohibition against degrading treatment in the ICCPR”.<sup>35</sup>
17. UNHCR visited the detention centre in October 2013 and, despite noting some improvements since 2012, concluded that “the current policies, conditions and operational approaches at the

<sup>30</sup> Direction 62 under s499 of the Migration Act 1958.

<sup>31</sup> The Principle of Family Unity was considered an essential right of the refugee by the 1951 Refugee Convention.

<sup>32</sup> Their applications even if already submitted, would be not processed until all other Family Stream applications had been considered.

<sup>33</sup> See the Addendum to report of UPR Working Group on Australia A/HRC/17/10/Add.1 at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/A\\_HRC\\_17\\_10\\_Add.1\\_Australia\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/A_HRC_17_10_Add.1_Australia_E.pdf)

<sup>34</sup> In addition to acceding to the *Convention Relating to the Status of Refugees* in 1954, Australia ratified the *Convention on the Rights of the Child* (CRC) in 1990.

<sup>35</sup> Parliamentary Joint Committee on Human Rights, Parliament of Australia, Ninth Report of 2013: Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012 and related legislation (2013), 19 June 2013, [2.195]

Refugee Processing Centre do not comply with international standards.”<sup>36</sup> In April 2014, underscoring the facility’s inadequate nature, heavy rainfall unearthed an unexploded munition from World War II in a camp area that children frequent.<sup>37</sup> The explosive, which had never been discovered despite the facility being used since 2001, would not only risk physical danger but also potential trauma for persons who have fled war zones.<sup>38</sup>

18. The Australian Churches Refugee Taskforce published a report in July 2014, *Protecting the Lonely Children*, on unaccompanied children who seek asylum in Australia. It characterised the physical and mental suffering of children in Nauru (and previously in Manus Island) as “state sanctioned child abuse”.<sup>39</sup> It was particularly critical of the conflict of interest created when the Minister for Immigration and Border Protection is also the legal guardian for unaccompanied children seeking asylum.
19. As at 31 January 2015, 300 children were held in immigration detention, 211 within Australia and 119 in Nauru.<sup>40</sup> There have been extensive complaints about abuse and aggression towards children by facility staff.<sup>41</sup> In four incidents,<sup>42</sup> children were struck on the back of the head and knocked to the ground; removed from play areas with “excessive force”; pushed and intimidated; and denied medical facilities.<sup>43</sup> They raise serious concerns for children's well-being, and may indicate violations of Australia’s obligations under the CRC.<sup>44</sup>
20. In February 2015, the independent Australian Human Rights Commission published its report, *The Forgotten Children: Inquiry into Children in Immigration Detention 2014*. The report suffered in that the Australian Department of Immigration and Border Protection refused to provide much requested key information about the transfer and detention of children in Nauru. Nevertheless, the Commission found that “[c]hildren on Nauru are suffering from extreme physical, emotional, psychological and developmental distress”<sup>45</sup> and confirmed that their prolonged, mandatory detention causes significant mental and physical illness and developmental delays, in breach of Australia’s international obligations.<sup>46</sup> It feared there would be no time limit on their detention<sup>47</sup> and revealed that between January 2013 and March 2014, children were involved in and/or exposed to numerous assault and self-harm incidents, including 207 incidents of actual self-harm, in which 128 children were involved; 27 children engaging in voluntary starvation/hunger strike, 171 children being involved in incidents of threatened self-harm, 233 assaults involving children, and 33 incidents of reported sexual assault, with the vast majority involving children. The average detention is between three and 14 months. When questioned in the parliamentary session on the report, the Australian Prime Minister denounced the report as a “blatantly partisan exercise”, said the Commission “should be ashamed of itself”.<sup>48</sup> The Government has also reportedly pressured the Commission’s President to resign.<sup>49</sup>

---

36 UN High Commissioner for Refugees (UNHCR), UNHCR monitoring visit to the Republic of Nauru, 26 November 2013.

37 The Guardian Australia, 'Unexploded wartime bomb found in Nauru detention centre', 22 April 2014, accessed 3rd May 2014 at <http://www.theguardian.com/world/2014/apr/22/unexploded-wartime-bomb-found-in-nauru-detention-centre>.

38 This was revealed in a leaked internal email: *ibid*.

39 National Council of Churches in Australia: Australian Churches Refugee taskforce: Protecting the Lonely Children July 2014 p9

40 According to the report of NGO ChilOut, at <http://www.chilout.org/>.

41 The Guardian Australia, 'Nauru guards accused of assaulting children in detention camp', 24th April 2014, accessed 28th April 2014 at <http://www.theguardian.com/world/2014/apr/24/nauru-guards-accused-of-assaulting-children>.

42 These four separate incidents were described in a letter to Nauru contractors.

43 *Ibid*.

44 See UN Committee on the Rights of the Child (CRC), CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, [89].

45 Australian Human Rights Commission: The Forgotten Children: National Inquiry into Children in Immigration Detention 2014 released 11 Feb 2015 p195.

46 See the report of the Australian National Commission of Human Rights at [https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten\\_children\\_2014.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf).

47 The report also found that the detention breached article 37(b) of the Convention on the Rights of the Child.

48 See at <http://www.theguardian.com/australia-news/2015/feb/12/tony-abbott-rejects-report-children-detention-blatantly-political>.

## **21. Recommendations**

- 1. To accept and implement the recommendations of the Australian Human Rights Commission's The Forgotten Children Report;*
- 2. To release the children and their families detained in Nauru, transfer them to Australia, and ensure that their rights are protected in accordance with Australia's international law obligations;*
- 3. To amend the Migration Act 1958 and enact federal legislation for the effective implementation of the CRC;*
- 4. To immediately close the Regional Processing Centre in Nauru;*
- 5. To stop the practice of refoulement of asylum-seekers and refugees.*

## **Rights of the Child: Juvenile Justice**

22. On juvenile detention, we received information on cases in Queensland in which 17-year-old minors with six or more months left to serve had been transferred to adult prison, and if previously found guilty and appearing in court, could be publicly "named and shamed." This practice contravenes the CRC. Of the daily average of 180 young people held in Queensland's two youth detention centres in 2013-14, more than 70% were on remand, waiting for their cases to go before the court. Less than 30% were there for actually committing an offence. Also concerning is the increasing number of girls in detention which has more than doubled from an average of 11-12 girls daily in detention centres in 2009-10 to an average of over 30 girls daily in detention centres in 2013-14.
23. Foetal Alcohol Spectrum Disorder (FASD) is a phenomenon resulting from prenatal alcohol exposure, which is more prevalent among indigenous peoples than the general population. Children and adolescents affected by FASD can develop problems of neurological function. In terms of justice, this can mean people with FASD can have trouble realising the consequences of their actions and learning from their mistakes. They are often impulsive; have poor personal boundaries or impaired judgment; are easily manipulated and give the appearance of understanding more than they actually do.
24. Interventions in juvenile justice are usually based on principles of learning theory that expect individuals to learn from consequences and take responsibility for actions. These methods assume all offenders understand ideas and concepts, make links and form associations, and interpret and remember information. However, young people affected by FASD in most cases are unable to apply learnings from one situation to another. Such interventions for young juvenile offenders do not address the needs of young people affected by FASD. Their rights will be compromised unless their disability is diagnosed, and appropriately managed.

## **25. Recommendation**

- 1. To review its legislation so as to raise the age of criminal responsibility to 18 years as recommended by CRC;*
- 2. To enable the National Commission on Children to develop strategy to monitor and ensure all federal and state governments' compliance with the rights of young people as set out in CRC;*
- 3. To adopt a federal strategy to raise awareness among health/social workers, law enforcement agencies and those involved in juvenile justice on FASD in order to take effective measures for its prevention.*

## Human Rights of Indigenous Peoples

### *First-Cycle UPR Recommendations*

26. In the previous UPR, Australia accepted recommendations on the rights of indigenous peoples, including the issue of land title, access to housing, health care, education, employment, and the involvement of indigenous community in the decision-making process.<sup>50</sup>

### *Legal and Institutional Framework*

27. Australia is a State Party to relevant treaties.<sup>51</sup> It has adopted several laws on racial discrimination and indigenous peoples, including the *Racial Discrimination Act 1975*, which gives specific effect to Australia's obligations under CERD and prohibits racial discrimination in respect of land, housing and other accommodation, and the provision of goods and services.<sup>52</sup> Australia's *Native Title Act 1993* recognises that indigenous peoples "have been progressively dispossessed of their lands". Despite its commitments to eliminating racial discrimination, however, the current government recently put forward a proposal (now withdrawn) to repeal Section 18C of the Racial Discrimination Act which protects against offensive comments or abuse made on the basis of race, color or national and/or ethnic background.<sup>53</sup>

### *Promotion and Protection of Human Rights on the Ground*

#### ***Indigenous Rights to Land***

28. In mid-November 2014, the West Australian Premier, Colin Barnett, approved the closure of over 100 of the state's least populated Aboriginal communities, after receiving official statistics/figures from that state's Department of Aboriginal Affairs showing that 174 of the least populated communities hosted an average of less than eight people, with approximately 115 communities housing five people or less.<sup>54</sup> Premier Barnett admitted that this decision resulted from a lack of options provided to the communities, but the plans for closure were presented during a time of funding cuts for remote indigenous communities. A protest led by Aboriginal elders in front of West Australia State Parliament followed the announcement, revealing the failure to consult with the affected communities.<sup>55</sup> In March 2015, the Australian Prime Minister – who is also the minister responsible for indigenous affairs – reportedly criticised indigenous peoples' residence in remote communities as a "lifestyle choice" which should not be subsidised by the government.<sup>56</sup>

29. Evidence has surfaced proving this process to be devastating to these communities. In September 2011, the West Australian Government closed down the Oombulgurri settlement, home to an aboriginal community in the eastern Kimberley. According to that state government, the settlement

---

50 See the Addendum to report of UPR Working Group on Australia A/HRC/17/10/Add.1 at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/A\\_HRC\\_17\\_10\\_Add.1\\_Australia\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/A_HRC_17_10_Add.1_Australia_E.pdf)

51 These include the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD) which Australia ratified in 1975, and the Declaration on the Rights of Indigenous Peoples, which the Government initially voted against but ultimately endorsed in 2009: UN News Centre, *Experts hail Australia's backing of UN declaration of indigenous peoples' rights*, 3 April 2009, accessed on 11 March 2015,

<http://www.un.org/apps/news/story.asp?NewsID=30382#.VQARvYHLeKo>. The former Australian Minister responsible for Indigenous Affairs pledged the Government's support for the UNDRIP and committed to redefine and improve the relationship with indigenous peoples: See the statement made by the Australian Government at [http://www.un.org/esa/socdev/unpfii/documents/Australia\\_endorsement\\_UNDRIP\\_Michael\\_Dodson\\_statement.pdf](http://www.un.org/esa/socdev/unpfii/documents/Australia_endorsement_UNDRIP_Michael_Dodson_statement.pdf).

52 Sections 12 and 13, *Racial Discrimination Act 1975* (Cth).

53 This proposal was an election promise made by the now-ruling Liberal Party during the campaign for the September 2013 federal election. It was only dumped nearly one year later following widespread criticism: Heath Aston, 'Tony Abbott dumps controversial changes to 18C racial discrimination laws', *The Sydney Morning Herald*, 5 August 2014, accessed 11 March 2015, <http://www.smh.com.au/federal-politics/political-news/tony-abbott-dumps-controversial-changes-to-18c-racial-discrimination-laws-20140805-3d65l.html>.

54 These statistics were gathered by that State's Department

55 *Ibid*.

56 Sarah Martin and Jared Owens, 'Remote communities a lifestyle choice: Tony Abbott', *The Australian*, 11 March 2015, accessed 11 March 2015, <http://www.theaustralian.com.au/national-affairs/indigenous/remote-communities-a-lifestyle-choice-tony-abbott/story-fn9hm1pm-1227257611488>.

was deemed “unviable”.<sup>57</sup> The state government slowly made life unlivable, starting with the closure of basic services such as health clinics, schools and the police station. Finally, they turned electricity and water off. Those who remained to the end were forcibly evicted. This led to many people becoming homeless and being forced deeper into poverty, substance abuse, violence and mental health issues.<sup>58</sup>

30. The forced removal of these indigenous communities sever the spiritual ties indigenous peoples have with their country, which have existed for over 40,000 years. To claim, as the West Australian Government does, that the communities are “unviable” is to ignore the spiritual and cultural life of these people and to force them to become refugees in their very own country. This internal displacement within one’s home country is the root cause of feelings of dispossession and loss of meaning, which have in turn been shown to lead to dysfunctional behavior. Displacement has been a pattern systematically repeated across Australia over the last 226 years.

### **31. Recommendations**

1. *To cease the closure of settlements and forced eviction of indigenous communities in rural areas;*
2. *To respect the existence and culture of indigenous communities in these settlements and to continue to provide them with the necessary services that they are entitled to;*
3. *To permanently withdraw the proposed repeal of Section 18C of the Racial Discrimination Act and ensure the continued protection of all Australians from racial discrimination in accordance with Australia’s international law obligations.*

### ***Indigenous Right to Education***

32. Indigenous education has improved in the past decade, particularly in cities and non-remote regions. Parents are being more selective about schooling, and enrolment at universities has never been higher. The number of indigenous students in New South Wales’ independent schools has doubled in the last four years.<sup>59</sup> At the University of Technology, Sydney (UTS), 300 indigenous students are enrolled and provided with specialised accommodation and services.<sup>60</sup> Some universities visit schools to interview potential school leavers and make enrolment offers in particular courses. Representatives from UTS and the Australian Catholic University also highlight the increasing number enrolling in teaching degrees. However, it should also be noted that there is still concern about the government’s proposed increases to higher education fees and the impact this would have on indigenous families.

33. There are still significant problems in indigenous education, especially in rural and remote areas. At primary school, most indigenous students are behind from the beginning to end of schooling. Indigenous students are eight times more likely to be the subject of substantiated child abuse and neglect and three times less likely to complete school. In remote areas, only one quarter of Indigenous students are attending school more than 80% of the time. The Australian Government should implement “intensive early childhood services on school grounds starting before birth within 200 communities.”<sup>61</sup> This would improve parental participation, emergent literacy and the child’s overall performance and enjoyment of schooling.

---

57 Tammy Solonec, 27 November 2014, ‘The trauma of Oombulgurri’s demolition will be repeated across Western Australia’, *Guardian Australia Online*, accessed 30 January 2015: <http://www.theguardian.com/commentisfree/2014/nov/27/the-trauma-of-oombulgurris-demolition-will-be-repeated-across-western-australia>

58 *Ibid.*

59 The information was given by Mr Ross Thomas, the Indigenous Liaison with the Association of Independent Schools, New South Wales, Australia

60 University of Technology, Sydney, Jumbunna: Indigenous House of learning, accessed 29 January, 2015. <http://www.uts.edu.au/future-students/indigenous/jumbunna/our-purpose>

61 Forrest Review, Forrest review of Indigenous training and employment programmes: Creating Parity, PowerPoint Presentation, accessed 30 January 2015: <http://tinyurl.com/ns6s7dd>

34. Concerns have been expressed at the Australian Government's policy to send young, non-indigenous, inexperienced teachers to remote communities, with the promise of a brighter future if they commit to a difficult assignment early on. Consequently, indigenous pupils and their communities have come to see school as a "white man's place" and people who stay at school as "coconuts" – black outside and white inside.
35. In mainland remote communities and in the Torres Strait islands, English is not the first language, as many communities speak creole or their native language. However, the language of instruction is English. As result, there is a significant literacy gap between the last year of primary school and the first year of secondary school, especially in boarding schools. This gap has always been present, but little has been done to improve the situation for struggling students. There needs to be a transition program to close the gap and give these students a better chance.

### **36. Recommendations**

- 1. To implement indigenous education reforms, especially with regards to intensive early childhood services in indigenous communities to start before birth;*
- 2. To promote the training and placement of indigenous educators in indigenous communities;*
- 3. To create a literacy program to ease the transition between primary and secondary schooling with greater support for indigenous students.*

### ***Indigenous Right to Employment***

37. Poor educational outcomes among indigenous communities lead to limited employment opportunities, especially in remote communities. Indigenous people are over four times more likely to be unemployed, and more than twice as likely to be on welfare between the ages of 17 and 24. In remote areas, only 35% will have real jobs compared to 83% of other Australians in the same areas; and as a 10 to 17 year old, one is 31 times more likely to be in juvenile detention on an average night.<sup>62</sup>
38. Limited employment opportunities can lead to drug and alcohol dependence, petty crime and issues of law and order, which is a key explanation for the very high incarceration rates among young indigenous people. In Queensland, recent figures indicate that the number of young indigenous people in detention is increasing. The gap between the numbers of indigenous and non-indigenous in detention is widening. In 2013-14, the average daily number of indigenous young people in detention doubled that of their non-indigenous counterparts. The Australian Government needs to acknowledge that it is also financially more sensible to have someone in productive employment and paying tax than on welfare or in detention.
39. The high level of unemployment amongst indigenous people is clearly visible. In small towns and remote communities throughout New South Wales and Queensland, most public services such as retail shops, public services and transport are staffed by non-indigenous people. Health workers and hospital staff are often also non-indigenous, and need to be given housing packages to be employed those areas.
40. Vocational Training and Employment Centres (VTECs), an Australian Government initiative, is commendable. It connects indigenous job seekers with guaranteed jobs and brings together the support services necessary to prepare job seekers for long-term employment. The guarantee of a job before job-specific training starts is the key feature of VTECs. The 21 organisations contracted employ up to 5,000 people. Most organisations, however, are based in cities or larger urban rural areas.<sup>63</sup> A similar policy is needed for small and remote communities.

---

<sup>62</sup> The Forrest Review, Creating Parity, Canberra, Commonwealth of Australia, 2014, p51.

<sup>63</sup> Generation One, What is a VTEC?, accessed 30 January 2015: <http://generationone.org.au/vtec/what-is-a-vtec>.

41. In December 2014, the Australian Government ceased funding another successful program that assists young people to maintain or review their education and/or employment, Youth Connections Australia. Although not specifically tailored to indigenous Australians, 20% of their client caseload identified as indigenous. The program managed cases of disadvantaged or disengaged young people and helps them to reconnect to education and find work. Each year, it assisted 30,000 Australians. 93% of participants were still engaged in training, education or employment six months after the program, and 89% after two years. It is an important program that can make a real difference to indigenous employment.
42. Another obstacle for indigenous peoples is movement between their communities and workplaces. Many indigenous people in rural and remote areas do not have driving licences. These are often difficult to obtain, due to the remoteness of communities and the time it takes to fulfil licence requirements. There is usually little or no public transport in these areas. This has led to an overrepresentation of indigenous Australian in gaol on traffic offences, because often they are detected driving unlicensed and unable to pay the fine. Reportedly, half the prisoners in one Western Australian gaol were there because of traffic offences.<sup>64</sup> Reforms in this area could improve indigenous employment prospects and ease pressure on gaols.
43. **Recommendations**
1. *To continue the promotion of long-term employment in indigenous communities by increasing VTEC programs;*
  2. *To reinstate funding for the Youth Connections program;*
  3. *To reform the process for indigenous people in rural communities to get their full driver's license, in order to break the cycle and better their employment prospects.*

### ***Constitutional Recognition of the Status of Indigenous Peoples***

44. The Australian Constitution does not recognise Aboriginal and Torres Strait peoples, whose presence predated European settlement and who suffered under “systematic efforts to wipe out the rich cultures and languages that existed.”<sup>65</sup> Indigenous Australians “lived with formal discrimination and servitude, were treated as second class citizens on their own lands and were subjected to intrusive administrative surveillance and control.”<sup>66</sup> Instead of shying away from this past, Australians and their government need to address it. Australia needs to formally recognise the place of indigenous Australians in its history and protect against discrimination under Australian law.
45. The Australian Human Rights Commission rightly notes that the Constitution “is silent on the histories of the people who inhabited this continent before European settlement. When it was being drafted, Aboriginal and Torres Strait Islander peoples were excluded from the discussions concerning the creation of a new nation to be situated on their Ancestral lands and waters. (...) It is time for the Constitution to reflect the Australian identity and recognise our Indigenous history.”<sup>67</sup>
46. The Australian Government should start a constitutional reform process to formally recognise the status of Indigenous Australians within the Constitution in accordance with the principles of the UNDRIP. This recognition could serve as the basis for reconciliation between indigenous and non-indigenous communities, recognition of indigenous peoples’ contributions, and ensuring a more accurate representation of Australian history.

<sup>64</sup> Episode 3, First Contact, Dir. Ronan Sharkley and Dora Weekley, Pres. Ray Martin, SBS, 20 November 2014.

<sup>65</sup> Patrick Dodson, ‘Rights, Recognition and Reconciliation’, the Lowitja O’Donoghue Oration 2014, University of Adelaide

<sup>66</sup> Ibid.

<sup>67</sup> Australian Human Rights Commission, ‘Constitutional reform: FAQs - Why reform of the Constitution is needed’, Online, accessed 2 February, 2015: <https://www.humanrights.gov.au/publications/constitutional-reform-faqs-why-reform-constitution-needed#reform1>

47. Sections of the Constitution that still allow for racial discrimination. Section 25 allows for the banning of voting rights based on race, while 51(26) allows for special laws based on race. These must be removed. Furthermore, as per the recommendations of the Expert Panel regarding indigenous recognition, the Constitution should be amended to recognise indigenous history and culture – including through a non-discrimination provision – and explicitly state that the Parliament must legislate in a way that protects, respects and advances indigenous persons and their culture.
48. We welcome the creation of the Prime Minister’s Indigenous Advisory Council, which aims to improve the living conditions of indigenous Australians, empower their communities, create partnerships between indigenous and non-indigenous Australians, and achieve Constitutional recognition for all indigenous Australians.<sup>68</sup> We hope this signifies a genuine commitment by the Government to improve the status of Indigenous Australians.

#### **49. Recommendations**

1. *To implement Constitutional recognition of indigenous Australians in accordance with the UNDRIP;*
2. *To remove Sections 25 and 51(26) of the Constitution, which allow racial discrimination;*
3. *To implement the recommendations made by the Expert Panel to remove discrimination and formally recognise Indigenous Australians.*

#### **Adverse Impact of Climate Change**

##### *First-Cycle UPR Recommendations*

50. In the previous UPR, Australia accepted in part several recommendations on the issue of human rights and climate change including the adoption of a rights-based approach to climate change policy at home and abroad, and reduction of greenhouse gas emissions to safe levels that are consistent with the full enjoyment of human rights.<sup>69</sup>

##### *Legal and Institutional Framework*

51. The Australian Government has adopted several policies to mitigate and adapt the adverse impact of climate change, especially through the Climate Change Adaptation Program that included an allocation of AU\$126 million to help Australians better understand and manage risks linked to carbon pollution.<sup>70</sup> Between 2008 and 2013, Australia implemented its International Climate Change Initiative, focusing especially on the Pacific, South and South-East-Asia, Caribbean and Africa regions, with the total budget of AUS\$ 328.2 million.

##### *Promotion and Protection of Human Rights on the Ground*

52. Historically, Australia has contributed significantly to increasing CO<sub>2</sub> emissions. The population of low-lying small islands and atoll states are beginning to suffer from the consequences of these emissions, being vulnerable to rising sea levels and very dependent on the environment for basic needs and financial gain. Climate change infringes upon their rights, especially to land, food, an adequate standard of living, water and sanitation, self-determination and education. Therefore Australia bears extraterritorial responsibility for the adverse impact of climate change on these states.

---

68 Office of the Prime Minister of Australia, The First Meeting of the Prime Minister’s Indigenous Advisory Council, accessed 30 January, 2015: <https://www.pm.gov.au/media/2013-12-05/first-meeting-prime-ministers-indigenous-advisory-council>

69 See UPR Australia 2011 recommendation 86.31

70 The information from the Government of Australia at <http://www.environment.gov.au/climate-change/adaptation/climate-change-adaptation-program>

53. A low-lying atoll nation with an average elevation only 2 meters above sea level, Kiribati is an example of a Pacific country seriously threatened by the adverse impact of climate change. During its second UPR in January 2015, the Kiribati Government reported that climate change had already impacted adversely through the loss of territory, severe coastal erosion, involuntary displacement, and food and water insecurity.<sup>71</sup> Kiribati's contribution to CO<sub>2</sub> emissions is minimal, yet the country is most seriously threatened by climate change.

#### 54. Recommendations

1. *To develop stronger policies on climate change that ensure the mitigation of the effects of the emission of greenhouse gases from Australian sources, with a view to protecting fundamental rights of the citizens of countries affected by human-induced climate change, based on the common but differentiated responsibility (CBDR) principles.*
2. *To develop a regional strategy to address the situation of climate induced displaced persons.*

### Trafficking in Persons

#### *First-Cycle UPR Recommendations*

55. In the previous UPR, Australia accepted recommendations on trafficking in persons which included coordinating with countries in the region to strengthen the regional framework to deal with irregular migration and human trafficking and increase its efforts to fight human trafficking and prosecute offenders.<sup>72</sup>

#### *Legal and Institutional Framework*

56. Since the last UPR, Australia introduced forward-looking anti-trafficking strategies including amending the *Commonwealth Criminal Code Act* to create new offences of forced labour and forced marriage, and legally redefining coercion relevant to slavery, slavery-like practices and human trafficking. It also completed the National Action Plan to Combat Human Trafficking and Slavery 2015-19, maintained the National Roundtable on Human Trafficking and Slavery. It also funded NGOs to develop new responses to awareness raising, direct services for victims of slavery and trafficking, and forced marriage initiatives.

#### *Promotion and Protection of Human Rights on the ground*

57. In 2012, the Special Rapporteur on trafficking in persons recommended the Australian Government increase Overseas Development Assistance (ODA) to support less developed countries in tackling the root causes of human trafficking.<sup>73</sup> Instead, the Australian Government introduced another budget cut of AU\$3.7 billion in December 2014,<sup>74</sup> resulting in up to AU\$11 billion being cut from the foreign aid budget and Australia's aid agency eliminated altogether.<sup>75</sup> The aid budget is the lowest it has been in 40 years and Australia lacks legislation to protect it, allowing the government to make budget withdrawals without considering long-term impact.

58. The prosecution of traffickers deserves more attention. Since 2004, only 17 convictions have

---

71 See the Opening Presentation by Honorable (Ms) Tangariki Reete, Minister of Women, Youth and Social Affairs of Kiribati on 19 January 2015 during the second review of Kiribati by the UN Working Group on UPR.

72 See UPR Australia recommendations 86.83-87 and 86.134

73 A/HRC/20/18/Add.1, para. 86.

74 Mid-Year Economic and Fiscal Outlook 2014-2015. (December 2014). Retrieved from [http://www.budget.gov.au/2014-15/content/myefo/download/MYEFO\\_2014-15.pdf](http://www.budget.gov.au/2014-15/content/myefo/download/MYEFO_2014-15.pdf), p. 164.

75 Only some staff of the aid agency,

resulted from 430 investigations, a rate criticised by the Australian Federal Police.<sup>76</sup> Between July 2013 and June 2014, there were no convictions at all.<sup>77</sup> The Interdepartmental Committee on Human Trafficking and Slavery lists only four ongoing cases in 2014,<sup>78</sup> which questions improvement of the prosecution rate, especially since progress is acknowledged in victim participation in investigations or prosecutions.<sup>79</sup>

59. Victims of labour trafficking who have entered or reside illegally in Australia are at risk of deportation if found by authorities. They should be provided with ways to legalise their status either temporarily or permanently. The current visa system neither protects their privacy when seeking employment and housing nor enables them to work or access financial support.
60. Australia's response to trafficking is based on criminal justice outcomes. Most protections and supports provided to victim/survivors are contingent on their participation in the criminal justice process. A better response would recognise the human rights of trafficked people and link their support to need rather than involvement in criminal investigations or prosecutions. This has become particularly urgent since young women and girls facing forced marriages have been understandably hesitant to engage in criminal justice processes that could involve family members.
61. Some victims of trafficking and slavery may effectively be barred from accessing an effective remedy as Australia has not established a national compensation scheme. While some victims of these crimes may be eligible for recognition under one of the seven different state/territory based statutory schemes, these frameworks are not designed to properly recognise harms caused by trafficking, slavery and slavery-like practices. The absence of a national compensation scheme is inequitable.

## **62. Recommendations**

1. *To develop a national and regional strategy for the prevention of trafficking by increasing its contribution through Overseas Development Assistance (ODA);*
2. *To adopt mechanisms to improve the rate of convictions of traffickers.*
3. *To take concrete legal measures for the protection of victims of trafficking through the adoption of a new visa framework for the victims.*
4. *To promote a human rights based approach to victims of human trafficking and ensure the rights of victims are protected including the right to redress and economic and social support for victims whether or not a prosecution occurs.*
5. *For victims of forced marriage, to establish a flexible entry to the government-funded Support for Trafficked People Program. This would mean that the girls and young women, currently facing forced marriage, would not need to explore criminal justice proceedings against their families in order to access support services to help them deal with the trauma and dislocation they are facing.*
6. *To establish a federal compensation scheme for victims of trafficking, slavery and slavery-like practices.*

---

76 Australia's Response in the ASEAN Region by Tony Negus (Australian Federal Police), 9 April 2014. Retrieved from <http://www.catholic-ew.org.uk/Home/Special-Events/Combating-Human-Trafficking-Rome-Conference/Speeches/Commr-Tony-Negus>

77 The Sixth Report of the Interdepartmental Committee on Human Trafficking and Slavery. (2014). *Trafficking in Persons: The Australian Government response 1 July 2013- 30 June 2014* (p. 22). Retrieved from

<http://www.ag.gov.au/crimeandcorruption/humantrafficking/documents/traffickinginpersons-theaustraliangovernmentresponse2013-2014.pdf>

78 Ibid, p. 77-79.

79 Australia's Response in the ASEAN Region by Tony Negus (Australian Federal Police).