

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

**Concluding observations of the Committee against Torture
(Extracts for follow-up of CAT/C/AUS/CO/4-5)**

AUSTRALIA

(...)

C. Principal subjects of concern and recommendations

(...)

Violence against women

9. While welcoming the legislative and other measures adopted by the State party to prevent and combat violence against women, the Committee notes with concern reports on the persistence of violence against women, which disproportionately affects indigenous women and women with disabilities. The Committee is also concerned at information received that over 50 per cent of the cases of violence against women are not reported (arts. 2, 12, 13, 14 and 16).

In light of its general comment No. 2 on implementation of article 2 by States parties, the Committee recommends that the State party redouble its efforts to prevent and combat all forms of violence against women throughout its territory by, inter alia:

(a) Taking measures to facilitate the lodging of complaints by victims and to address effectively the barriers that may prevent women from reporting acts of violence against them;

(b) Ensuring the effective enforcement of the existing legal framework by promptly, effectively and impartially investigating all reports of violence and prosecuting and punishing perpetrators in accordance with the gravity of their acts;

(c) Strengthening public awareness-raising activities to combat violence against women and gender stereotypes;

(d) Increasing its efforts to address violence against indigenous women and women with disabilities;

(e) Guaranteeing in practice that all victims benefit from protection and have access to sufficient and adequately funded medical and legal aid, psychosocial counselling and social support schemes, which take into

account their special needs, and that victims not placed under the “safe at home” model have access to adequate shelters;

(f) Further intensifying community-based approaches to addressing violence against women, with the involvement of all relevant stakeholders

(...)

Indigenous people in the criminal justice system

12. Noting with satisfaction the measures taken by the State party to address the situation of indigenous people, including the Indigenous Advancement Strategy, the Committee is concerned at information received that indigenous people continue to be disproportionately affected by incarceration, reportedly representing around 27 per cent of the total prisoner population while constituting between 2 and 3 per cent of the total population. In that respect, the Committee notes with concern the reports indicating that overrepresentation of indigenous people in prisons has a serious impact on indigenous young people and indigenous women. The Committee is also concerned at reports that mandatory sentencing, still in force in several jurisdictions, continues to disproportionately affect indigenous people. Furthermore, and while welcoming the information concerning the legal assistance services available for indigenous people, the Committee is concerned at reports that these services are not adequately funded (arts. 2, 11 and 16).

The State party should increase its efforts to address the overrepresentation of indigenous people in prisons, in particular its underlying causes. It should also review mandatory sentencing laws with a view to abolishing them, giving judges the necessary discretion to determine relevant individual circumstances. The State party should also guarantee that adequately funded, specific, qualified and free-of-charge legal and interpretation services are provided from the outset of deprivation of liberty.

(...)

Non-refoulement

15. The Committee is concerned at policies and practices currently applied in relation to persons who, irregularly, attempt to arrive or arrive in the State party, in particular the policy of intercepting and turning back boats, without due consideration of the State party’s obligations under article 3 of the Convention. In addition, the Committee is concerned at bills introduced into Parliament that would reduce some of the existing statutory standards against refoulement, in particular the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014, which, inter alia, establishes that “an officer’s duty to remove as soon as reasonably practicable an unlawful non-citizen under section 198 [of the Migration Act 1958] arises irrespective of whether there has been an assessment, according to law, of Australia’s non-refoulement obligations in respect of the non-citizen” (arts. 2 and 3).

The State party should adopt all the necessary legislative and other measures with a view to ensuring that it effectively meets its non-refoulement obligations under the Convention, in particular with regard to all asylum seekers and other persons in need of international protection who attempt to arrive or arrive in the State party, regardless of the mode and date of arrival. The State party should guarantee that all asylum claims are thoroughly examined and that the persons concerned have a real opportunity to effectively challenge any adverse decisions adopted concerning their claims. It should also guarantee that all asylum seekers have access to independent, qualified and free-of-charge legal assistance during the entire asylum procedure. The State party should also refrain from adopting any legislative or other measures that may lower the existing safeguards and standards of protection, which could constitute a violation of its obligations under the Convention.

Mandatory immigration detention, including of children

16. The Committee remains concerned that detention continues to be mandatory for all unauthorized arrivals, including for children, until the person concerned is granted a visa or is removed from the State party. It is also concerned that the law does not establish a maximum length for a person to be held in immigration detention, reportedly resulting in protracted periods of deprivation of liberty. The Committee is further concerned at reports that stateless persons whose asylum claims have not been accepted and refugees with an adverse security or character assessment can be detained indefinitely (arts. 2, 11 and 16).

The State party should adopt the necessary measures with a view to considering: (a) repealing the provisions establishing the mandatory detention of persons entering its territory irregularly; (b) ensuring that detention should be only applied as a last resort, when determined to be strictly necessary and proportionate in each individual case, and for as short a period as possible; and (c) establishing, in case it is necessary and proportionate that a person should be detained, statutory time limits for detention and access to an effective judicial remedy to review the necessity of the detention. It should also ensure that persons in need of international protection, children and families with children are not detained or, if at all, only as a measure of last resort, after alternatives to detention have been duly examined and exhausted, when determined to be necessary and proportionate in each individual case, and for as short a period as possible. The State party should also continue and redouble its efforts with a view to expanding the use of alternatives to closed immigration detention. It should also adopt all necessary measures to ensure that stateless persons whose asylum claims were refused and refugees with adverse security or character assessments are not held in detention indefinitely, including by resorting to non-custodial measures and alternatives to closed immigration detention.

(...)

25. The Committee requests the State party to provide, by 28 November 2015, follow-up information in response to the Committee's recommendations contained in paragraphs 9, 12, 15 and 16 of the present document.

(...)
