

UPR Submission

37th session of UPR Working Group (November 2020)

Australia



سازمان دفاع از قربانیان خشونت
Organization for Defending Victims
of Violence

www.odvv.org

About ODVV

1. The Organization for Defending Victims of Violence (ODVV) is a non-governmental, non-profit, non-partisan organization in Special Consultative Status to ECOSOC. ODVV was established in 1988 in Tehran and has been active in the field of human rights and humanitarian activities.

2. ODVV is also associated to the United Nations Department of Public Information (UNDPI), a member of the Conference of Non-Governmental Organizations (CONGO), AMAN Network of Rehabilitation Centers in the Middle East and North Africa and International Rehabilitation Council for Torture Victims (IRCT). ODVV has cooperated with international organizations in a variety of issues and has working relations with many NGOs in Iran and around the globe.

3. ODVV is focused on promoting human rights, supporting victims of violence, empowering Iranian civil society, and offering human rights consultations to the Iranian institutions and organizations. ODVV is actively involved in running various human rights education courses, workshops, seminars, and conferences. Other activities include:

- Participation in UN Commission on Human Rights and the Human Rights Council sessions in Geneva;
- Publication of different books and booklets on human rights such as Rights of the Child, Unilateral Coercive Measures (Economic Sanctions), Racism, Racial Discrimination, Islamophobia and Xenophobia;
- Publishing *Defenders* Quarterly (in English), human rights news and developments *Weekly* (in Farsi), daily updating ODVV websites in English, Farsi and Arabic;
- Internship for Iranian and international students.

4. ODVV is submitting the following report on the human rights situation of Australia, in order to contribute to the improvement of the human rights situation.

Background and framework

5- Australia is a country which has voluntarily ratified or joined several international human rights treaties¹, so it should accept legal obligations to uphold the treaty rights. This means Australia has obligations under international law to respect, promote and protect human rights. However, these obligations are difficult to enforce until they are enshrined in domestic law, there is no national human rights legislation in this country and only three states have human rights legislation, namely the Australian Capital Territory (ACT), Victoria, and Queensland.² Yet, Australia remains the only western country without a specific human rights act or bill of rights.³

6- While many Australians enjoy a high standard of living and the security that comes from living in a stable democracy, there are marginalized groups including the indigenous people, the refugees and asylum seekers who regularly experience fear, hunger, homelessness, powerlessness and discrimination. For these people, lack of adequate human rights protection affects their ability to be free from arbitrary detention, to be treated equally before the law and to be treated with dignity and respect in the community.⁴

7- In 2018, the government continued to hold refugees and asylum seekers who arrived by boat in Australian waters on Manus Island in Papua New Guinea and on Nauru, marking more than five years since the reintroduction of its draconian offshore processing and settlement policy. Studies have proved that the living conditions in refugee's camps in addition to Australia's policies toward these asylum seekers⁵, leaves serious negative effects on the mental health of the residents specially children, leading them to self-harm including suicide or requiring them to take medical treatment for years in order to get their mental health back.

¹ Several treaties which Australia has ratified are: International Convention on the Elimination of All Forms of Racial Discrimination 1965; International Covenant on Civil and Political Rights 1966; and International Covenant on Economic, Social and Cultural Rights 1966

² https://www.qhrc.qld.gov.au/data/assets/pdf_file/0019/20575/QHRC_PublicEntityToolkit.pdf

³ <https://www.amnesty.org/en/countries/asia-and-the-pacific/australia/report-australia/>

⁴ <https://www.hrw.org/world-report/2019/country-chapters/australia>

⁵ . they are deprived of many rights including enrolment in education centers or even voluntary and unpaid work

Challenges of international human rights obligations

- **Freedom of Expression**

8- In 2018, the Senate passed national security and foreign interference laws that amounted to the most significant overhaul of Australia's security and foreign interference laws in decades – creating new espionage offences, introducing tougher penalties on spies and establishing a register of foreign political agents. The legislation introduces new national security offenses and represents an aggressive approach toward foreign political agents without presenting any proof of harm or illegitimate foreign interests.⁶

9- In July 2018, media freedom came under attack when the Australian Federal Police raided the Sydney offices of Australia's public broadcaster, apparently in connection with an article published in 2017 about Australian Special Forces being investigated over possible war crimes in Afghanistan.⁷

10- Following growing climate change protests across Australia, the prime minister threatened to invoke powers to stifle campaigning and protests. Anti-protest laws were enacted in Queensland, criminalizing peaceful protest tactics and infringing Queenslanders' rights to freedom of expression, association, and peaceful assembly. Offenses were punishable by up to two years in jail. ⁸

- **Disability Rights**

11- People with disability are subject to multiple and aggravated forms of human rights violations including the neglect of their most basic survival related needs. These human rights violations occur in all areas including far off places that lack enlightened legislation and policies or the resources needed to meet basic needs. They occur every day, in every region, of every

⁶ <https://www.lawfareblog.com/whats-australias-new-laws-foreign-interference-domestic-politics>

⁷ <https://www.nytimes.com/2019/06/04/world/australia/journalist-raid-annika-smethurst.html>

⁸ <https://www.amnesty.org/en/countries/asia-and-the-pacific/australia/report-australia/>

State and Territory in Australia.⁹

12- According to report entitled "Disability Rights Now 2019: Shadow Report to the United Nations Committee on the Convention on the Rights of Persons with Disabilities (CRPD) a majority of people with disability (61%) reported not being able to afford, or get access to the disability support they need. Many people with disability die decades younger than their non-disabled peers.¹⁰

- **Asylum Seekers and Refugees**

13- Despite clear concerns that Australia's offshore processing facilities for asylum seekers in Nauru and Manus Island are violating basic human rights, public scrutiny seems to have waned. Recent federal elections saw little emphasis on refugee policy, followed by an apparent disinterest in reviewing the policy.¹¹

14- Asylum-seekers who arrive in Australia without a visa are potentially subjected to a number of punitive measures. These measures can greatly impress their general well-being specially their mental health and their ability to meaningfully engage in the refugee status determination process.

15- There are approximately 30,000 asylum-seekers affected by these measures, labelled by the Australian Government as the so-called 'legacy caseload'. People who seek international protection have endured traumatic experiences before arriving in Australia and their resilience is eroded by punitive measures they experience in Australia. Many asylum-seekers suffer from clinically diagnosable mental disorders including anxiety, depressive disorders and Post-Traumatic Stress Disorder (PTSD).¹²

16- Australia maintained hardline policies with regard to refugees, particularly those held in offshore processing centers. The government continued to detain refugees and asylum seekers

⁹ <https://pwd.org.au/resources/disability-info/student-section/human-rights-violations/>

¹⁰ <https://dpoa.org.au/rights-of-people-with-disability-routinely-ignored-new-report/>

¹¹ <http://www.ipsnews.net/2019/07/australias-forgotten-asylum-seekers/>

¹² <https://www.unhcr.org/en-au/asylum-in-australia.html>

who arrived by boat at Manus island in Papua New Guinea (PNG) and on Nauru, marking the seventh year since the reintroduction of its offshore processing and settlement policy. Australia continues to turn back boats of people seeking safety and to return people to the country from which they are fleeing.¹³

17- According to the 2019 Report of the United Nations Special Rapporteur on the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health”, Dainius Puras, there are major concerns about refugee and asylum-seeker: “Many suffer from physical and mental conditions, which seem to have been caused and exacerbated by their prolonged and indefinite confinement, there are multiple reports of self-harm and suicide attempts.”¹⁴

- **Indigenous Rights**

18- It seems that historically, Australian governments and Australian courts have often resisted recognizing Indigenous rights.

19- In 2017, the United Nations Human Rights Committee released recommendations from its review of Australia’s compliance with a key human rights treaty, the International Covenant on Civil and Political Rights. The committee expressed concern about disproportionately high (27%) Indigenous incarceration rates. It recommended that measures such as mandatory sentencing and imprisonment for not paying fines be repealed.¹⁵

20- Indigenous Australians are significantly overrepresented in the criminal justice system, often for minor offenses like unpaid fines. Aboriginal and Torres Strait Islander people comprise 28 percent of Australia’s adult prison population, but just 2 percent of the national population. Indigenous women make up 34 percent of Australia’s women prison population and Indigenous children make up over 50 percent of the youth prison population.¹⁶

¹³ <https://www.amnesty.org/en/countries/asia-and-the-pacific/australia/report-australia/>

¹⁴ <https://reliefweb.int/report/australia/australia-s-forgotten-asylum-seekers>

¹⁵ <http://theconversation.com/un-slams-australias-human-rights-record-87169>

¹⁶ <https://www.amnesty.org/en/countries/asia-and-the-pacific/australia/report-australia/>

21- In August 2018, an analysis of 10 years of colonial data by the Guardian found that 407 Indigenous people had died in custody since 1991. Between August 2018 and August 2019, another 17 died, bringing the figure to 424. It is now 426.¹⁷

22- Guardian Australia's 2019 analysis, which includes deaths reported via coronial findings, official statements and other means in the past 12 months, shows:¹⁸

- The proportion of Indigenous deaths where medical care was required but not given increased, from 35.4% to 38.6%.
- The proportion of Indigenous deaths where not all procedures were followed in the events leading up to the death increased from 38.8% to 41.2%.
- The proportion of Indigenous deaths involving mental health or cognitive impairment increased from 40.7% to 42.8%.
- An increase in the proportion of deaths attributed to a medical episode following restraint from 4.9% of all deaths in the 2018 analysis, to 6.5% with new data in 2019.
- Indigenous women were still less likely to have received all appropriate medical care prior to their death, and authorities were less likely to have followed all their own procedures in cases where an Indigenous woman died in custody.

Recommendations

We call on Australia to:

23- Continue its efforts to ratify the international human rights instruments to which it is not a party and bring its internal legal framework into line with international obligations.

¹⁷ <https://redflag.org.au/node/7003>

¹⁸ https://www.google.com/url?q=https://www.theguardian.com/australia-news/2019/aug/23/indigenous-deaths-in-custody-worsen-over-year-of-tracking-by-deaths-inside-project&source=gmail&ust=1580906278704000&usg=AFQjCNGrjb3cVc0mvTJwjG_wdHVk_prF1w

24- Implement and promote constitutional recognition of Indigenous people and continue to exert efforts to ensure the indigenous people have equal access to health services, education and employment opportunities.

25- Refrain from prosecuting or penalizing human rights defenders, journalists and other media actors for performing their legitimate work, including through their online activities.

26- Support persecuted media members and make greater efforts to end impunity for attacks against them.

27- Eliminate discrimination and violence against people with disability and ensure equal opportunity for enjoyment of their economic, social and cultural rights.

28- Take adequate steps to promote and protect the rights of asylum seekers, refugees and migrants and continue its efforts to protect their rights regardless of their situation and status.

29- As a party to the Refugee Convention, ensure that asylum seekers who meet the definition of a refugee are not sent back to a country where their life or freedom would be threatened (the principle of non-refoulement).

30- Do not return people who face a real risk of violation of their human rights to their countries, and do not send people to third countries where they would face a real risk of violation of their human rights under instruments such as the ICCPR, the CAT and the CRC.

31- Take measures to reduce violence against indigenous women and address their rights within the overall context of broader measures of protection, security and justice for populations as a whole.

32- Review its immigration laws and policies and ensure compliance with its international obligations, especially regarding the rights of children who live in refugee camps, threatened with mental health issue that will affect their future life.