

The Organization for Defending Victims of Violence (ODVV)

Australia

Submission to the UN Universal Periodic Review

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Executive Summary:

1- This report deals with practical, monitoring and research actions of the Organization for Defending Victims of Violence in some fields' namely women and children, Indigenous Rights, Freedom of Media, asylum-seekers, Police use of force and disabilities on the second round of Australia's UPR. Although there are problems and challenges in all aforementioned areas which the Australian government must make more efforts to improve upon.

2- Towards practical, monitoring and research actions that has been conducted on the abovementioned subjects, the preparer of this report, the ODVV presents the following recommendations for the improvement of human rights in these areas:

About us

3- The Organization for Defending Victims of Violence (ODVV) is a nongovernmental, nonpolitical and nonprofit organization in Special Consultative Status to ECOSOC, and was founded in 1988. Some of the benefits of the 25 year history of the ODVV is the provision of legal and humanitarian services, holding of education courses, holding of general and thematic researches by using experienced and expertise teams in the issues that are required by society, production and publication, transfer of experiences and effective presence in international conferences.

4- The ODVV is associated to or member of the following organizations and associations:

- Network of NGOs for the formation of the international criminal court
- The International Rehabilitation Centre for Torture Victims (IRCT) (membership in its Central Council)
- CONGO
- The AMAN Network of Rehabilitation Centres for Torture Victims in the MENA region, (Network's First Deputy)
- Asia Youth Network
- In Association with UNDPI

5- To-date (2015) the ODVV has taken part in all Human Rights Council Sessions and submitted written and oral statements held sideline panels, submitted consultative reports on human rights to UN mandate holders.

Data collection method

6- To present a factual picture on areas which this report covers, the preparers adopted a practical method based on the findings of exclusive and field thematic researches, legal monitoring and also media monitoring regarding the activities taken place on the subject.

Challenges and Difficulties

Disability

7- People with disability are subject to multiple and aggravated forms of human rights violation, including the neglect of their most basic survival related needs. These human rights violations do not only occur in 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 State and Territory in Australia. Many people with disability lack awareness and knowledge of their rights. The barriers to 'knowledge of rights' include:

- poorer education opportunities and outcomes for people with disability
- limited or no accessible information otherwise available to their non-disabled peers about rights and how to use them
- limited or no alternative and augmentative communication systems to communicate with others
- limited access to independent advocacy services and support
- lack of control over their own lives and alternative choices
- No national, comprehensive approach to seek the voices of children and young people with disability or to ensure that they are able to access information of benefit to children and young people.¹

Asylum Seekers

8- Federal Government announcement of drastic funding cuts to the Immigration Advice and Application Assistance Scheme are a further denial of justice for asylum seekers, and will leave

¹ <http://www.pwd.org.au/student-section/human-rights-violations.html>

many to navigate the legal process on their own.²This is further discriminatory treatment of asylum seekers by mode of arrival, something which is explicitly prohibited under the Refugee Convention.

9- Australia violates its international law obligations by aiding the Sri Lankan government to intercept asylum seekers fleeing that country.³

10 - Australian government has stopped people arriving by boat seeking protection, through a combination of terror and physical force. The Navy allegedly refused to search for people who fell overboard⁴ in Australian waters off Darwin and people have been bashed and have had their hands burned⁵. 12 Asylum seekers are being treated in a way that would be against the law — if they were able to seek legal protection. Australia is now persecuting the persecuted.

11- Asylum seekers who arrive in Australia by boat, including children, are subject to mandatory detention and transfer to Nauru or Papua New Guinea (PNG), where they are arbitrarily and indefinitely detained in what the UNHCR has called ‘cruel and inhumane’ conditions. As at 31 July 2014, there were 1146 asylum seekers detained in Nauru (including 183 children) and 1,127 asylum seekers detained on Manus Island, PNG. In February 2014 one asylum seeker died and 77 others were injured in violent riots at the Manus Island facility. Later in 2014 another asylum seeker detained on Manus Island died after developing septicemia as a result of an untreated wound.⁶

Indigenous Rights

12- While some health and socioeconomic indicators are improving for indigenous Australians, they still on average live 10-12 years less than non-indigenous Australians, have an infant mortality rate almost two times higher, and continue to die at alarmingly high rates from treatable and preventable conditions such as diabetes and respiratory illness. Although they live in one of the world’s wealthiest countries, many indigenous Australians do not have access to adequate health care, housing, food, or water.

13- Australia does not have a comprehensive, national policy framework for children. There is a lack of integration of children’s rights in Australian law and no mechanism to ensure compliance in all jurisdictions.

² <http://www.asrc.org.au/2014/03/31/media-release-cuts-to-legal-assistance-for-refugees-another-denial-of-justice/>

³ <http://hrlc.org.au/un-human-rights-council-told-that-australia-is-violating-international-law-by-blocking-returning-sri-lankan-asylum-seekers/>

⁴ <http://www.news.com.au/national/first-closeup-look-at-a-lifeboat-the-abbott-government-is-using-to-stop-asylum-seeker-boats/story-fncynjr2-1226815340238>

⁵ <http://www.smh.com.au/national/asylum-seeker-with-burnt-hands-speaks-out-20140325-35emq.html>

⁶ http://hrlc.org.au/wp-content/uploads/2014/10/CAT_NGO_Report_Australia_2014.pdf

14- Aboriginal people are incarcerated at 15 times the rate of non-Aboriginal Australians, and are significantly over-represented in the Australian criminal justice system. Aboriginal young people are 31 times more likely to be detained than the general youth population and the number of Aboriginal women in prison has almost doubled in the last decade⁷.

Police use of force

15- Taser use now allowed against unarmed people by South Australian police South Australian police now have permission to use Tasers against unarmed people. Stephen Blanks from the NSW Council of Civil Liberties, saying he had seen terrible instances of Taser misuse interstate, which had resulted in deaths. "Putting Tasers in the hands of general duties police dramatically increase their use,"⁸ Australia also lacks a nationally consistent approach to oversight of police detention.

16- A number of disturbing incidents and findings by coroners and oversight bodies indicate increased reliance on Tasers by police and demonstrate an urgent need for more rigorous police training and more stringent regulation of police use of force in Australia. There have been at least four recorded Taser related deaths to date in Australia. In each case, there are credible allegations that the Taser use was inappropriate or excessive.⁹

17- Australia signed OPCAT on 19 May 2009. Since that time, progress on ratification and implementation has been slow¹⁰.

Freedom of Media

18- In September 2013, the High Court rejected an appeal by three award-winning journalists working for the Age newspaper who refused to comply with an order to disclose their confidential sources in a defamation case for articles written in 2009. The journalists face charges of contempt of court, which could lead to fines and imprisonment if they refuse to reveal their sources.¹¹

Children and women

19- Australia is in breach of its human rights obligations by allowing children to be sentenced to life in prison without the genuine possibility of parole, the United Nations Human Rights Committee has declared.¹²

⁷ http://hrlc.org.au/wp-content/uploads/2014/10/CAT_NGO_Report_Australia_2014.pdf

⁸ <http://www.abc.net.au/news/2014-10-01/sa-police-allowed-to-carry-tasers/5781668>

⁹ http://hrlc.org.au/wp-content/uploads/2014/10/CAT_NGO_Report_Australia_2014.pdf

¹⁰ http://hrlc.org.au/wp-content/uploads/2014/10/CAT_NGO_Report_Australia_2014.pdf

¹¹ <http://www.hrw.org/world-report/2014/country-chapters/australia?page=3>

¹² <http://hrlc.org.au/un-tells-aus-sentencing-children-to-life-in-prison-without-genuine-possibility-of-parole-breaches-international-law/>

20- Twenty-one percent of Australian children who were substantiated for abuse were substantiated for physical abuse. Sexual abuse was the substantiated form of maltreatment in 13% of substantiations.¹³

21- In Australia, around one in three women has experienced physical violence, and almost one in five has experienced sexual violence since the age of 15.¹⁴

22- Aboriginal women are 31 times more likely to be hospitalized as a result of family violence-related assault than non-Aboriginal women. Women with disability are at a higher risk of being assaulted, an experience sexual assault at twice the rate of women who do not have disability. Aboriginal women and women with disabilities are also subject to additional institutional failures to adequately prevent and respond to family violence.¹⁵

23- Australia now incarcerates more people than it ever has. Over 30,000 people (sentenced and unsentenced) are in prison, a five per cent increase in the past twelve months¹⁶ This swelling in prison numbers has generally occurred faster than growth in prison capacity¹⁷ and has therefore resulted in most states and territories having overcrowded prisons.¹⁸

24- Prisoners do not have access to Medicare, the free health service provided by the Australian government, while in prison. They also do not have access to many of the prescribed, subsidized pharmaceutical drugs that are dispensed in the community. Importantly, prisoners largely do not have the freedom to choose their medical provider, are not able to obtain a second opinion free of charge, or access an alternative provider, if they disagree or clash with the medical professionals provided by the prison.¹⁹ This issue can be particularly acute in relation to psychiatric services.

25- Queensland's current approach to child protection is clearly failing Aboriginal and Torres Strait

¹³ <https://www3.aifs.gov.au/cfca/publications/child-abuse-and-neglect-statistics>

¹⁴ <https://www.dss.gov.au/our-responsibilities/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022>

¹⁵ http://hrlc.org.au/wp-content/uploads/2014/10/CAT_NGO_Report_Australia_2014.pdf

¹⁶ Australian Bureau of Statistics, Prisoners in Australia, 2013 (ABS Catalogue No 4517.0, 5 December 2013) www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0

¹⁷ Australian Bureau of Statistics, Prisoners in Australia, 2013 (ABS Catalogue No 4517.0, 5 December 2013) www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0

¹⁸ Sean Rubinsztein-Dunlop, Australia's Prison System Overcrowded to bursting point with more than 33,000 people in jail (3 July 2014) ABC News www.abc.net.au/news/2014-07-02/australian-prison-overcrowding-female-populations-growing/5567610

¹⁹ Australian Institute of Health and Welfare, 'Prisoner Health Services in Australia 2012' (Bulletin No 123, Australian Institute of Health and Welfare, August 2014) 3 www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129548270

Islander children and their families on many fronts. Rates of substantiated harm against children remain high, increasing numbers of families face intrusive interventions, and the system is struggling to provide stable and suitable placements for children in need of protection.²⁰

26- Aboriginal and Torres Strait Islander children are over-represented in child protection and out-of-home care services compared to non-Indigenous¹ children. The reasons for this are complex and are influenced by past policies like forced removals, the effects of lower socio-economic status and differences in child rearing practices and intergenerational trauma (Human Rights and Equal Opportunity Commission [HREOC], 1997). Additionally there are high numbers of children in WA, Tasmania and ACT where the Indigenous status is not known, so any attempt to interpret these data should be made with caution (Australian Institute of Health and Welfare [AIHW], 2013, p. 16).²¹

Recommendation

Asylum-seekers

27- As Australia is a candidate for membership of the Human Rights Council in 2018, therefor it must ensure the processing of asylum-seekers' claims in accordance with the United Nations Refugee Convention and that they are detained only when strictly necessary and Cease the practice of refoulement of refugees and asylum-seekers, which puts at risk their lives and their families' lives

Indigenous Rights

28- Strengthen efforts and take effective measures with the aim of ensuring enjoyment of all rights for indigenous people and promote the inclusion and participation of indigenous peoples and Torres Strait Islanders in any process or decision-making that may affect their interests.

Children & women

29- Ensure effective implementation of national action plan to reduce violence against women and children.

30- Elimination of discrimination against migrants and ensure equal opportunity for enjoyment of their economic, social and cultural rights.

31- Ensure that no children are held in detention on the basis of their migratory status.

²⁰ http://www.childprotectioninquiry.qld.gov.au/__data/assets/pdf_file/0005/175397/Chapter-7.pdf

²¹ <https://www3.aifs.gov.au/cfca/publications/child-protection-and-aboriginal-and-torres-strait-islander-c>

32- Australia should review mandatory detention regime of asylum-seekers, limiting detention to the shortest time reasonably necessary.

33- Improve the quality of Statements of Compatibility and its responses to the findings of the Joint Parliamentary Committee on Human Rights.

34-The Australian Government give full and proper consideration to the adverse Views of the UN treaty bodies and implement them in good faith.

35-Australian Government ratify OPCAT without delay.

Prisoners

36- Australia should ensure that state and territory governments commit to reducing the number of young people in pre-trial detention by modifying current bail and remand practices.

37- Australia should ensure that states and territories commit to reducing the number of people entering the prison system and fund early-release support programs to reduce the overcrowding of prisons.