



Refugee Council
of Australia

AUSTRALIA'S 2021 UNIVERSAL PERIODIC REVIEW BY UNITED NATIONS HUMAN RIGHTS COUNCIL

UN MEMBER STATES CHALLENGE AUSTRALIA'S REFUGEE AND ASYLUM POLICIES

Forty-seven UN member states raised concerns about and recommended changes to the Australian Government's refugee, asylum and immigration detention policies when Australia's human rights record came up for its third five-yearly Universal Period Review (UPR).

Of the 122 UN member states participating in Australia's UPR hearing before the UN Human Rights Council on 20 January 2021, 45 states made comments or recommendations on refugee and detention policies and another two states raised formal questions prior to the session.

Critical to the 50 formal recommendations were the issues of offshore processing of people seeking asylum, indefinite immigration detention, lack of legislation to prohibit detention of children, refoulement, and lack of compliance of Australia's asylum and border management policies with international law.

Australia's offshore processing policies generated the most discussion with 10 countries raising concerns about these policies and the majority calling for an end to offshore processing. Finland added that those subject to offshore policies need to be provided with pathways to resettlement.

Many countries, including Germany and Norway, urged Australia to amend its detention policies to not only ensure immigration detention is time-limited but that is also subject to judicial review. Rwanda highlighted the large number of people in immigration detention and urged Australia to reduce this number especially given the risks associated with the COVID-19 pandemic.

Other issues of concern were conditions of immigration detention facilities, lack of access to family reunification for many refugees, the less robust refugee status determination process for people who arrived by sea, and the prevalence of hate speech against refugees and people seeking asylum. Italy also raised concerns about the humanitarian impacts of deportation of people whose permanent visas have been cancelled.

Each state which participated in the UPR hearing was given just 55 seconds to speak, in which they could comment on Australia's progress on human rights over the past five years, raise current concerns and make recommendations on any aspect of human rights. Delegates raised a broad range of concerns including age of criminal responsibility, over-representation of indigenous people in the criminal justice system, weak action on climate change, and discriminatory practices towards people with disabilities, including forced sterilisations. The fact that, in the limited time available, so many states raised concerns about Australia's treatment of asylum seekers and immigration detention policies illustrates the depth of global concern about Australia's refugee policy.

After the review, an outcome report will be prepared by the UN Human Rights Council which provides a summary of the discussions, including the questions, comments and recommendations made by states. Australia will have the opportunity to make preliminary comments on the recommendations, choosing to either accept or note them.

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The Refugee Council of Australia
is the national umbrella body
for refugees, people seeking asylum
and the organisations and individuals
who support them • Founded 1981

RECOMMENDATIONS AND COMMENTS FROM UN MEMBER STATES

During Australia's Universal Periodic Review session on 20 January 2021, representatives of 122 UN member states participated, each making intervention of up to 55 seconds. In that time, each delegate could comment on progress made by Australia in the five years since its previous review, raise current human rights concerns and make recommendations to the Australian Government. Despite the very limited time available and the wide number of human rights issues on which they could comment, representatives of 45 participating states commented or made recommendations relating to Australia's treatment of refugees and people seeking asylum. Here is a compilation of the comments (recorded in italics) and recommendations (recorded as bullet points).

Afghanistan

We commend the ratification of the OPCAT, the Paris Agreement, and the offer for resettlement to thousands of refugees from war-torn countries. However, we remain concerned that asylum seekers arriving by boat and granted temporary protection visas are banned from family unification.

- Ensure that the non-refoulement principle is secured in law and adhered to in practice, and that all asylum seekers, regardless of their mode of arrival, have access to efficient refugee status determination procedures.
- Ensure that all refugees and asylum seekers' children enjoyed the right to education, without any discrimination.

Albania

- Ensure that measures taken with regard to refugees and asylum seekers are in full compliance with obligations under international law and human rights.

Algeria

- Continue to carry out awareness-raising activities on human rights, especially rights of persons with disabilities refugees and migrants, to law enforcement officers,
- Increase support for human rights education and training initiatives, particularly for law enforcement officials who deal with migration issues,
- Improve conditions of reception and detention of refugees and migrants in accordance with international standards.

Angola

- Take further measures to increase the protection of vulnerable migrants and to prevent their forced evictions.

Argentina:

- Take the necessary measures to guarantee that the principle of non-refoulement is incorporated into legislation and that all asylum seekers, regardless of how they reach Australia, have access to effective procedures to identify their refugee status and ensure non-refoulement.

Bahrain

- Take more effective measures to reduce inequalities and discrimination against minorities, migrants and refugees, and protect vulnerable groups from hate speech and other hate crimes.

Brazil

Although we commend the closure of some processing centres, we remain concerned about offshore processing of asylum claims and we reiterate our previous recommendation to review this policy.

- Ensure that asylum seekers have access to a refugee status determination procedure in line with international law.

Cambodia

- Encourage implementation of a human rights-based approach to migration and border management.

China

- Protect the rights of migrants and close offshore detention centres for migrants.

Costa Rica

- Guarantee efficient procedures for the determination of refugee status, the principle of non-refoulement, and also to halt the policy of offshore processing of asylum applications.
- Consider amending the Migration Act with a view to stopping the detention of children and to prioritise family reunification.

Cuba

- Eliminate cruel, inhuman and degrading treatment of undocumented migrants and asylum seekers.

Democratic People's Republic of Korea (North Korea)

- Cease cruel, inhuman or degrading treatment in places of detention, including sexual violence, routine strip searches and inadequate mental health-care facilities.

El Salvador

- Step up your actions to promote the human rights of indigenous peoples and those of refugees.

Fiji

- Strengthen asylum processes and border management policies to ensure that they fully comply with Australia's international obligations, including the principle of non-refoulement.

Finland

- Australia review its immigration detention regime to end indefinite detention of people seeking asylum in Australia and stop offshore processing of refugees and provide pathways to resettlement.

Germany

Germany commends Australia for removing children and their families and other individuals at risk from immigration detention centres, as agreed to during the previous UPR cycle. Germany remains concerned about the scope of immigration detention. Germany therefore recommends to:

- Ensure immigration detention is justified, time limited, and subject to prompt and regular judicial oversight.

Ghana

- Continue to ensure improvement in the conditions of refugees to meet human rights standards and International treaties.

Holy See

We also note the positive progress that has been made in combatting human trafficking and slavery-like practices and in assisting asylum-seekers and refugees.

- Ensure adequate protection for refugees and asylum seekers, as well as migrant workers with temporary visas.

Indonesia

- Ensure that the issue of asylum seekers and refugees is addressed in line with international human rights and humanitarian law, as well as Australia's other commitments relating to this issue, including within the framework of the Bali Process.

Iran

- Reverse the high level of discretion held over asylum seekers by the Department of Home Affairs.
- End the mandatory detention of refugees and prohibit offshore processing of asylum seekers.

Ireland

Ireland acknowledges Australia's efforts to advance human rights domestically and welcomes recent progress including the latest humanitarian settlement program. Ireland remains concerned, however, about the mandatory detention of irregular migrants and asylum seekers, particularly under offshore processing systems.

- Review legislation on the mandatory detention of irregular migrants and halt the use of offshore detention centres in Papua New Guinea and Nauru.

Italy

- Review immigration policies so to improve the rights of refugees and asylum seekers, including by means of transferring to onshore centres asylum seekers waiting for a decision and taking into consideration the humanitarian aspects of the expulsion of foreign citizens with permanent resident visas.

Luxemburg

- Halt offshore detention of refugees or asylum seekers arriving by sea.

Mexico

- Ensure that refugee processing is compatible with international standards by guaranteeing the principle of non-refoulement and giving primacy to family reunification.

Montenegro

- Prioritise family reunification for all asylum seekers.

Myanmar

- Ensure the human rights of migrants are protected, including the conditions of temporary migrant workers and detained irregular migrants.

Nepal

- Continue to review and assess immigration laws and policies to ensure that the rights of migrants are safeguarded, in accordance with international human rights standards.

Nicaragua

- Ensure that asylum procedures and border management policies are fully compliant with Australia's international obligations.

Norway

Norway notes the positive steps that have been taken since the last review, including Australia's progress on the transfer of asylum seekers away from the offshore process centres in Nauru and Papua New Guinea. Norway is concerned about asylum seekers remaining in Nauru and PNG, and about the number of asylum seekers still detained in Australia.

- Ensure that asylum seekers' claims are processed in accordance with the UN Refugee Convention and that detention only occurs when necessary and justified, for a minimum period of time, and subject to timely judicial oversight.

Pakistan

- Fulfill international obligations related to refugees' protection.

Perú

- Continue to ensure the security, living conditions and rights of migrants, refugees and asylum seekers, regardless of the way they entered the country.

Philippines

We welcome Australia's efforts to expand support for human rights education and training of law enforcement officials handling migration, and other steps taken to protect refugees, asylum seekers and migrants.

- Australia continue its efforts to improve living conditions in immigration detention or processing centres.

Qatar

- Take effective measures to eradicate racial, ethnic and religious discrimination and put an end to all forms of racial discrimination, racism and xenophobia, especially against migrants and asylum seekers.

Republic of Korea (South Korea)

- Take concrete steps to improve its treatment of asylum seekers, refugees, and migrants, including reducing the detention period and improving detention conditions.

Russian Federation

We are concerned by the illegal migrant centres on the islands of Manus and Nauru. Migrants are held there for years without court decision and there have been reports of suicide attempts, including among minors.

- The Russian Federation recommends ensuring adequate access for migrants to medical and legal services.

Rwanda

- Reduce the numbers of people held in immigration detention to maintain safety during the COVID-19 pandemic.
- Amend the Migration Act 1958 to prohibit placing children in immigration detention.

Somalia

- Take all the necessary steps to provide special protections for asylum seekers, refugees and, particularly, children.

Spain

- Bring legislation into line with the Convention on the Rights of the Child when it comes to the detention of minors, and migrant minors in particular.

State of Palestine

- Implement a human rights-based approach to migration and border management.

Sudan

- Continue to enforce labour and immigration laws consistent with international standards.

Thailand

Thailand acknowledges Australia's efforts to provide resettlement for vulnerable women and children by granting them humanitarian visas. Recognising additional challenges posed by the COVID-19 pandemic in immigration policies, we recommend:

- The Australian Government continue its efforts in adopting a human-rights based approach to migration and border management and consider utilising alternatives to detention for migrant children.

Turkey

The protection of asylum seekers and refugees requires collective action at the international level.

Uganda

- Ensure implementation of a human rights approach in the offshore processing of migrants and asylum seekers.

United States of America

- Increase support for refugees and asylum seekers by reducing barriers to labour markets and education, and by providing access to healthcare facilities, especially those aimed at improving mental health.

Uruguay

- Amend migration legislation in order to prohibit the detention of children in migration centres and, in exceptional cases, make sure any detention is as short as possible.

QUESTIONS SUBMITTED TO AUSTRALIA IN ADVANCE

Prior to the UPR hearing, UN member states can submit questions for Australia to consider. Nine member states took up this opportunity, with four of them raising questions related to Australia's refugee policies.

Germany

- How has the number of persons in immigration detention, onshore and offshore, developed over the last three years, and how long have inmates been in detention? How many minors are there in immigration detention?

Iran

- Iran requests an update on the latest measures adopted to address alleged violation of human rights of a group of 30,000 asylum seekers who were transferred to Australia between August 2012 and December 2013 (so-called "Legacy Caseload"). Iran also requests Australia to report on the latest situation of 60 asylum seekers arbitrarily detained for more than a year in detention centres in Mantra Bell City.
- What legal and administrative measures have been taken by Australia to stop violation of human rights and ensure full protection of human rights of refugees and asylum seekers accommodated in detention centres established in Nauru and Papua New Guinea?

Slovenia

- In previous cycle, Australian Government has accepted a recommendation by Slovenia to end the mandatory detention of migrant children. How does the Australian Government intend to solve the issue of its continuous policy of mandatory immigration detention in cases of children involved?

Sweden

- Except for progress in the offshore processing of migrants and asylum seekers, is the Government reinforcing the existing legislation and what measures are being taken – in accordance with its international obligations – to effectively protect, promote and guarantee the human rights of migrants and refugees?

RESPONSE FROM AUSTRALIA'S DEPARTMENT OF HOME AFFAIRS

During the UPR session, Australia's Ambassador to the UN in Geneva and representatives of six Australian Government departments spoke at various points, responding to concerns raised by UN member states. Here are the comments from Andrew Rose of the Department of Home Affairs regarding the Government's refugee, asylum and detention policies.

Australia is a nation built on migration. We have a long and successful history of managed migration. We are also one of a small number of countries that operate an annual permanent resettlement program. Australia recognises the valuable contribution that refugees and migrants make to Australian society, culture and prosperity.

The Australian Government remains committed to a managed and equitable system of migration, consistent with our non-refoulement obligations and other obligations with respect to the human rights of migrants, refugees and asylum seekers. This system of migration is enabled by Australia's ongoing commitment to strong border protection policies tailored to our own specific circumstances.

Australia plays a leading role in our region to combat people smuggling and human trafficking. A critical element of our policy is to send a clear message that people smugglers cannot sell a path to Australia. If people attempt to reach Australia by boat without a visa, they will not be permitted to settle permanently in Australia. Rather, they will be safely returned or transferred to a regional processing country for protection claims assessment by that country. These policies have been successful in severely damaging the people smuggling trade and, by extension, have saved countless lives at sea.

I thank delegations for their recommendations in relation to immigration detention, including Germany and Slovenia for their questions in advance. No transferees under regional processing arrangements in Nauru or Papua New Guinea are in detention. They reside in the community and they are able to move around freely without restriction. Onshore, immigration detention is an essential component of effective border management. Under the Migration Act, a non-citizen who does not hold a valid visa must be detained. Australian Government policy provides that detention in an immigration detention centre is a last resort. As such, Australia uses a risk-based approach to determine whether less restrictive arrangements, such as community detention, can be utilised while a person's immigration status is resolved.

Under the Migration Act, detention is not limited by a set timeframe. Rather, it ends when the person is either granted a visa or is removed from Australia in accordance with our laws. Where persons seeking asylum do not engage Australia's protection obligations and do not hold a valid visa, Australia expects states to allow the return of their citizens consistent with international law.

Immigration detention of children is always a last resort and children are detained for the shortest practicable time. It is the Australian Government's policy that minors are not held in immigration detention centres. Rather, they are accommodated in alternative places of detention. Australia also welcomes the important and positive role of scrutiny bodies such as UN agencies and the Commonwealth Ombudsman in providing independent oversight of our immigration detention system.

Australia's strong border protection policies have allowed Australia to maintain our generous humanitarian programs. Australia is one of the world's most generous contributors to international refugee resettlement efforts, successfully settling more than 900,000 refugees and others in humanitarian need since the end of the Second World War. Under Australia's humanitarian program, we will settle up to 13,750 individuals per annum for the next four years. While the size of the 2020-21 program is a reduction from earlier years, this reflects the significant operational challenges

presented by the COVID-19 pandemic. Notwithstanding this, Australia will continue to offer one of the largest resettlement programs on both an absolute and a per capita basis.

DOCUMENTS RELATED TO AUSTRALIA'S UNIVERSAL PERIODIC REVIEW

[Video recording of Australia's UPR session](#) – three-hour session of the UN Human Rights Council on 20 January 2021, including comments and recommendations from 122 UN member states and responses from the Australian Government

[Australia's UPR page on UN Human Rights Council website](#) – includes reports and information supplied by the Australian Government, UN Human Rights Council and stakeholders

[Joint NGO submission on behalf of Australian NGO Coalition](#) – endorsed by more than 200 NGOs, coordinated by Human Rights Law Centre, Kingsford Legal Centre, Caxton Legal Centre and an advisory group of 16 NGOs, with the section on refugees and asylum seekers drafted by Refugee Council of Australia (RCOA)

[Factsheet on the situation of refugees and people seeking asylum submitted by NGO Coalition](#) – additional information supplied to support the joint NGO submission, drafted by RCOA, Peter McMullin Centre on Statelessness and Human Rights Law Centre

[UPR pre-session statement from Refugee Council of Australia](#) – delivered by Sahar Okhovat, RCOA Senior Policy Officer, as part of a group of 5 Australian NGO representatives, to a meeting of UN member states in December 2020