



Universal Periodic Review (UPR) for Australia

10th Session (February 2011)

**Joint NGO Submission by
Franciscans International – FI- (General Consultative Status with UN ECOSOC),
Edmund Rice International (ERI), &
Foundation for Marist Solidarity International (FMSI)**

Submitted in Geneva, July 2010

Introduction

1. This stakeholder's report is a joint submission of the above-mentioned organizations. The Human Rights concerns in this submission relate to the following areas: ***Indigenous affairs, the rights of refugees and asylum seekers, and climate change***. Each section conveys recommendations to the Australian Government.
2. The data and information obtained for this submission came from various sources and includes information from both indigenous and non indigenous peoples in Australia. Information from institutions and education centre such as: Edmund Rice Centre for Justice and Community Education (Sydney), Edmund Rice Institute for Social Justice (Fremantle), Stronger Smarter Institute of Queensland University of Technology, Queensland Aboriginal and Torres Strait Islander College of Health, Education and Training (Brisbane), Australians for Native Title and Reconciliation (Queensland) and Project 10% (Queensland) are included.

I. Indigenous Affairs

Northern Territory Emergency Response

3. In 2007 the Australian Government initiated the Northern Territory Emergency Response (NTER), which with some minor adaptations, has been continued by the present Government. The NTER applies to 73 Aboriginal communities and means that the Australian Government determines where and how Aboriginal people, who are resident in those communities and dependent on government-funded benefits, spend half those benefits. State-funded essential services are available to these communities only if a community agrees to hand over control of their property for a fixed amount of time.¹
4. In order for this to occur, the Racial Discrimination Act was suspended, as these provisions apply only to Indigenous peoples. However, the Human Rights Commission of Australia (AHRC) found the NTER to be in breach of Australia's human rights obligations, as these measures are based on specific ethnic group and discriminate against the rights of Aboriginal people.² The Australian Government has since reinstated the Racial Discrimination Act³, but the AHRC has proposed guidelines for the Australian Government, if there is a future suspension of the Racial Discrimination Act.⁴ The Human Rights Committee (HRC) shares the same concerns where it has noted the negative impact of the NTER measures on the enjoyment of the rights of Indigenous peoples and that the Racial Discrimination Act 1975 was suspended without adequate consultation with the Indigenous peoples.⁵

¹ See http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/Pages/default.aspx (accessed 2 June, 2010).

² See http://www.humanrights.gov.au/social_justice/sj_report/sjreport07/chap3.html (accessed 2 June, 2010).

³ See Department of Families, Housing, Community Services and Indigenous Affairs *Landmark Reform to the Welfare System* (see Note 1).

⁴ See http://www.humanrights.gov.au/social_justice/intervention/index.html (accessed 2 June, 2010).

⁵ CCPR/C/AUS/5, p. 3, para 14.

National Congress of Australia's First Peoples

5. The establishment of the National Congress of Australia's First Peoples in April 2010 is a significant development for Indigenous Australians.⁶ The Congress is expected to provide an independent, national Indigenous voice on key policy issues affecting Aboriginal and Torres Strait Islander peoples. The Congress is a positive development in assisting Indigenous self-determination and the movement towards reconciliation and is in line with the recommendation made by the Human Rights Committee in its Concluding Observations for the fifth periodic review of Australia (CCPR/C/AUS/5).⁷ The HRC also recommended that such a body be adequately resourced.
6. The Australian Government however, has provided limited one-off funding to the Congress, making its long-term sustainability untenable. The Congress needs to be adequately funded in order to guarantee its future and ensure its effective advocacy for the human rights of Indigenous peoples.

The UPR mechanism should urge the Australian government to:

7. **Consult with Aboriginal and Torres Strait Islander stakeholders, and comply with guidelines proposed by the Australian Human Rights Commission, before considering suspension of the Racial Discrimination Act for any future intervention affecting Aboriginal and Torres Strait Islander people.**
8. **Provide ongoing support to the National Congress of Australia's First Peoples, to ensure its long-term sustainability.**

The Stolen Generation

9. The 20th century Australian Government policy of assimilation had many negative effects. It destroyed the social structures of Indigenous communities and resulted in immense personal suffering. This suffering should be compensated.
10. The Stolen Generations Report, *Bringing Them Home*, proposed a national compensation tribunal to assist people with a legitimate legal right to access compensation. Such a tribunal would be a partnership between governments, churches, Indigenous organizations and the Stolen Generations community.⁸ In its report on the CCPR review of Australia, the HRC noted its regret that the Australian Government "has not granted reparation, including compensation, to the victims of the Stolen Generation policies. (arts.2,24,26 and 27)"⁹

⁶ See <http://www.nationalcongress.com.au/index.html> (accessed 3 June, 2010). Australian Human Rights Commission *Our Future in Our Hands – creating a sustainable national representative body for Aboriginal and Torres Strait Islander Peoples: report of the Steering Committee for the Creation of a New National Representative Body*. (Sydney, 2009).

⁷ CCPR/C/AUS/5, p.3, para 13.

⁸ See http://www.hreoc.gov.au/social_justice/bth_report/report/index.html (accessed 3 June, 2010).

⁹ CCPR/C/AUS/5, p 4, para 15.

11. The Australian Government should follow the lead of other successful and workable compensation schemes for Indigenous children separated from their families that have been established in the Australian state of Tasmania and in other countries, namely Canada and New Zealand.¹⁰

National Reconciliation

12. In 1991, the Australian Government instituted a process of National Reconciliation within Australia, with a special focus on Aboriginal and Torres Strait Islander peoples.¹¹ In 2000, a million Australians demonstrated publicly their support of reconciliation with Aboriginal and Torres Strait Islander peoples.¹² One of the first acts of the newly elected government in 2008 was to apologize to Indigenous people taken from their families as children, often referred to as the Stolen Generations.¹³
13. Aboriginal and Torres Strait Islander peoples in Australia continue to suffer from serious disadvantage. Whilst the Australian Government has committed itself to policies to ‘Close The Gap’, there remains a 10-year life expectancy differential between Indigenous and other Australians.¹⁴ Aboriginal and Torres Strait Islander people cannot enjoy full human rights when struggling with poverty, social disadvantage and discrimination.¹⁵ As a signatory to the ICESCR, Australia is in breach of its human rights obligations to its Indigenous citizens, if those peoples cannot exercise their rights freely and fully.
14. The formal reconciliation agenda leading to an agreement, or treaty, needs to be revisited, in order to bring Australia into line with other nations with similar histories such as the United States, Canada and New Zealand.

The UPR mechanism should urge the Australian government to:

15. **Establish a National Compensation Tribunal, as recommended in the *Bringing Them Home* Report, to provide compensation to Aboriginal and Torres Strait Islander people negatively affected by the assimilation policy, particularly as it applies to those children unfairly removed from their families and the parents of those children.**
16. **Institute a formal reconciliation process leading to an agreement with the Aboriginal and Torres Strait Islander peoples.**

¹⁰ Amanda Cornwall *Restoring Identity: final report of the Moving Forward consultation project*, (Sydney, Public Interest Advocacy Centre, 2002), pp 40 – 43.

¹¹ See <http://www.austlii.edu.au/au/other/IndigLRes/car/> (accessed 3 June, 2010).

¹² See <http://www.austlii.edu.au/au/orgs/car/index.htm>, (accessed June 3, 2010).

¹³ See

<http://www.fahcsia.gov.au/sa/indigenous/pubs/stolengenerations/Pages/StolenGenerationsWorkingPartnership.aspx> (accessed June 2, 2010).

¹⁴ See

http://www.healthinfonet.ecu.edu.au/uploads/docs/overview_of_australian_indigenous_health_status_dec_2009.pdf, (accessed June 2, 2010).

¹⁵ Tom Calma *Social Justice Report 2009: Aboriginal and Torres Strait Islander Commissioner*. (Sydney, Australian Commission for Human Rights, 2009), pp 5 – 7.

Administration of Justice

17. Australian rates of incarceration of Indigenous peoples are unacceptably high, and are increasing. While making up only 2% of the Australian population, Aboriginal and Torres Strait Islander people comprise 26% of the full-time prison population in December 2009, up from 22% in June 2005. All but two Australian states increased their Indigenous imprisonment rate between December 2008 and December 2009.¹⁶ The number of young people in detention on an average day increased by 17% over four years (2004 – 2007), and, in 2007 – 2008, and half of young people in detention were Aboriginal or Torres Strait Islander.¹⁷
18. In Queensland, a coalition of Aboriginal agencies and a process of wide community consultation have developed a campaign entitled (Project 10%). Project 10% aims to reduce the Aboriginal prison population by 10%, each year, over the next ten years. The program uses existing state and national frameworks to target five key points of influence: at-risk groups, especially children, police contact, remand and sentencing practices, in-prison programmes, and post-release support.¹⁸
19. In the USA, ten states have adopted an evidence-based approach, called ‘**Justice Reinvestment**’ that has reduced imprisonment rates, decreased crime and strengthened local communities. It involves integrating research, communication and feedback for policy-makers and stakeholders, so they can match the services and resources needed with the community’s aspirations and goals.¹⁹ This approach is supported by the Aboriginal and Torres Strait Islander Commissioner for the Australian Human Rights Commission and might be appropriate for use in the Australian system of criminal justice.²⁰

The UPR mechanism should urge the Australian government to:

20. **Act to reduce rates of Aboriginal and Torres Strait Islander incarceration by producing policies that set targets (like those of Project 10%) for all Australian states and territories in key areas influencing Indigenous imprisonment rates, such as children at risk, police contact, remand and sentencing practices, in-prison programmes, and post-release support.**
21. **Consider, after appropriate consultations, adopting the ‘Justice Reinvestment’ approach to reducing prison populations of Aboriginal and Torres Strait Islander adults and young people, in collaboration with the relevant Aboriginal and Torres Strait Islander agencies.**

¹⁶ See

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/second+level+view?ReadForm&prodno=4512.0&viewtitle=Corrective%20Services,%20Australia~Jun%202008~Latest~18/09/2008&&tabname=Past%20Future%20Issues&prodno=4512.0&issue=Jun%202008&num=&view=&> (accessed 28 May, 2010).

¹⁷ Australian Institute of Health and Welfare *Juvenile Justice in Australia, 2007 – 2008*. (Canberra, 2009), p vii.

¹⁸ See project10percent@gmail.com (accessed 28 May, 2010). See office@antarqld.org.au (accessed 28 May, 2010). See www.antarqld.org.au (accessed 28 May, 2010).

¹⁹ See www.jusitcecenter.csg.org (accessed 28 May, 2010).

²⁰ Tom Calma *Social Justice Report 2009: Aboriginal and Torres Strait Islander Commissioner*. (Sydney, Australian Human Rights Commission, 2009), pp 12 – 67.

Indigenous Education

22. In November 2009, the Australian Government unveiled a school website (<http://www.naplan.edu.au/>) which publishes attendance rates, literacy results and numeracy results from the Nation-wide Literacy and Numeracy testing mechanism (NAPLAN). NAPLAN is carried out in every school in Australia. It allows parents to compare their own school with those throughout the rest of the country. It revealed, although this is not ‘new news’, that Indigenous education is in many parts of the country at or below Third World standards. This is unacceptable in an advanced and prosperous country such as Australia – one of the first in the world to commit to free, universal primary and secondary education.
23. An analysis of the NAPLAN results shows very low rates of achievement for the majority of Indigenous children in remote communities. It is estimated that 40% of Indigenous children do not achieve the minimum national standards in literacy and numeracy, and unfortunately, the majority of those children who do not achieve minimum standards live in remote communities²¹. These children are citizens of Australia and hence deserve the same opportunities as the rest of Australia’s children to access education and its professional delivery.²²
24. The Federal Government has allocated significant financial resources to ‘halving the gap’ between Indigenous children and the rest of the country with regards to reading, writing and numeracy standards by 2018. A financial commitment by the Government is not the issue. The problem is where and how the money is allocated.
25. Indigenous schools need outstanding educators and leaders to deliver quality education. A greater financial allocation towards attracting the best principals and the best teachers in Australia is necessary. Teacher housing in remote schools needs a radical upgrade and other incentives are required. Such incentives need to be attractive enough to ensure teacher retention in location and duration.
26. The isolation of many Indigenous communities from major townships makes it difficult to attract good, committed teachers to these schools. Teachers must teach in under-resourced classrooms and then return to basic and run-down accommodation at the end of the school day. Incentive packages and better housing for all teachers will help attract more outstanding educators to these schools.
27. The facilities in remote schools resemble those of a 3rd world country. There has been a history of neglect for decades by the Australian Government in this area. Although government resources have been boosted in these schools since 2008, much remains to be done to make them comparable with other schools in Australia.
28. Successful Indigenous schools are those that have strong community support. Where a community is divided over its support for the local school, the education of children suffers. More needs to be done to foster community involvement and support of local schools.

²¹ The Centre for Independent Studies, Indigenous Education 2010, Helen Hughes and Mark Hughes, p. 4

²² Convention on the Rights of the Child, Article 28: the right to education.

29. The key to improvement in a child's education is community engagement. According to Dr Chris Sarra²³, this is the cornerstone for building a better education for Indigenous children in Australia. It is critical for good education outcomes that there is a partnership of trust between the local community and the school.

The UPR mechanism should urge the Australian government to:

30. **Continue allocating substantial capital funds to remote Indigenous schools until their facilities and resources reach acceptable Australian standards.**

31. **Allocate sufficient funds to remote Indigenous schools to ensure that the accommodation provided for principals and teachers is of an acceptable standard to attract and retain high performers.**

32. **Provide substantial incentive salary packages and extra bonuses to attract quality principals and teachers to remote Indigenous schools, tied to a minimum period of five years at that school.**

33. **Promote programs geared towards rallying community support and participation in their local school at all levels.**

II. Refugee and Asylum Seekers

Principle of non-refoulement

34. Article 33 of the Refugee Convention indicates States shall not expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his/her life or freedom would be threatened on account of race, religion, nationality, membership or a particular social group or political opinion.²⁴ In recent years Australia has been in breach of its obligations under Article 33. The Human Rights Committee shares similar concerns.²⁵

35. Research by the Edmund Rice Centre in Sydney, in conjunction with the Australian Catholic University, has demonstrated that Australia has 'refouled' refugees to situations of serious risk. This research undertaken between 2003 and 2010 has involved interviews with over 250 returnees in 22 countries. The research found that some refugees returned by Australia were killed in Afghanistan, Iran, Iraq, Sri Lanka, Colombia and Pakistan. In Afghanistan a number of refugees' children were killed.²⁶ We note with serious alarm

²³ Dr Chris Sarra is the Executive Director of the Stronger Smarter Institute, Queensland University of Technology (QUT). He is committed to building a better education for all Indigenous Australians, in fact all Australians. He founded the Stronger Smarter Institute to 'change the tide of low expectations in Indigenous education'. In 2009 he was engaged by the Northern Territory Government to assess the NT Education Department with regards its delivery of education to Indigenous children.

²⁴ United Nations 2007 **Convention and Protocol relating to the Status of Refugees**, Art.33 'Prohibition of Expulsion or Return (Refoulement)', p 32.

²⁵ CCPR/C/AUS/5, p. 4, para 19.

²⁶ Edmund Rice Centre for Justice and Community Education *Deported to Danger: a study of Australia's treatment of 40 rejected asylum-seekers*. (Croydon, NSW; Edmund Rice Centre; Strathfield, NSW, School of Education, Australian Catholic University, 2004), p 2.

that Australia has once more begun returning rejected asylum seekers to Sri Lanka and Afghanistan.

36. On a research visit to Sri Lanka in March 2010 Edmund Rice Centre staff found that asylum seekers rejected by Australia and recently returned to Sri Lanka were living in danger. We hold grave fears for any Tamils returned to the country at this time. Similar fears are held for returned Afghans, especially Hazaras.

Unauthorized Refugees in the country of refuge

37. Whilst the present Australian Government has improved some of the cruel and inhumane practices of the previous Government, the Australian Government's policy of mandatory detention is in contravention of Article 31 of the Convention relating to the Status of Refugees²⁷. Moreover the detention of asylum seekers on Christmas Island (some 2,500 kilometres from the Australian mainland) makes appropriate independent checks by citizens concerning the treatment of asylum seekers very difficult.²⁸ The HRC has recommended that the Government should consider closing down the Christmas Island detention centre.²⁹
38. Article 31 of the Refugee Convention is further undermined through the excision of more than 4,600 islands from the Australian territories 'for migration purposes'. This means that asylum seekers arriving by boat are denied access to Australian refugee law. Instead, assessments are initially handled by an officer of the Department of Immigration. Other departmental officers scrutinise that initial decision. However, The Australian Human Rights Commission is excluded from the process.³⁰ The concern here is that Immigration officers are well trained in immigration protocols, not refugee law. Not only do such practices contravene Article 31, they also constitute a denial of natural justice.

²⁷ According to article 31 of the Convention "1. *The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.* 2. *The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.*"

²⁸ Amnesty International *Australia: update to briefing to the Committee against Torture*. (London, Amnesty International, International Secretariat, 2008), pp 8 – 11. See <http://www.amnesty.org.au/refugees/comments/22732/> (accessed 4 June, 2010). See <http://www.radioaustralia.net.au/connectasia/stories/200912/s2773205.htm> (accessed 4 June, 2010).

²⁹ CCPR/C/AUS/5, p. 6, para 23

³⁰ Amnesty International *Australia: update to briefing to the Committee against Torture*. (London, Amnesty International, International Secretariat, 2008), p 10. Note 50. Excised off-shore places are deemed not to constitute Australia for the purposes of the *Migration Act 1958*. According to Department of Immigration & Citizenship Fact Sheet 81, people who arrive without authorization (i.e. a visa), at an "excised offshore" place, such as Christmas Island, cannot apply for a visa except at the discretion of the Minister, can be sent to a declared safe country, and can be detained. The declared purpose of these provisions is "detering the activities of people smugglers." Fact Sheet available from <http://www.immi.gov.au/media/fact-sheets/81excised.htm> (accessed 16 March 2008). (Note: this link is no longer available.)

Suspension of Sri Lankan and Afghan asylum claims

39. On 9 April 2010, the Australian Government announced a three-month freeze on processing refugee claims from Sri Lankan and Afghani nationals.³¹ This suspension sends a clear message that Australia does not respect the binding nature of its international human rights obligations towards asylum seekers and refugees. It also risks inflicting additional psychological harm on vulnerable people, many of whom are survivors of torture and trauma. The UNHCR has warned that the Australian Government must provide adequate safeguards for these asylum-seekers.³²

Curtin Detention Centre Re-opening

40. The Australian Government has re-opened Curtin Air Base as a detention centre, to house Sri Lankan and Afghan asylum seekers whose claims are subject to the 3 and 6 month suspension.³³ This policy runs a considerable risk of further exacerbating the psychological harm suffered by vulnerable asylum seekers.³⁴
41. The extreme isolation of Curtin will make the delivery of adequate psychosocial support services difficult, if not impossible. It will also deter any regular social and pastoral visits which are so important for emotional support. This population of asylum seekers will include torture and trauma survivors, for whom services will be impossible to deliver.

Concerns about Anti-People Smuggling and Other Measures Bill 2010

42. Serious human rights concerns arise from the findings of the Senate Committee inquiry into the Anti-People Smuggling and Other Measures Bill 2010. The Committee seems to have ignored much evidence and many concerns raised by the majority of submissions.
43. This Bill is inconsistent with Australia's international legal obligations, lacks sensitivity to the needs of torture and trauma survivors, and could criminalize humanitarian actions. The Bill does not acknowledge that asylum-seekers have a lawful right to enter Australia for the purposes of seeking asylum.

The UPR mechanism should urge the Australian government to:

44. Honour its obligations under *Article 33* of the UN Convention on Refugees, and cease the practice of *refoulement* of refugees and asylum-seekers whereby their lives and their families' lives are put at risk.
45. Honour all obligations under *Article 31* of the Convention on the Rights of Refugees, and ensure that all refugees and asylum-seekers have their rights respected and access to Australian refugee law.

³¹ See <http://www.immi.gov.au/media/fact-sheets/75a-suspension-asylum-claim-processing-sri-lanka-afghanistan.htm> (accessed 4 June, 2010).

³² See http://unhcr.org.au/pdfs/100416_aulpress.pdf (accessed 4 June, 2010).

³³ See <http://www.theaustralian.com.au/politics/backbenchers-plan-to-confront-kevin-rudd-over-the-reopening-of-curtin-centre/story-e6frgczf-1225855718569> (accessed 4 June, 2010).

³⁴ See http://www.google.com/hostednews/afp/article/ALeqM5g8G_1huIfTAG3pgBedBQxeHTL-g (accessed 4 June, 2010).

46. **Close the detention centre on Christmas Island, and ensure that all refugees and asylum-seekers are brought to the Australian mainland for processing of claims.**
47. **Cease the suspension of Sri Lankan and Afghan asylum claims, and ensure that Sri Lankan and Afghan refugees and asylum-seekers have all rights respected while their claims are processed.**
48. **Immediately cease using the Curtin Air Base as a detention centre, and ensure that all detention centres for refugees and asylum-seekers are close to major population centres, so that adequate support services are readily available.**
49. **Re-draft the Anti-People smuggling and Other Measures Bill 2010, as it fails to exclude innocent citizens from the scope of its criminal sanctions, and fails to acknowledge the human rights of refugees and asylum-seekers.**

III. Human Rights and Climate Change

50. For residents of the Republic of Kiribati, climate change is leading to the disappearance of culture, way of life, and the country itself. In addition to extreme tropical storms, they are subject to prolonged droughts. During such droughts, fresh water wells become brackish, fresh water becomes scarce, and staple food trees (coconut and breadfruit) die, which increases soil erosion.³⁵ Kiribati has the highest rate of infant mortality in the Pacific.³⁶ 10 out of 100 children in Kiribati die, many as a consequence of contaminated water supplies. The Australian Government has recently postponed its presentation of its Emissions Trading Scheme (ETS) legislation until the end of 2013. For the people of Kiribati and Tuvalu, this sends a message that Australia is not serious about climate change or its implications for human rights. The Association of Small Island States argues that a reduction of carbon dioxide emissions to 350 ppm is needed.³⁷

The UPR mechanism should urge the Australian government to:

51. **Developed a legislative framework by 2012 that ensures 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.**

³⁵ OHCHR Summary of stakeholders' information: A/HRC/WG.6/8/KIR/3 (Geneva, 2010), pp 6 – 7.

³⁶ See <http://www.indexmundi.com/kiribati/> (accessed 31 May, 2010). See http://www.radioaustralia.net.au/pacific/places/infant_mortality.htm (accessed 31 May, 2010).

³⁷ See http://www2.pazifik-netzwerk.de/uploads/aosis_summit_declaration_sept_21_final.pdf (accessed 3 June, 2010).