

Submission No 18



amnesty international australia

Submission to the

**Joint Standing Committee on Foreign Affairs,
Defence and Trade**

regarding the

**REVIEW OF AUSTRALIA'S RELATIONS
WITH THE UNITED NATIONS**

Submitted by

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1 Introduction

Amnesty International welcomes the opportunity to make a submission to the first annual review by the Joint Standing Committee on Foreign Affairs, Defence and Trade (**the Joint Standing Committee**) of Australia's relations with the United Nations (**the UN**). Amnesty International believes that the UN, and in particular the human rights treaties and treaty bodies under its auspices, remains one of the most important human rights defenders in the world today.

In this submission, we revisit some issues that were addressed in Amnesty International's previous oral and written submissions to the Joint Standing Committee on 5 July 2000 and May 2000 respectively (2000 Submission). The current submission also addresses several important issues of concern to Amnesty International about Australia's relations with the UN that have arisen in recent years.

In particular, this submission addresses:

- Australia and the UN Commission on Human Rights;
- Australia and the UN human rights treaty bodies generally;
- Australia and the UN human rights treaties;
- Australia, the UN and Terrorism; and
- Australia, the UN and Refugees.

2 Australia and the United Nations Commission on Human Rights

The UN Commission on Human Rights (**the Commission**) is the UN's primary human rights policy-making body. It prepares recommendations, conventions, declarations and investigations into human rights issues. The Commission often sends rapporteurs and experts to visit countries to obtain information about particular human rights issues in those countries. These "thematic mechanisms" established under the UN Charter therefore rely heavily on the cooperation of governments. As of 22 May 2002, 38 countries have extended a standing invitation to the Thematic Special Procedures of the Commission, regrettably, Australia is not among them.

As stated in our 2000 submission, Amnesty International is concerned about the politicisation of the Commission. The capacity of the UN to protect human rights is limited by the will of individual states and the way some states manipulate UN voting blocks to deflect criticisms.

Amnesty International welcomed the December 1998 report of the Bureau of the Commission on the procedures of the Commission, and endorsed the Bureau's recommendation:

"to promote maximum depoliticisation of the Commission's work by taking all possible measures to ensure that its procedures are established and operate on the basis of the highest standards of objectivity and professionalism, free of influence from extraneous political and other considerations."

We welcome Australia's election to the Commission for a three year term starting in 2003, and urge that the Australian Government use Australia's position on the Commission to pursue appropriate reforms, such as those outlined by the Bureau in its report.

3 Australia and the United Nations Human Rights Treaty Bodies

The six main UN human rights treaty Bodies¹ (**the Treaty Bodies**) are made up of independent experts, nominated and elected by government representatives, who monitor² states' compliance with their obligations under international human rights treaties. The Treaty Bodies consider and comment on reports from governments on treaties to which they are signatories. The Treaty Bodies can also consider reports from NGOs, and most have developed procedures to consider country situations in the absence of a government report. Members of Treaty Bodies are individual experts nominated by governments. However these members act independently of governments and independently from the UN political bodies.

3.1 Australia's Participation in the UN Human Rights Treaty Body System

In recent years, some of the Treaty Bodies have raised serious concerns about Australia's policies in relation to indigenous people and asylum seekers. In August 2000, partly in response to these criticisms, the Australian Government decided to limit Australia's cooperation with the Treaty Bodies and argued there was a need to:

- Ensure adequate recognition of the primary role of democratically elected governments and the subordinate role of non government organisations;
- Ensure that Treaty Bodies and individual members work within their mandates;
- Improve coordination between different Treaty Bodies; and
- Address the current inadequate secretariat resources for research and analysis to support the Treaty Bodies' work

The Australia Government proposed the following measures to improve Australia's interaction with the Treaty Bodies:

- Reports to and representation at Treaty Bodies will be based on a more economical and selective approach where appropriate;
- Australia will only accede to a visit by a Treaty Body and requests from the Commission's thematic mechanisms for visits and the provision of information where the government considers there is a compelling reason to do so;

¹ The six main Treaty Bodies are:

- (i) the Human Rights Committee, which oversees the International Covenant on Civil and Political Rights (**ICCPR**);
- (ii) the Committee on Economic, Social and Cultural Rights, which oversees the International Covenant on Economic, Social and Cultural Rights (**ICESCR**);
- (iii) the Committee against Torture, which oversees the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**the Convention Against Torture**);
- (iv) the Committee on the Elimination Racial Discrimination, which oversees the Convention on the Elimination of all forms of Racial Discrimination (**CERD**);
- (v) the Committee on the Elimination of Discrimination Against Women, which oversees the Convention on the Elimination of all forms of Discrimination against Women (**CEDAW**); and
- (vi) the Committee on the Rights of the Child, which oversees the Convention on the Rights of the Child.

There is a seventh Treaty Committees, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, which oversees the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which is not yet in force.

² As noted by the Joint Standing Committee at page 221 of its June 2001 report, "[t]he findings of the treaty monitoring bodies are advisory only, although they do have the force of moral persuasion based on questions of our compliance with the obligations into which we have entered."

- Australia will reject “unwarranted” requests from Treaty Bodies to delay “removal” of unsuccessful asylum seekers from Australia; and
- Australia will not sign or ratify the Optional Protocol to CEDAW.

Amnesty International is concerned that “a more economic and selective approach” with respect to reporting and representation at Treaty Bodies may see Australia breach its obligations to comply with the reporting processes detailed in the UN human rights treaties. Australia should not be setting a precedent whereby cooperation with a Treaty Body is determined by reference to the subjective view of national governments whether it is “appropriate.” It is an obligation Australia has voluntarily entered into.

Australia has historically engaged with its neighbours on a platform of promoting respect for human rights and compliance with UN human rights treaties. By not fully supporting the Treaty Bodies, Australia erodes its international efforts to promote ratification of, and adherence to international human rights treaties, and damages its credibility in the region, particularly with respect to the messages it sends to countries with serious human rights problems. By withdrawing or limiting its role in the UN Treaty Body system, Australia is setting a precedent for countries with poor human rights concerns to be selective when deciding on whether to partake in this reporting system.

Amnesty International recognises that there are some legitimate concerns about the operation of the Treaty Bodies, but nevertheless urges the Australian Government to remain engaged with Treaty Body system. Effective reform of the Treaty Bodies requires the full support and cooperation of all states, particularly states such as Australia (which has a record of constructive support of the treaty system). Amnesty International believes that by working with UN Treaty Bodies to establish and maintain a consistent international human rights framework, Australia can play a leading role in upholding and protecting the fundamental human rights of all people.

3.2 Reform of the UN Human Rights Treaty Body system

The functioning of the Treaty Body system has been the source of some concern to the Australian Government in recent years. Amnesty International also has some concerns about the Treaty Body system. Amnesty International commends the recommendations of the Joint Standing Committee at page 154 of its June 2001 report that the Australian Government:

- Encourage member states to provide significantly increased funding appropriate to the needs of the treaty body system in order to ensure its effective and efficient working; and
- Pursue reform of the UN Human Rights Treaty Body system positively and constructively within the UN.

We note that on 25 June 2002, the Minister for Foreign Affairs and Trade announced that, as part of the Australian government’s diplomatic initiative to increase the political momentum to review and improve the operations of the United Nations human rights treaty bodies, the Australian Government:

- Was to host a workshop in Geneva on 25 and 26 June 2002 to focus on “improving the operation of the United Nations Human Rights Treaty Body system”; and
- Has announced that it will fund a study by the Office of the High Commissioner for Human Rights to identify “best practice” reporting guidelines.

Amnesty International cautiously welcomes Australia’s pro-active position on improving the effectiveness of UN Treaty Body system. However, we urge that any reduction in administration or increase in efficiency not be made at the expense of ensuring that human rights abuses are diligently investigated and human rights treaties properly implemented. Further, Amnesty

International hopes any position Australia takes with respect to improving the operation of the treaty body system is one that is constructive, positive and within the spirit of the human rights treaties within which those committees operate.

4 Australia and the United Nations Human Rights Treaties

The international human rights treaties contain provisions that, if respected, would safeguard the very human rights being violated in so many countries today. The UN has a central role in urging countries to ratify, implement and abide by human rights treaties. Amnesty International regards ratification of and compliance with these treaties by all countries, including Australia, as crucial to the protection of human rights. For example, improved adherence to these treaties would help eliminate the "push factors" causing many of today's movements of refugees and economic migrants.

4.1 The Convention against Torture

This year marks the fifteenth anniversary of the entry into force of the Convention against Torture. However, despite the universal condemnation of torture, it is still widespread and practiced systematically in many countries. Torture most often occurs in places of detention either to extract confessions or information, or to intimidate. It is particularly common where training and government discipline of officials is not effective.

The Optional Protocol to the Convention against Torture was adopted by the UN Economic and Social Council on 24 July 2002, and will now go to the UN General Assembly for approval. The Optional Protocol establishes a system whereby independent international and national bodies can regularly visit centres where people are incarcerated, to prevent torture and other cruel, inhuman or degrading treatment or punishment. Only centres in those states that ratify the Optional Protocol can be visited.

The adoption of the Optional Protocol is a vital step towards making a practical method of *preventing* torture a reality. It is an innovative approach to the problem of torture, as it focuses on preventing torture, whereas other international mechanisms dealing with torture (such as the Committee against Torture, the Special Rapporteur on torture, and international and domestic prosecutions for torture) for the most part address acts of torture after they have been committed.

The adoption of the Optional Protocol was supported by 35 states³ and opposed by 8 states: Australia, Cuba, Libya, Sudan, Egypt, Nigeria, Japan, and China. Ten countries abstained, including the United States. Amnesty International believes that the decision of the Australian government to vote against adoption of the Optional Protocol stands in contrast to the government's often-stated support for the international human rights system, and particularly its efforts for Australia to become a member of the Commission on Human Rights.

In voting against the very creation of the Protocol, which is designed to proactively abolish torture, Australia has demonstrated an unwillingness to help make better enforceable an internationally-agreed treaty to eradicate torture. Further, by voting against the adoption of the Optional Protocol, the Australian Government has drawn well-deserved criticism on Australia.

³ The Optional Protocol enjoys the support of countries from all regions of the world. For example, the resolution that the Draft Optional Protocol be adopted by the UN Commission on Human Rights was proposed by Costa Rica, the country which initially began the negotiations to create this new treaty in 1991, and was supported by many states in all regions of the world: Denmark, the Netherlands, Sweden, Spain (representing the EU as a whole) and Switzerland lead the supporters in the European group; Mexico led the support of many countries in Latin America; South Africa and Senegal lead the support of the African countries.

Support in favour of the adoption of the Optional Protocol was overwhelming, such that Australia's decision to vote against was never going to prevent the adoption of the Protocol (even supposing that it was in Australia's interest that the Optional Protocol not be adopted). As such, the Australian Government's action sends another worrying signal to the world that Australia lacks the political will to have international human rights mechanisms applied to itself.

Amnesty International urges the Australian Government to recognise the importance of the Optional Protocol in moving towards a world free of torture, and to commit to supporting the Protocol at the UN General Assembly later in 2002. Amnesty International urges the Joint Standing Committee to recommend that if and when the UN General Assembly approves the Optional Protocol, Australia sign and ratify the Optional Protocol at the earliest possible opportunity.

4.2 The Convention on the Elimination of all forms of Discrimination against Women

The Convention on the Elimination of all Forms of Discrimination Against Women was adopted by the UN General Assembly in 1979 and ratified by Australia on 28 July 1983. It defines discrimination against women and sets up an agenda for national action to end such discrimination.

The Optional Protocol to CEDAW was adopted by the UN General Assembly on 6 October 1999 and is yet to be ratified by Australia. The Optional Protocol gives individuals and groups of women from states that have ratified the protocol the right to lodge complaints to the UN Committee on the Elimination of Discrimination against Women regarding violations of the Convention, and enables the Committee to conduct inquiries into grave or systematic abuse of women's human rights in countries that have ratified the Optional Protocol.

Amnesty International commends the Committee for recommending at page 205 of its June 2001 Report that Australia ratify the Optional Protocol. However, Amnesty International is concerned that Australia has still not ratified the Optional Protocol, and that the Australian Government has not resiled from its announcement of 29 August 2000 that Australia would not sign or ratify the Optional Protocol to CEDAW.

Amnesty International reaffirms its position as stated in 2002 that Australia's decision not to sign or ratify the Optional Protocol to CEDAW is of particular concern for women's rights, routinely abused in countries across the Asia-Pacific region. Amnesty International joins the UN High Commissioner on Human Rights in urging Australia to reconsider this step.

Amnesty International is also concerned that Australia's report to the Committee on the Elimination of Discrimination Against Women is currently outstanding, and that at present there is no invitation to the Committee on the Elimination of Discrimination Against Women to visit Australia. Amnesty International submits that it is imperative for the Australia government to take a leadership role with respect to the issue of women's rights, particularly as Australia sits within a region where the respect for women's rights is routinely violated.

4.3 The Convention on the Elimination of all forms of Racial Discrimination

Amnesty International commends the fact that mandatory imprisonment laws, laws which in their application risked falling short of Australia's obligations under the Convention on the Elimination of all forms of Racial Discrimination, have been largely repealed in the Northern Territory, in accordance with the recommendations of the UN Committee on the Elimination of

Racial Discrimination. We note however, that Western Australia is yet to repeal its mandatory sentencing laws.⁴

Amnesty International notes the visit of the UN Special Rapporteur⁵ from 22 April to 10 May 2001, and applauds the Australian Government for acceding the visit. The purpose of the visit was to enable the Special Rapporteur to evaluate the impact, on the various components of the population, of legislation and governmental policy affecting racial discrimination. Its particular focus was on the situation of Aboriginal and Torres Strait Islanders. The report provided a detailed assessment of Australia's legislative and administrative framework to combat racism, as well as a quantitative and qualitative analysis of the effect of certain regimes, such as mandatory sentencing, upon sectors of the population such as Aboriginal and Torres Strait Islanders.

Amnesty International notes that the Special Rapporteur acknowledged that "substantial efforts" were being made by the Australian government to end racism and racial discrimination through programs designed to address disadvantage and recognition of ethnic diversity.

Amnesty International is disappointed that the Australia Government's response to the Special Rapporteur's report highlighted the report's minor errors (such as the statement that Australia has not ratified CEDAW, as opposed to the *Optional Protocol* to CEDAW). It is simply not credible for the Australian Government to dismiss a report on the basis of alleged minor factual errors. The response failed to address the substance of the report, and exacerbated the perception of Australia as being unreceptive, even hostile, to the UN and its mechanisms for ensuring the observance of human rights. Amnesty International notes that in February 2002, the Special Rapporteur published an addendum to his report which addresses some of the government's criticisms (E/CN.4/2002/24/Add.1).

Finally, Amnesty International notes with concern that the Australian Government still has not invited the Committee of the Elimination of Racial Discrimination into the country.

4.4 The Convention on the Rights of the Child

Amnesty International commends the Australian Government for signing the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on 18 December 2001.

4.5 The Rome Statute of the International Criminal Court

Amnesty International commends the Australian Government for passing the implementing legislation for the International Criminal Court (ICC)⁶. Amnesty International also commends the Joint Standing Committee for having recommended at page 175 of its June 2001 report that Australia ratify the Rome Statute of the ICC.

⁴ Amnesty International understands that repeal of mandatory imprisonment laws would have little practical effect on adult offenders, given that the third time offenders who incur mandatory sentences would usually be imprisoned in most cases regardless of the mandatory imprisonment laws. Amnesty International understands that, in relation to juvenile offenders, the WA government is assessing the impact on the mandatory imprisonment of indigenous juveniles. From a human rights perspective, one problem with such laws is that they remove the ability of the appropriate bodies to determine sentences – the courts – to make a sentence fit the seriousness of the crime, and to consider the circumstances of the victim (if any), the offence and the offender.

⁵ Report of Mr Glèlè-Ahanhanzo, UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, E/CN.4/2002/24/add.1 page 39.

⁶ Although the Rome Statute for the International Criminal Court is not strictly speaking a United Nations treaty, it is nevertheless a key human rights treaty.

However, Amnesty International notes with disappointment that the Australian Government inserted a section into the implementing legislation providing that the Attorney-General must issue a certificate before a person can be surrendered to the ICC, and that the Attorney-General has an absolute discretion to determine whether to do so⁷. The Rome Statute does not authorise a national political officer to unilaterally refuse to surrender a person. Amnesty International is disappointed that the Australian Government has decided to insert such a declaration, particularly after the leading role Australia played in negotiating the Rome Statute.

Amnesty International urges the Joint Standing Committee to recommend that the section of the *International Criminal Court Act 2002* (Cth) that gives the Attorney-General absolute discretion whether to issue a certificate authorising surrender of a person to the ICC be repealed as it has the potential to undermine completely the operation and effect of the ICC.

5 Australia, the United Nations and Terrorism

5.1 The United Nations and Terrorism

Following the tragic events of 11 September 2001, governments around the world have sought to implement measures to prevent and suppress terrorist activities, in accordance with UN Security Council Resolution 1373. Amnesty International notes and supports the comments of the UN Commission on Human Rights in 2000 and 2001 that

“all measures to counter terrorism must be in strict conformity with international law, including international human rights standards.”

Amnesty International acknowledges that while there must be a response to the events of September 11, any such response must be reasonable, proportional and in accordance with international human rights standards and the rule of law.

5.2 Australia's Security Legislation

In response to the events of 11 September 2001, a number of bills referred to collectively as the “Security Legislation” were introduced into the Commonwealth Parliament in March of this year. Many of these bills, including the *Security Legislation Amendment (Terrorism) Act 2002* [No. 2] (**the Terrorism Act**), received parliamentary approval in June 2002. The *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002* (**the ASIO Bill**) has not yet been introduced into the Senate.

Amnesty International made detailed submissions to both the Senate Inquiry on the Terrorism Bill and the Parliamentary Joint Committee on ASIO, DSD and ASIS Inquiry into the ASIO Bill. Representatives of Amnesty International have also appeared as witnesses at the Senate Inquiry and the ASIO Inquiry to voice Amnesty International's concerns regarding this legislation.

Therefore in this submission we have not repeated all of Amnesty International's concerns, rather, we have briefly outlined the some of the more important ways in which the Security Legislation may fail to meet Australia's obligations under UN human rights treaties. Amnesty International is concerned that despite some recent amendments to certain parts of the Security Legislation there is still scope for abuse of the legislation, and stresses the need for further review and public consultation.

⁷ *International Criminal Court Act 2002* (Cth) section 29.

(a) The Terrorism Act

One of Amnesty International's primary concerns relating to the Terrorism Act was that, as initially drafted, the terms it used were extremely vague and uncertain. This risked violating the rights to a fair trial in article 14 of the ICCPR. Recent amendments have done little to address this concern. Amnesty International believes that even after the inclusion of the amendments the legislation lacks clarity. The terms used in the legislation, such as "things" in section 101.4 and "member" in section 102.1, are too broad and vague.

Amnesty International also has concerns with the extension of the definition of treason in the legislation. We note that it will be a defence to this section that the relevant conduct relates to the provision of aid of a humanitarian nature. However, there remains significant concern that the advocacy works of community groups, including Amnesty International itself, may still fall within the scope of this offence. Amnesty International's work is focused on campaigning, researching and reporting. Amnesty International is concerned that this type of work would not come under the defence of providing humanitarian aid. Accordingly many human rights advocacy groups may still be subject to a charge of treason, as the present defence is insufficient.

(b) The ASIO Bill

Amnesty International is concerned that the ASIO Bill as presently drafted may be in breach of Australia's obligations under various UN human rights treaties. Amnesty International's concerns include (but are not limited to) the following:

- The Bill provides for detention without charge for an initial 48 hour period which can be extended indefinitely, contrary to the right to freedom from arbitrary arrest and detention contained in article 9 of the UDHR and article 9(1) of the ICCPR⁸.
- The Bill fails to ensure that detainees can be brought before a court to rule on the legality of their detention as required by article 9(4) of the ICCPR. Accountability for detention is an important safeguard against abuse of executive powers.
- The Bill provides for incommunicado detention. The ASIO Committee has recommended granting detainees access to legal representation from a panel of approved lawyers. Limiting a detained person's access to legal representation not of their own choice has been held an infringement of the right to defence by counsel of choice by the Human Rights Committee.⁹ Any "list" of available lawyers must be open to any lawyer, subject to security clearance, in accordance with article 14(3)(d) of the ICCPR.
- The Bill's applicability to minors, particularly the ability to strip search and detain children between the ages of 10 and 18, may breach the Convention on the Rights of the Child. Amnesty International notes that the ASIO Committee has recommended these powers not apply to minors at all.

Amnesty International believes that the Bill will not adequately protect the rights of detained persons, even if the amendments recommended by the ASIO Committee are adopted. Amnesty International reiterates no one should be detained until or unless charged with and prosecuted for a recognisable criminal offence without delay, and granted the opportunity to challenge their detention before a court of law or independent tribunal.

⁸ Amnesty International notes that the wording of the prohibition of arbitrary arrest and detention in article 9(1) ICCPR is the result of an Australian proposal during the drafting stage of the covenant in the late 1940s.

⁹ *Estrella v Uruguay*, Communication No 74/1980, Human Rights Committee, 18th session, UN Doc CCPR/C/OP/2 (1990).

6 Australia, the United Nations and Refugees

Amnesty International has a range of concerns in relation to the treatment of asylum seekers and refugees in Australia. Amnesty International is particularly concerned that recent or proposed pieces of legislation affecting refugees and asylum seekers breach many provisions of various UN human rights treaties. Many of these concerns will be outlined in Amnesty International's submission to the Senate and Legal and Constitutional Committee inquiry into the Migration Legislation Amendment (Further Border Protection) Bill 2002. Therefore in this submission we have not repeated all of Amnesty International's concerns, rather, we have briefly outlined Amnesty International's concerns in relation to some of the most pressing issues relating to Australia, the UN and refugees

6.1 Visits by United Nations Officials

Amnesty International applauds the Australian Government for acceding to the visit by the UN Commission on Human Rights Working Group on Arbitrary Detention (**the WGAD**) in May and June of this year, to investigate Australia's mandatory detention system. We note that the head of the WGAD, Mr Joinet, outlined serious concerns about numerous aspects of Australia's policy of mandatory detention, particularly in relation to the detention of minors, prior to his departure from Australia.

We also applaud the Australian Government for acceding to the visit to Australia by Justice Bhagwati, former Chief Justice of India and Special Envoy of the UN High Commissioner for Human Rights, Mary Robinson. His visit, also in May and June of this year, was made for the purpose of looking at and reporting on human rights issues with regard to the treatment of asylum seekers currently in detention in Australia.

Justice Bhagwati's report was damning of Australia's system of mandatory detention. His report noted numerous possible breaches of provisions of UN human rights treaties, including but not limited to:

- Breach of article 7 of the ICCPR, which provides that no-one shall be subjected to cruel, inhuman or degrading treatment or punishment.
- Breach of article 9 of the ICCPR, which provides that no-one shall be subjected to arbitrary detention.
- Breach of article 37 of the Convention on the Rights of the Child, which prohibits the detention of children, except as a last resort and for the shortest possible period of time. Justice Bhagwati commented that "the detention of children in the context of immigration procedures is certainly contrary to international standards."

Amnesty International notes with concern the Australian Government's response, set out in a joint media release on 31 July 2002 by the Minister for Foreign Affairs, the Minister for Immigration, Multicultural and Indigenous Affairs, and the Attorney-General. The statement that the report is fundamentally flawed is simply wrong. The allegation that the report lacks objectivity is baseless. The dismissal of the report on the basis that it contains "a number of emotive descriptions and assertions that have no foundation in the human rights instruments to which Australia is party" is facile. It is simply not credible for ministers of the Australian Government to criticise Justice Bhagwati for having recourse to reports about matters of which he had no direct experience.

Amnesty International commends the report of Justice Bhagwati to the Joint Standing Committee.

6.2 Mandatory detention of asylum seekers

Amnesty International is disappointed about Australia's steadfast refusal to accept the UN Human Rights Committee's findings in *A v Australia*¹⁰ that the prolonged detention of an asylum seeker was in violation of Australia's human rights obligations under the ICCPR, in particular, articles 9 (the right to liberty) and article 2(3), which sets out the right to an effective remedy. We note that although the finding was made in an individual case, the Committee expressed its concern at the policy itself in July 2000.

We also note Australia's failure to comply with the guidelines on detention of asylum-seekers adopted by UNHCR's Executive Committee, which call for detention to be used only exceptionally, to be justified in each individual case, and to be subject to the safeguard of an independent review of continuing detention of the individual in question.

7 Recommendations

7.1 Australia and the United Nations Commission on Human Rights

Amnesty International recommends that the Australian Government use Australia's position on the Commission on Human Rights to pursue appropriate reforms, such as those outlined in the report of the Bureau of the Commission.

7.2 Australia and the United Nations Human Rights Treaty Bodies

Amnesty International recommends that the Australian Government:

- Remains positively and constructively engaged with UN treaty body system and set an example for compliance and cooperation with human rights treaty bodies in accordance with its obligations under UN human rights treaties.
- Works to improve the effectiveness of UN committees, while ensuring that any reduction in administration or increase in efficiency not be made at the expense of ensuring that human rights abuses are diligently investigated and human rights treaties implemented properly.

7.3 Australia and the United Nations Human Rights Treaties

Amnesty International commends the fact that since Amnesty International's previous report on Australia's relations with the United Nations:

- Australia has signed the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.
- Mandatory sentencing laws have been largely repealed, in accordance with the recommendations of the UN Committee on the Elimination of Racial Discrimination.
- Australia has ratified the ICC.

¹⁰ *A (name deleted) v Australia*, Communication No 560/1993, Human Rights Committee, 59th session, UN Doc CCPR/C/59/D/560/1993.

Amnesty International recommends that the Australian Government:

- Supports the adoption of the Optional Protocol to the Convention Against Torture at the UN General Assembly to ensure torture and ill-treatment can be eradicated in all countries.
- Ratifies the Optional Protocol to the Convention Against Torture, if and when it is adopted by the UN General Assembly, to signal to the international community Australia's openness to international efforts to eradicate torture.
- Ratifies the Optional Protocol to CEDAW to allow greater UN scrutiny of Australia's efforts to comply with this treaty.
- Submits its report to the Committee on the Elimination of Discrimination Against Women shortly, and submit such reports in a timely manner in future.
- Invites the UN Committee on the Elimination of Discrimination Against Women to visit Australia to allow greater UN scrutiny of Australia's efforts to comply with the CEDAW treaty.
- Invites the UN Committee on the Elimination Racial Discrimination to visit Australia to allow greater UN scrutiny of Australia's efforts to comply with the Committee on the Elimination of Racial Discrimination.
- Repeals the section of the *International Criminal Court Act 2002 (Cth)* that gives the Attorney-General absolute discretion whether to issue a certificate authorising surrender of a person to the ICC.

7.4 Australia, the United Nations and Terrorism

Amnesty International recommends that the Australian Government:

- Amends the *Security Legislation Amendment (Terrorism) Act 2002 [No. 2]* to ensure it complies with Australia's obligations under UN human rights treaties.
- Amends the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002* to ensure it complies with Australia's obligations under UN human rights treaties.

7.5 Australia, the United Nations and Refugees

Amnesty International recommends that the Australian Government:

- Comply with the guidelines on detention of asylum-seekers adopted by UNHCR's Executive Committee, which call for detention to be used only exceptionally, to be justified in each individual case, and to be subject to the safeguard of an independent review of continuing detention of the individual in question.
- Not deport Alamdar and Muntazer Bakityari before the UN Human Rights Committee hears their case.

Amnesty International
1 August 2002