

Submission
Universal Periodic Review of Australia 2015

World Vision Australia

World Vision is a Christian relief, development and advocacy organisation dedicated to working with children, families and communities to overcome poverty and injustice. World Vision Australia (WVA) is part of the World Vision International Partnership, which operates in more than 90 countries.

For further information, see www.worldvision.com.au

1. World Vision is a Christian relief, development and advocacy organisation dedicated to working with children, families and communities to overcome poverty and injustice. World Vision Australia (WVA) advocates for the comprehensive implementation of the core human rights treaties for all of the children and communities in Australia's sphere of influence.
2. Since Australia's first Universal Periodic Review in 2011, the Government has made some advances in areas relating to child rights, particularly through the appointment of the National Children's Commissioner, a move that World Vision Australia (WVA) wholeheartedly applauds. At the same time, however, the Australian Government has failed to protect the human rights of children and other vulnerable people within its sphere of influence.
3. This submission will address three main areas of concern: children in immigration detention, trafficking and labour exploitation, and Indigenous development and systemic disadvantage. World Vision is particularly concerned about the specific vulnerabilities of, and impacts on, children in these and other areas, and advocates for the full realisation of all rights articulated in the *Convention on the Rights of the Child*, supported by appropriate mechanisms for redress when these rights are not upheld.

Recommendation 1: WVA calls on the Australian Government to withdraw its reservation to the *Convention on the Rights of the Child*

Recommendation 2: WVA calls on the Australian Government to ratify the *Third Optional Protocol to the Convention on the Rights of the Child*

Recommendation 3: WVA calls on the Australian Government to enact legislation to give direct effect to the *Convention on the Rights of the Child*

CHILDREN IN IMMIGRATION DETENTION

4. Australia is one of the only countries to impose mandatory and indefinite detention for asylum seekers, including children, as a first action. Under this policy, children are held in unsuitable conditions for long periods, in contravention of the Australian Government's obligations under the *Convention on the Rights of the Child* (CRC). The CRC clearly states that the detention of a child must only be a measure of last resort, and that detention must not be arbitrary, and that "in all actions concerning children, the best interests of the child shall be a primary consideration."
5. In a March 2015 report, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, concluded that Australian Government's current immigration detention practices violates the rights of "asylum seekers, including children, to be free from torture or cruel, inhuman or degrading treatment", as provided by articles 1 and 16 of the *Convention Against Torture*.¹

¹ UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, 6 March 2015, A/HRC/28/68/Add.1

6. In 2014 the Australian Human Rights Commission (AHRC) conducted a National Inquiry into Children in Immigration Detention, for which the report, *The Forgotten Children*², was delivered to the Australian Government on 11 November 2014 and tabled in the Australian Parliament on 11 February 2015. The report provided clear and comprehensive evidence that prolonged detention has disastrous effects on the short-, medium- and long-term wellbeing of children. The report identifies numerous cases of self-harm, assaults and sexual assaults and demonstrates a direct correlation between the time spent in detention and rates of mental illness.
7. As of February 2015, the Department of Immigration & Border Protection reported³ that 240 children are being held in closed detention, 107 of which were in detention centres in the Republic of Nauru. This represents a significant decrease in the total number of children held in closed detention, and World Vision has welcomed the Government's moves to expedite the release of children from closed detention. However, the policies and legislation that result in the prolonged and indefinite detention of future child asylum seekers, including any children of "unauthorised maritime arrivals" that are born in Australia, remain in place.
8. WVA supports all of the recommendations articulated in *The Forgotten Children*, but consider the following to be the most urgent.

Recommendation 4: *WVA calls on the Australian Government to repeal the mandatory detention provisions in the Migration Act 1958*

Recommendation 5: *Until such a time as the mandatory detention provisions are repealed, WVA calls on the Australian Government to release all children and their families into community detention or the community on bridging visas with a right to work.*

Recommendation 6: *WVA calls on the Australian Government to enact legislation to ensure that children may be detained under the Migration Act 1958 for only so long as is necessary for health, identity and security checks*

Recommendation 7: *WVA calls on the Australian Government to refer all cases of reported sexual assault involving children that have occurred in immigration detention to the Royal Commission into Institutional Responses to Child Sexual Abuse.*

Recommendation 8: *WVA calls on the Australian Government to ratify OPCAT*

TRAFFICKING AND LABOUR EXPLOITATION

9. The United Nations Office on Drugs and Crime (UNODC) estimates that approximately one-third of all detected trafficking victims are children.⁴ While the hidden nature of trafficking makes it difficult to estimate the total number of victims, in 2014, UNODC noted that the proportion of detected victims that are children represented a five per cent increase compared to the 2007-2010 period.

² Australian Human Rights Commission (2014) *The Forgotten Children: National Inquiry into Children in Immigration Detention*

³ Department of Immigration and Border Protection (2015) *Immigration Detention and Community Statistics Summary, 31 January 2015*

⁴ UNODC, *Global Report on Trafficking in Persons 2014* (United Nations publication, Sales No. E.14.V.10) p.11

10. At the same time, the International Labour Organization (ILO) estimates that more than 168 million children are subject to child labour⁵. This means that approximately ten per cent of children worldwide are undertaking “work that deprives (them) of their childhood, their potential and their dignity, and that is harmful to physical and mental development”⁶.
11. Several of the recommendations made through its first Universal Periodic Review encouraged the Australian Government to increase its efforts to fight human trafficking, and the Government should be commended for the progress it has made in this area. In particular, the recently launched *National Action Plan to Combat Human Trafficking and Slavery 2015-19* demonstrates a clear commitment to prevent and deter human trafficking, to prosecute offenders and to support trafficked people in Australia. World Vision also applauds the Government’s continued support of the National Roundtable on Human Trafficking and Slavery, the establishment of the Attorney-General’s Supply Chains Working Group, and amendments to legislation on trafficking in persons to better align with the *UN TIP Protocol*.
12. However, there are still significant gaps in resourcing the implementation of policy and legislative measures to effectively end impunity of Australian offenders and secure justice for victims of both labour and sexual exploitation.
13. The Australian Government did not support recommendations from the first UPR to sign and ratify the *International Convention on the Rights of Migrant Workers* (ICRMW), claiming existing workplace protections as adequate. As a significant labour-receiving country, however, with numerous documented cases⁷ of disproportionately unfair treatment of migrant workers, the Australian Government should reconsider this position.

Recommendation #9: *WVA calls on the Australian Government to better resource and increase the capacity of domestic and international investigatory responses to ensure the extent of trafficking in persons and exploitation committed by Australians (including companies domiciled in Australia) is revealed.*

Recommendation #10: *WVA calls on the Australian Government to sign and ratify the ICRMW*

14. There is also much more the Australian Government can do to support global prevention efforts and reduce the “demand” for goods produced through exploitative labour. In the four years since Australia’s first UPR, there has been a growing awareness of the respective roles of governments and business in protecting and respecting human rights. This includes the rights of children “to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.”⁸

⁵ International Labour Organization (2013) *Marking Progress against Child Labour: Global estimates and trends 2000-2012*.

⁶ International Labour Organization, “What is Child Labour”, <http://www.ilo.org/ipec/facts/lang--en/index.htm> (accessed 5 October 2014).

⁷ CFMEU *A Better Life?: Stories for Exploited Guest Workers in Australia*, <http://www.cfmeunsw.asn.au/sites/cfmeunsw.asn.au/files/downloads/posters/exploitedguestworkers09nsw0.pdf> (accessed 17 February 2015)

⁸ UN General Assembly (20 November 1989), “Text of the UN Convention on the Rights of the Child”, UN Office of the High Commissioner for Human Rights, Article 32(1).

15. While the unanimous Human Rights Council endorsement of the *UN Guiding Principles for Business and Human Rights* (UNGPs) does not represent new international law obligations, the UNGPs do clearly articulate “the implications of existing standards and practices for states and business”⁹. The UNGPs clearly establish that it is the duty of States to protect human rights, while business has a responsibility to respect human rights. An important part of meeting their duty to protect is that governments are expected to promote respect for human rights in all their commercial dealings¹⁰ and clearly convey the expectation that businesses will respect human rights throughout their global operations¹¹.
16. Further, in 2013, the Committee on the Rights of the Child adopted *General Comment No.16 (2013) on State Obligations Regarding the Impact of the Business Sector on Children’s Rights*. General Comment No.16 explains “States are not relieved of their obligations under the Convention and its protocols when their functions are delegated or outsourced to a private business or non-profit organisation”. It further explains, “States must take steps to ensure that public procurement contracts are awarded to bidders that are committed to respecting children’s rights...”¹²
17. Despite having co-sponsored the UN Human Rights Council resolution endorsing the UN Guiding Principles on Business and Human Rights, the Australian Government has not yet incorporated them into national law or policy.
18. For example, while the Commonwealth Attorney-General’s Department provides “ethical procurement” guidance, businesses bidding on Government contracts are not yet required to demonstrate whether they conduct human rights due diligence on their supply chains. Instead, Commonwealth Government procurement officers are encouraged “where possible, (to) check supply chains to ensure exploited labour has not been used”¹³.
19. Similarly, Australia’s *Corporations Act 2001* does not reflect the growing international awareness of the important relationship between business and government in protecting and respecting human rights. Finally, at the time of this submission, the Australian Government has yet to commit to developing a National Action Plan on Business and Human Rights.

Recommendation #11: WVA calls on the Australian Government to reform the Commonwealth Procurement Rules so that companies bidding for public contracts are explicitly required to demonstrate that they have taken appropriate steps to prevent, identify and address human rights abuses, particularly the use of trafficked and child labour, in their supply chains.

Recommendation #12: WVA calls on the Australian Government to consider amending the Corporations Act 2001 to require (or at least explicitly permit) company directors to consider human rights issues as an aspect of their duty to act in the best interests of the company.

⁹ Ruggie, J.G. (30 May 2011), “Presentation of Report to United Nations Human Rights Council”, Geneva

¹⁰ UNGP 6

¹¹ UNGP 2

¹² UN Committee on the Rights of the Child (2013), “General Comment No. 16 on State obligations regarding the impact of the business sector on children’s rights”, paras 25-27.

¹³ Attorney-General’s Department *Ethical Procurement: Information sheet for Commonwealth Government procurement officers*

Recommendation #13: *WVA calls on the Australian Government to develop, without further delay, a National Action Plan on Business and Human Rights, which clearly articulates its expectation that Australian businesses respect human rights, particularly children's rights, in their global operations.*

INDIGENOUS DEVELOPMENT & SYSTEMIC DISADVANTAGE

20. The current status of many Indigenous Australians who are experiencing ongoing and persistent disadvantage in their enjoyment of human rights is well documented. Symptoms of disadvantage such as high levels of morbidity, low levels of employment, alcohol and other drug misuse, poor social and emotional wellbeing, mental health issues, poor parenting, family and lateral violence, housing overcrowding, poor sanitary conditions, insufficient number of appropriately trained teachers for remote locations and the alienation of young people in urban areas all preclude Indigenous people from taking control of their lives. These symptoms of Indigenous disadvantage are the inevitable cumulative response to the structural barriers, caused by the ongoing existence of institutionalised negative discrimination of Indigenous Australians, and intergenerational trauma experienced by many Indigenous people, both of which so often preclude them from taking control of their lives. The net result is the widespread alienation of many Aboriginal families from the very institutions that exist to ensure their equality and social mobility.

21. Australia requires fundamental systemic change to achieve equality between Indigenous and non-Indigenous Australians.

Recommendation 14: *WVA calls on the Australian Government to work in partnership with Indigenous organisations to:*

- a) *Empower Indigenous Australians by practically implementing relevant international human rights instruments such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP);*
- b) *Develop policies and practices that value the diversity of Indigenous cultures and embrace the unique and significant contribution Indigenous people and communities make to building the nation;*
- c) *Recognise Aboriginal and Torres Strait Islander peoples in the Australian Constitution*

22. Articles 3, 18, 19 and 23 of UNDRIP clearly articulate Indigenous peoples' right to self-determination – to freely determine their political status and pursue their economic, social and cultural development. Fundamental to overcoming disadvantage is the ability of families and communities to exert influence on those aspects of life that impact on their ability to provide optimal environments for children, youth, adults and elders to grow and develop.

Recommendation 15: *WVA urges the Australian Government to invest in long term Indigenous programs that embed enabling conditions for locally led development including:*

- a) *A locally-driven approach to engagement and development, which enables Indigenous people, families, organisations and communities to devise their own development strategy and programs, and to have the power, responsibility, resources and authority to lead them.*

- b) *Integrated programs, projects and services¹⁴ (i.e. across education, employment, health, culture, land, safety and wellbeing)*
- c) *Integrated partnerships, led by Indigenous organisations¹⁵*
- d) *Alignment of funders, providers and systems to community decisions¹⁶*
- e) *A parallel investment in capability building (for both Indigenous and non-Indigenous people)¹⁷*

23. Investment in children's early years is now understood to be one of the most effective strategies available for reducing inter-generational disadvantage, building human capacity, economic participation and creating a fairer society. Australia has one of the lowest rates of financial investment in Early Childhood in the OECD. Recognising this, *The Creating Parity Report¹⁸* urges Australian governments to work jointly to agree on, and put into effect a new approach that includes progressive investment to implement integrated childhood services and to dramatically improve attendance.

24. Australia is also experiencing increasing unemployment rates for Indigenous people, whose needs (such as bilingual education and context appropriate, strength based adult learning) are not being met by existing formal education systems and programs.

25. Without a commitment to locally led development and life-long learning opportunities, starting with a holistic approach to early childhood care and development from prenatal to age five¹⁹, intergenerational poverty becomes further entrenched.

Recommendation 16: *WVA calls on the Australian Government to invest in and commit to:*

- a) *Indigenous people having access to life-long learning opportunities that are holistic, demand driven, flexible and integrated in its approach to learning and development, addressing the key social determinants of Indigenous health; and*
- b) *Implementing Recommendation 1 of the Creating Parity Report, which calls on all levels of Australian Government to work together to prioritise and implement investment in early childhood, from conception to at least three years of age.*

¹⁴ *Integration rather than independent programs and projects: the sustained success of an integrated portfolio of projects over time will lead to a change in community outcomes.*

¹⁵ *All partners must commit to working in partnership to avoid duplication and a fragmented operational response made up of multiple, disconnected projects.*

¹⁶ *This means systems (including funding and procurement) are designed to maximise the potential to achieve community identified outcomes. Funds are committed to support a realistic portfolio over the lifespan of the community's development plan rather than individual projects.*

¹⁷ *A locally led approach is only possible through building the capacity of communities and Indigenous organisations to lead, govern and manage the programs of work they have created; and the capacity of NGOs and government to maintain strong, effective partnerships through devolved responsibility.*

¹⁸ Forrest, A. (2014). 'The Forrest review: creating parity'. Commonwealth of Australia, Canberra.

¹⁹ *In line with Article 14, UNDRIP and Articles 28 and 29, Convention on the Rights of the Child*