

# UN torture report criticises Australia's refugee policies

By Terry Cook  
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The Australian government has flatly rejected, and directly defied, a report by the Geneva-based UN Committee Against Torture (CAT) stating that the country's refugee policies could be in breach of the UN Convention Against Torture.

Immigration Minister Scott Morrison dismissed the report out of hand, and the government this month proceeded to push through legislation that explicitly repudiates Australia's obligations under the torture convention, and the international refugee convention, when turning away or deporting asylum seekers.

The CAT report, handed down on November 28, forms part of the committee's performance appraisal of the 156 countries whose governments have ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Australia is a signatory.

While couched in exceedingly cautious language and avoiding any condemnation or threat of sanctions, the CAT report raises a raft of "concerns" about Australia's so-called border protection regime of repelling all refugee boats and indefinitely detaining asylum seekers who arrived previously.

First on the list of the committee's "concerns" is the policy of "intercepting and turning back of boats ... without due consideration for its obligations under article 3 of the Convention."

Article 3 of the torture convention specifies that no State "shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." It also insists that "the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

The Abbott government has flouted these requirements by aggressively using the Australian navy to intercept and turn back refugee boats without determining the circumstances of their passengers, including whether they face the danger of persecution or torture.

The previous Labor government introduced "fast track" processing" designed to prevent asylum seekers, particularly those from Sri Lanka, formally applying for protection visas, a practice that the current Liberal-National government has extended and further institutionalised.

In one known recent example, during July, 157 Sri Lankan Tamil asylum seekers attempting to reach Australia were seized and incarcerated on an Australian naval ship on the Indian Ocean for nearly a month in a bid to hand them back to Sri Lanka or India. Ultimately, they were forcibly transported to the remote Pacific island of Nauru, to be locked in one of Australia's "offshore" detention camps, while still denied the right to apply for asylum.

Concern is also raised in the UN report about the Abbott government's legislation "that would reduce some of the existing statutory standards against refoulement, in particular the Migration and Maritime Powers Legislation."

In fact, the legislation explicitly repudiates Australia's obligations under the Convention against Torture, as well as under the Refugee Convention, by stipulating that asylum seekers denied a visa can be removed from Australia "irrespective" of any "non-refoulement obligations." It also authorises the immigration minister to disregard Australia's "international obligations" in ordering the interception of refugee boats and the removal of their passengers to anywhere in the world.

Despite the plea in the CAT report for the Australian government to “refrain from adopting any legislative or other measures that may lower the existing safeguards and standards of protection” for refugees, the legislation was passed by the Senate on December 5.

The CAT report further states that the UN committee “remains concerned that detention continues to be mandatory for all unauthorised arrivals, including for children.” This compulsory detention policy was first introduced by the Keating Labor government in 1992 and has been expanded ever since by both Labor and Liberal-National governments.

The report notes the lack of any defined maximum length for a person to be held in detention and declares that this is “resulting in protracted periods of deprivation of liberty” with some category of detainees—“stateless persons whose asylum claims have not been accepted”—being held in captivity indefinitely.

The committee also criticises the policy of consigning asylum seekers, including children, to detention centres on Nauru and Manus Island in Papua New Guinea “despite reports on the harsh conditions prevailing in these centres,” including “overcrowding, inadequate health care; and even allegations of sexual abuse and ill-treatment.”

The report notes: “The combination of these harsh conditions, the protracted periods of closed detention and the uncertainty about the future, reportedly creates serious physical and mental pain and suffering.” It recalls that in 2013 these offshore holding centres “were deemed by the UNHCR [UN High Commissioner for Refugees] not to provide humane conditions of treatment.”

The report indicates that this detention could violate Articles 2, 11 and 16 of the torture convention, which require governments to prevent in their jurisdictions all torture, defined as the intentional infliction of “severe pain or suffering, whether physical or mental,” and “other acts of cruel, inhuman or degrading treatment or punishment.”

What the report does not say is that the inhuman treatment of refugees is a deliberate and intended component of the policy, designed to prevent any asylum seekers from reaching Australia and deter any refugees from even trying to flee to the country.

Demonstrating the Australian government’s outright contempt for international law and its complete

confidence that it faces no real action at the hands of the UN, Immigration Minister Morrison dismissed the criticism in the CAT report. “I don’t share their view,” he declared. “Australia’s border protection policies are made in Australia—nowhere else.”

While the Abbott government ruthlessly enforces the anti-refugee policy, the previous Labor government re-opened the detention camps on Manus Island and Nauru, creating the conditions that have resulted in deaths and chronic physical and mental health problems among detainees.

Labor and the Greens opposed the *explicit* repudiation of international law in the latest legislation, but the Labor government, kept in office by the parliamentary votes of the Greens, had already repudiated it, *de facto*, by indefinitely incarcerating all asylum seekers and removing hundreds to Sri Lanka and other countries where they faced the likelihood of persecution.

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