



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR Representation in Canberra

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Committee Secretary
Parliamentary Joint Committee on Human Rights
PO Box 6100,
Parliament House
Canberra ACT 2600

1 July 2023

Subject: Parliamentary Joint Committee on Human Rights Inquiry into Australia's Human Rights Framework

Dear Committee,

The Office of the United Nations High Commissioner for Refugees (UNHCR) welcomes the opportunity to provide input to the Parliamentary Joint Committee on Human Rights in respect of its inquiry into Australia's Human Rights Framework.

UNHCR offers these comments as the agency entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees and other persons within its mandate, and for assisting governments in seeking permanent solutions for refugees. Australia is a Contracting Party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (together, "the Refugee Convention"), as well as the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Statelessness Convention* (together, "the Statelessness Conventions"). Through accession to these instruments, Australia has assumed international legal obligations in relation to refugees, asylum-seekers, and stateless persons in accordance with their provisions.

A founding principle of the United Nations Charter is that states are charged with the collective and individual responsibility to promote universal respect for, and observance of, human rights and fundamental freedoms for all. Whilst the primary duty rests with states themselves, UNHCR, as the UN agency tasked with providing protection to refugees, asylum-seekers, stateless persons, and others has a particular role to play insofar as its mandate extends to ensuring that the human rights of its beneficiaries are upheld in accordance with the international obligations of states hosting them.

The Refugee Convention clearly affirms in its preamble that the refugee protection regime aims to ensure the widest possible exercise of refugees' fundamental rights and freedoms. The Refugee Convention was envisaged as a human rights instrument directed at a specific and identifiable group of victims (or potential victims) of human rights violations and designed to ensure that they obtain the fullest possible enjoyment of their human rights. These include the right to seek and enjoy asylum and the right to non-discrimination but also the right to education, freedom of movement, livelihoods, health care and accommodation, amongst others.

However, since the creation of UNHCR in 1950, many more international human rights treaties and instruments have been adopted, which prescribe a wider range of human rights and establish a variety of supervisory mechanisms that foster the creation of accountability and implementation.

These are immediately applicable to the persons who fall under UNHCR's mandate and relevant to the protection responsibilities of UNHCR. The experience of displacement or statelessness enhances the need for protection under international and national human rights frameworks and these frameworks complement and strengthen the protection of persons under UNHCR's mandate.

As you may be aware, the Global Compact on Refugees, affirmed by the United Nations General Assembly on 17 December 2018 calls for the equitable sharing of the burdens and responsibilities of all displaced and stateless people and introduced a whole-of-society approach. It is [complemented](#) by the United Nations Secretary-General's *Call to Action for Human Rights* and the *2030 Agenda for Sustainable Development*. In addition, the second Global Refugee Forum, which coincides with the 75th anniversary of the Universal Declaration of Human Rights, has built further momentum around the advancement of human rights so that people, including those under UNHCR's mandate, can achieve the realisation of their rights to thrive and reach their full potential.

UNHCR's recently released *Global Trends report* indicates that the number of people displaced by war, persecution, violence, and human rights abuses now stands at 110 million. New and ongoing conflicts (including in DRC, Sudan, and Myanmar) continue to force people to flee, yet in 2022 more than half of all refugees and other people in need of international protection came from just three countries: Syria, Ukraine, and Afghanistan. Unfortunately, shrinking asylum space, discrimination and xenophobia, poverty and exclusion leave many refugees without solutions, prospects or the resources and access to rights necessary to live in safety and dignity. As recently [observed](#) by UN High Commissioner for Human Rights, Volker Türk:

Hate speech and harmful narratives against migrants and refugees also continue to proliferate; they are accompanied, worryingly, by laws and policies that are anti-migrant, and they risk undermining the basic foundations of international human rights law and refugee law...Article 14 of the Universal Declaration is clear on everyone's right to seek and enjoy asylum from persecution. We need solidarity – to ensure that all people in vulnerable situations are treated with humanity and respect for their rights.

In this context it is relevant to recall that UNHCR has consistently expressed significant concern with respect to the laws and policies that contravene Australia's international obligations arising under international refugee law and human rights law. Principally, these have been adopted with respect to Australia's offshore processing arrangements in third countries; immigration detention and removal regime; maritime interception and return policies; access to fair and efficient asylum procedures; and procedures to promote the protection of stateless persons and prevention of statelessness.

UNHCR's long-held concerns in these areas are well-documented and most recently summarised in our [submission](#) to the Universal Periodic Review 37th session on Australia. Such concerns have also been echoed over many years in various human rights processes, including the Universal Periodic Review, the international human rights treaty bodies' reviews of Australia, and relevant outcomes from special procedures (including the Working Group on Arbitrary Detention), as well as national human rights institutions. Unfortunately, the views and [recommendations](#) of such mechanisms have largely been disregarded.

Similarly, Australia's parliamentary oversight mechanisms, including human right scrutiny as prescribed by the *Human Rights (Parliamentary Scrutiny) Act 2011* have also proven inadequate to prevent the adoption of laws that contravene Australia's international refugee and human rights obligations. Moreover, such mechanisms do not have a wider scrutiny role beyond the human rights and freedoms recognised or declared in any one of seven listed international instruments. UNHCR considers that the strengthening of Australia's parliamentary scrutiny mechanisms is essential and should expressly extend to ensuring compatibility with Australia's international treaty obligations, especially the Refugee Convention and Statelessness Conventions, which specifically seek to protect and uphold the human rights of the world's most vulnerable people.

UNHCR continues to observe first-hand the severe and harmful impact of laws that depart from Australia's international refugee and human rights obligations and decision-making that results in

violations of human rights. Moreover, UNHCR has observed the consequences of deficient domestic accountability and enforcement mechanisms, whether through independent investigative or administrative and judicial processes. Over the last decade, this has been most visibly acute for those transferred to regional processing countries and those in indefinite and arbitrary immigration detention.


UNHCR acknowledges the significant contributions that have been made to date to inform the development of human rights in Australia, including through the 2009 National Human Rights Consultation chaired by Frank Brennan, the extensive [consultations](#) culminating in a model for a Human Rights Act proposed by the Australian Human Rights Commission, and other processes that have highlighted the need and advanced the discussion for critical reform in this area.

UNHCR supports the introduction of a national Human Rights Act informed by the above processes, the development of strengthened and expanded parliamentary scrutiny mechanisms, as well as enhanced accountability mechanisms to enable every person who claims that their rights have not been respected, protected, or fulfilled to seek an effective remedy before a competent and independent domestic body vested with the power to order reparations and to have its decisions enforced.

Without any specific comment on Australia's 2010 Human Rights Framework and the National Human Rights Action Plan, UNHCR would urge any future national human rights action plan to be based on a comprehensive assessment of Australia's human rights situation, be designed to improve the promotion and protection of human rights, and it should have ongoing political support. It should also result in a Human Rights Act that codifies and gives full legal effect to the critical international human rights instruments to which Australia is a state party, noting that refugees, asylum-seekers, and stateless persons have specific additional rights through the Refugee and Statelessness conventions, above and beyond the core human rights instruments. Best practice [guidance](#) indicates that improvements should be expressed as tangible objectives, attainable through implementation of specific programmes, with the participation of all relevant sectors of government and civil society with the allocation of sufficient resources. Moreover, any action plan should also contain clear performance criteria and strong participatory mechanisms for monitoring and evaluation.

UNHCR stands ready to assist renewed efforts to strengthen Australia's human rights framework and to promote the explicit inclusion of refugees, asylum-seekers, and stateless persons within it.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Adrian Edwards', written in a cursive style.

Adrian Edwards
Regional Representative