

**AMNESTY  
INTERNATIONAL**



Submission to the

**Royal Commission into the Protection and Detention of Children in  
the Northern Territory**

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Submitted by  
**Amnesty International Australia**

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## **About Amnesty International**

Amnesty International is the world's largest independent human rights organisation, comprising more than seven million supporters in more than 160 countries.

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments, including the Declaration on the Rights of Indigenous Peoples. Amnesty International undertakes research focused on preventing and ending abuses of these rights.

Amnesty International is impartial and independent of any government, political persuasion or religious belief. Amnesty International Australia does not receive funding from governments or political parties.

## 1. Summary

- 1.1 Amnesty International welcomes the opportunity to provide this submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory. The ill treatment and abuse of children in youth detention facilities in the Northern Territory and other Australian jurisdictions requires a national spotlight and sustained government leadership to address. This Royal Commission is also a critical step towards greater accountability for children subject to abuse or mistreatment while in the care of the Northern Territory Government.
- 1.2 Amnesty has been closely monitoring issues related to the imprisonment of children in the Northern Territory since mid-2014, and we have raised concerns about the treatment of children in detention with the Northern Territory Government numerous times. This is part of a wider project Amnesty International has been undertaking since 2013 to study and report on the disproportionate rates at which Aboriginal and Torres Strait Islander children are incarcerated across Australian jurisdictions.
- 1.3 The human rights abuses that occurred at Don Dale Youth Detention Centre and sparked this Royal Commission are a result of systemic policy failures at the Northern Territory and Federal Government levels. These failures require the focussed attention this Royal Commission will bring.
- 1.4 Unfortunately these abuses are not isolated to the Northern Territory. In Amnesty International's research we have identified serious concerns about the treatment of children in youth detention facilities right across the country. Amnesty International notes the importance of these abuses also being fully investigated, and to that end we note the importance of the review of youth detention currently taking place in Queensland.<sup>1</sup>
- 1.5 It is also important for the Royal Commission to consider the wider context in which these abuses have taken place. The over-representation of Indigenous young people in detention in Australia is a national crisis. Between July 2014 and June 2015, Indigenous young people were 24 times more likely to be in detention than their non-Indigenous peers across Australia. In the Northern Territory during the same year, Indigenous young people made up an average of 95 per cent of all young people in detention despite comprising 45 per cent of the Territory's population aged between 10 and 17. Amnesty International hopes the work of this Royal Commission will lead to an Australian Government-led strategy at the Council of Australian Governments to end this overrepresentation.
- 1.6 Amnesty International urges the Royal Commission – and both the Northern Territory and Australian governments – to develop policy responses which are not simply focussed on how human rights are respected in places of detention, important as that is. The question that also must be asked is how do we find solutions to prevent children from being detained in the first place?

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<sup>1</sup> Amnesty International's submission to the Independent Review of Youth Detention in Queensland can be accessed at <https://static.amnesty.org.au/wp-content/uploads/2016/10/20161026-AIA-Submission-to-Qld-Independent-Review-of-Youth-Detention.pdf>

1.7 This submission touches on both these issues, drawing our analysis from the framework of international human rights law. The submission also provides a summary of correspondence between Amnesty International and the Northern Territory government in relation to the Don Dale Youth Detention Centre. This correspondence is reproduced in full at Appendices 4(a)-4(f). When viewed together with the numerous reports received by the Northern Territory from 2014 onwards, the failure of Northern Territory Government to ensure its detention facilities met basic human rights standards is clear.

## **2. Recommendations**

2.1 Amnesty International urges the Royal Commission to consider the following recommendations:

### **Northern Territory Government**

- (1) Ensure the Northern Territory's youth justice system and all youth justice laws are expressly compliant with Australia's international human rights obligations, including the Convention Against Torture, the Convention on the Rights of the Child and the Declaration on the Rights of Indigenous Peoples;
- (2) End all practices which are inconsistent with these human rights obligations, including:
  - a. stronger safeguards to prevent the misuse of tear gas;
  - b. prohibiting the use of solitary confinement of children; and
  - c. prohibiting the use of restraint chairs and spit hoods against children.
- (3) Fully investigating allegations of torture and other ill-treatment and excessive use of force in detention facilities, with a view to bringing those responsible to justice, and to provide victims with effective remedies.

### **Australian and Northern Territory Governments**

- (4) Establishing a reporting mechanism to ensure the Australian and Northern Territory governments respond to and monitor implementation progress of this Royal Commission;
- (5) Ensuring the Australian and Northern Territory governments, when responding to the Royal Commission, consult widely with Aboriginal and Torres Strait Islander people and their representative organisations;

### **Australian Government in conjunction with all state and territory governments**

- (6) Immediately ratify and implement the Optional Protocol to the Convention Against Torture (OPCAT)
- (7) Develop justice targets through the Council of Australian Governments (COAG) to reduce the overrepresentation of Indigenous children in detention and to reduce rates of violence, in consultation with Indigenous organisations that represent offenders and victims.
- (8) Develop a COAG strategy to end the overrepresentation of Indigenous children in detention in consultation with Indigenous people and organisations.
- (9) Quantify the level of unmet legal need currently experienced by Indigenous children and their families and take immediate steps to make up the shortfall of funding to Indigenous legal services.
- (10) Fund and support, including building the capacity of, Indigenous-led early intervention and diversion services.
- (11) Raise the age of criminal responsibility from 10 years of age to at least 12 years in all Australian jurisdictions.

- (12) Identify the data required to implement a Justice Reinvestment approach, including by tasking a technical body with assisting states and territories and coordinate a national approach to the data collection.
- (13) Urgently finalise a diagnostic tool for Fetal Alcohol Spectrum Disorder and provide sufficient resources to Indigenous community-designed and led initiatives to address the effects of FASD to ensure that it is treated as a disability rather than becoming a criminal justice issue.
- (14) Identify areas of unmet need for bail accommodation and provide funding for Indigenous community controlled bail accommodation and support services to ensure that Indigenous young people are not held in detention on remand solely due to a lack of other options.
- (15) Develop youth bail legislation at a Federal level requiring that pre-trial detention should occur only as a last resort where there is a risk of flight or where release would interfere with the administration of justice. Under the uniform youth bail legislation, pre-trial detention should occur only after a case-by-case assessment of necessity and proportionality.

### 3. Amnesty International's research on youth detention

- 3.1 Since 2013, Amnesty International has conducted thorough research on the over-representation of Indigenous children in the justice system in Australia, with an in depth focus on Western Australia and Queensland, but drawing also on preliminary research in the Northern Territory.
- 3.2 Amnesty International published a National Overview of this issue in June 2015,<sup>2</sup> followed by a research report on the youth justice system in Western Australia.<sup>3</sup> In September 2016 Amnesty International published *Heads Held High: Keeping Queensland kids out of detention, strong in culture and community*,<sup>4</sup> which raised serious concerns about the treatment of children in Queensland detention centres and prisons. The evidence contained in the *Heads Held High* report contributed to the Queensland Government's establishment of a Youth Justice Review to investigate evidence of abuse and mistreatment in Queensland youth detention centres, which is ongoing.<sup>5</sup>
- 3.3 All three reports include recommendations for developing policies at a national, state and territory level to reduce and ultimately end the over-representation of Indigenous young people in the criminal justice system. If implemented, these recommendations would also reduce the youth detention population overall, by ensuring that detention is only ever used as a measure of last resort, and increasing investment in early intervention, diversion and prevention programs. Ultimately the best way to prevent abuses of children in detention is to ensure children are not detained.
- 3.4 A theme throughout Amnesty's research has been that - notwithstanding the obvious responsibility of the state and territory governments when it comes to their own laws, policies and practices for dealing with young people in the justice system - the Australian Government bears overarching responsibility in fulfilling what are human rights obligations. As reflected in the findings of our National Overview, Amnesty International considers the issue of Indigenous children being overrepresented across all states and territories to be one that demands national leadership.
- 3.5 In addition to the Northern Territory Government's responsibilities, Amnesty International hopes this Royal Commission can take steps to ensure the Australian Government accepts its national leadership role by addressing human rights violations and reducing the overrepresentation of Indigenous children in detention in the Northern Territory and across Australia.

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<sup>2</sup> Appendix 1, or see [https://static.amnesty.org.au/wp-content/uploads/2016/09/A\\_brighter\\_future\\_National\\_report.pdf](https://static.amnesty.org.au/wp-content/uploads/2016/09/A_brighter_future_National_report.pdf)

<sup>3</sup> Appendix 2, or see [https://static.amnesty.org.au/wp-content/uploads/2016/02/CIE\\_WA-Report\\_low-res.pdf](https://static.amnesty.org.au/wp-content/uploads/2016/02/CIE_WA-Report_low-res.pdf)

<sup>4</sup> Appendix 3, or see [https://static.amnesty.org.au/wp-content/uploads/2016/08/Heads\\_Held\\_High\\_-\\_Queensland\\_report\\_by\\_Amnesty\\_International.pdf](https://static.amnesty.org.au/wp-content/uploads/2016/08/Heads_Held_High_-_Queensland_report_by_Amnesty_International.pdf)

<sup>5</sup> See <https://static.amnesty.org.au/wp-content/uploads/2016/10/20161026-AIA-Submission-to-Qld-Independent-Review-of-Youth-Detention.pdf> (accessed 28 October 2016)

## 4. International Legal Frameworks

- 4.1 In his Opening Remarks to the Royal Commission, Commissioner Gooda noted the Terms of Reference allowed Commissioners to inquire not just into the facts surrounding the child protection and youth detention systems in the Northern Territory, but also “into associated human rights and freedoms violations.”<sup>6</sup>
- 4.2 While the three Amnesty International reports attached to this submission provide a detailed discussion of the international human rights context in which Australian youth detention systems operate, a brief overview follows below.

### Convention Against Torture

- 4.3 Australia is a State Party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), having ratified the CAT in 1989.
- 4.4 Under the CAT, the Australian Government is responsible for ensuring “effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction,”<sup>7</sup> and to prevent “acts of cruel, inhuman or degrading treatment of punishment which do not amount to torture.”<sup>8</sup>
- 4.5 The excessive use of restraints, spit hoods, physical abuse and solitary confinement against children are forms of treatment that could constitute cruel, inhuman or degrading treatment or punishment. Where these forms of treatment are inflicted deliberately by or on behalf of a public official, in an effort to punish, intimidate or coerce, they may also amount to torture under the CAT.<sup>9</sup>
- 4.6 Australia is yet to ratify the Optional Protocol to the CAT (OPCAT – see below at paragraph 6.5), which would create an obligation for independent oversight of all places of detention.

### Convention on the Rights of the Child

- 4.7 Under international law, all fair trial and procedural rights that apply to adults apply equally to children, but additional juvenile justice protections exist under the international human rights framework in recognition that children differ from adults in their physical and psychological and development. The *Convention on the Rights of the Child* (CRC) is the primary source of these rights. Importantly, the CRC also recognises the particular needs of Indigenous children.

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<sup>6</sup>Commissioner Mick Gooda, Opening Remarks to the Royal Commission into the Protection and Detention on Children in the Northern Territory (2016) <https://childdetentionnt.royalcommission.gov.au/Public-Hearings/Documents/Directions-Hearing-Commissioner-Mick-Gooda-Opening-Remarks.pdf>

<sup>7</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987, Article 2(1).

<sup>8</sup> CAT, Article 16.

<sup>9</sup> CAT, Article 1.



- 4.8 Australia is a state party to the CRC, having signed and ratified the Convention in 1990.<sup>10</sup> Under the Convention, the Australian Government bears ultimate responsibility for respecting, protecting and fulfilling the rights set out in the Convention and other international legal instruments, including that:
- the best interests of the child is a fundamental principle to be observed, including in the context of criminal justice;
  - arrest and detention must be measures of last resort; and
  - a variety of appropriate alternatives to detention should be in place to ensure that children are dealt with in a manner appropriate to their well-being and proportionate.<sup>11</sup>
- 4.9 The CRC defines a child as “every human being below the age of eighteen years, unless, under the law applicable to the child, majority is attained earlier,”<sup>12</sup> and that “in all actions concerning children, whether undertaken by ... courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”<sup>13</sup>
- 4.10 The CRC provides that States Parties shall ensure that “the arrest, detention or imprisonment of a child ... shall be used only as a measure of last resort and for the shortest appropriate period of time.”<sup>14</sup> The CRC requires States Parties to “promote the establishment [of] measures for dealing with such children without resorting to judicial proceedings ... to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”<sup>15</sup>
- 4.11 In its General Comment 10, on children’s rights in juvenile justice, the Committee on the Rights of the Child says that “a comprehensive policy for juvenile justice must deal with ... the prevention of juvenile delinquency; interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings.”<sup>16</sup>
- 4.12 The CRC requires parties to “respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour ... ethnic or social origin ... or other status.”<sup>17</sup>

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<sup>10</sup> United Nations Treaty Collection, No 11: Convention on the Rights of the Child (New York, 20 November 1989) [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg\\_no=IV-11&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-11&chapter=4&clang=en) (accessed 25 October 2016). 194 countries are party to it.

<sup>11</sup> International law provides that a State cannot plead its federal structure to avoid complying with an international obligation. As a signatory to the Convention on the Rights of the Child and other binding international legal instruments which protect the rights of Indigenous young people, all Australian states and territories are bound by such law. Article 29 of the Vienna Convention on the law of treaties provides that ‘Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory’: See <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf> (accessed 23 October 2016).

<sup>12</sup> Convention on the Rights of the Child, Article 1

<sup>13</sup> Convention on the Rights of the Child, Article 3.2

<sup>14</sup> Convention on the Rights of the Child, Article 37

<sup>15</sup> Convention on the Rights of the Child, Article 40(3)

<sup>16</sup> Committee on the Rights of the Child, General Comment No. 10 (2007) ‘Children’s rights in juvenile justice’ p15 <http://www.refworld.org/docid/4670fca12.html> (accessed 25 October 2016).

<sup>17</sup> Convention on the Rights of the Child, Article 2(1)

4.13 This is the overarching international human rights law framework governing the detention of children.

## **Declaration on the Rights of Indigenous Peoples**

4.14 The UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples (the Declaration) in 2007,<sup>18</sup> which contains numerous human rights provisions relevant to the detention on Indigenous children in the Northern Territory and across Australia. The Australian Government endorsed the Declaration in 2009.<sup>19</sup>

4.15 The Declaration has been characterised as constituting “the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world” and recognises “the right of indigenous families and communities to retain shared responsibility for the upbringing ... and well-being of their children.”<sup>20</sup>

4.16 It recognises the right of Indigenous peoples to promote, develop and maintain their distinct institutions, customs, spirituality, traditions and practices, including juridical systems. The right “to the improvement of their economic and social conditions” without discrimination, is also recognised.”<sup>21</sup> The Declaration states that particular attention should be given to “the rights and special needs of indigenous ... youth, children and persons with disabilities.”<sup>22</sup> Under the Declaration, Indigenous Peoples have “the right to participate in decision-making in matters which would affect their rights” through their own representatives chosen in accordance with their processes.<sup>23</sup>

4.17 Under the Declaration, States are required to take steps to ensure continuing improvement of Indigenous Peoples’ economic and social conditions.<sup>24</sup>

4.18 The rights inherent in the Declaration are not only a lens through which to assess what has already taken place, but a basis on which the Royal Commission should make recommendations and on which policy should be made.

## **5. Conditions within the Don Dale Youth Detention Centre**

5.1 Amnesty International has maintained serious concerns regarding particular incidents and practices reported as taking place in the Don Dale Youth Detention Centre.

5.2 Amnesty International's concerns have been based on the Northern Territory Children’s Commissioner’s report to the Minister (August 2015), the so-called Vita Report (January 2015), correspondence with the Northern Territory Government,<sup>25</sup> contemporaneous media reports from 2014, as well as the *Four Corners* episode of 25 July 2016, and correspondence

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<sup>18</sup> United Nations General Assembly Resolution 61/295 (13 September 2007) <http://www.un-documents.net/a61r295.htm> (accessed 24 October 2016)

<sup>19</sup> <https://www.humanrights.gov.au/news/media-releases/2009-media-release-united-we-stand-support-united-nations-indigenous-rights>

<sup>20</sup> Article 43, Declaration on the Rights of Indigenous Peoples

<sup>21</sup> Article 21, Declaration on the Rights of Indigenous Peoples

<sup>22</sup> Article 21 (2), Declaration on the Rights of Indigenous Peoples

<sup>23</sup> Article 18, Declaration on the Rights of Indigenous Peoples

<sup>24</sup> Article 21, Declaration on the Rights of Indigenous Peoples

<sup>25</sup> Appendices 4(a)-(d)

and discussions with the two Northern Territory Aboriginal Legal Services, Aboriginal Peak Organisations and the Children's Commissioner's office.

- 5.3 In letters to the Northern Territory Government, Amnesty International maintained concerns that the youth detention facilities (both the original and successor Don Dale facilities) were not adequate, purpose-built youth detention facilities.<sup>26</sup>
- 5.4 Moreover, reports from 2014-2015 raised questions regarding particular forms of ill-treatment of children, as well of conditions within Don Dale. A brief overview of human rights issues raised by the allegations of torture and ill-treatment follows.

### **Solitary confinement**

5.5 The NT Children's Commissioner noted children in Don Dale's Behaviour Management Unit complained they were being held in solitary confinement for up to 23 hours a day. Amnesty International heard reports that this practice was continuing even after the airing of the 4 Corners report, and wrote to the then-Chief Minister and Opposition Leader (see Appendices 4g-4h) regarding this. Amnesty also issued a joint media release with the Human Rights Law Centre and National Aboriginal and Torres Strait Islander Legal Services.<sup>27</sup>

5.6 The Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty strictly prohibit the use of solitary confinement for children in detention.<sup>28</sup>

5.7 The UN Rules state that:

*"All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned."*<sup>29</sup>

5.8 Solitary confinement is the "physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day".<sup>30</sup> According to the Special Rapporteur on torture and other cruel, inhuman or degrading punishment:

*"[t]he imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures."*<sup>31</sup>

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<sup>26</sup> Appendices 4(a), 4(c)

<sup>27</sup> see <http://hrlc.org.au/immediate-action-necessary-to-protect-children-in-nt-detention/>

<sup>28</sup> *UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)*, UN General Assembly resolution 70/175, 17 December 2015, Annex, Rule 45(2); *UN Rules for the Protection of Juveniles Deprived of their Liberty*, UN Doc A/RES/45/113, 14 December 1990, Rule 67.

<sup>29</sup> *UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)*, UN General Assembly resolution 70/175, 17 December 2015, Rule 45(2); *UN Rules for the Protection of Juveniles Deprived of their Liberty*, UN General Assembly resolution 45/113, 14 December 1990, Rule 67

<sup>30</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A-HRC-31-57-Add-1-%20E,%20F,%20S%20only-.docx> (Accessed 25 October 2016)

<sup>31</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment

## **Tear gas**

- 5.9 Amnesty International wrote to the then-Chief Minister and then-Attorney-General in September 2014 and in January 2015 after receiving reports of the use of tear gas against children.<sup>32</sup>
- 5.10 Responses received from then-Attorney-General Elferink are attached.<sup>33</sup> Neither response addressed concerns regarding tear gas.
- 5.11 Tear gas is a dangerous substance and a toxic irritant. It must never be used in a manner which is arbitrary, abusive or indiscriminate, or which increases the risk of unnecessary harm to persons, such as spraying near unarmed people who are in confined spaces, or where exits and ventilation points are restricted.
- 5.12 While tear gas can play legitimate role in law enforcement to disperse crowds, it should never be used in the way it was used at Don Dale, as depicted by *Four Corners*.
- 5.13 Amnesty International recommends the Royal Commission fully investigate the use of tear gas at Don Dale Detention Centre and ensure victims of the misuse of tear gas are given access to effective remedy. Amnesty International also recommends Northern Territory puts in place stronger safeguards to prevent against the misuse of tear gas in future.

## **Restraints and hoods**

- 5.14 The use of hooding and restraint chairs at Don Dale may constitute cruel, inhuman or degrading treatment or punishment, in violation of the CAT.
- 5.15 Hoods and restraint chairs have inherently abusive. These techniques pose a danger of asphyxiation, and are methods that pose a substantial risk of unwarranted injury, unnecessary pain. The effects of these methods are contrary to international human rights standards.
- 5.16 When it comes to the use of restraints against children, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty notes that “instruments of restraint and to force for any purpose should be prohibited.”<sup>34</sup> The only exception is where “all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation.” Importantly, such use “must not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time.”<sup>35</sup>
- 5.17 Restraints can be used to “prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property.” But this can only happen when the facility’s director

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<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A-HRC-31-57-Add-1-%20E,%20F,%20S%20only-.docx>  
(Accessed 25 October 2016)

<sup>32</sup> See Appendices 4(a), 4(c)

<sup>33</sup> See Appendices 4(b), 4(d)

<sup>34</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 63

<sup>35</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 64

“consult(s) medical and other relevant personnel and report(s) to the higher administrative authority.”<sup>36</sup> Policies and practices for the use of restraints must be made absolutely clear.

- 5.18 Strict rules must be in place regarding the use of restraints. Amnesty International recommends the Royal Commission seeks a prohibition of abusive and unnecessary use of restraint techniques by law enforcement officials, such as hooding and restraint chairs.

### **Self-harm and mental illness**

- 5.19 Reports of self-harm and attempted self-harm at Don Dale are disturbing.<sup>37</sup>
- 5.20 The United Nations Rules for the Protection of Juveniles Deprived of their Liberty make clear that children in detention who are suffering from mental illness should be treated in a specialised institution. On face value, Don Dale was not such a place.<sup>38</sup>
- 5.21 Moreover, the same rules stipulate that personnel in any youth detention facility “should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists.”<sup>39</sup>
- 5.22 Amnesty International recommends that staff at youth detention facilities must be adequately qualified and resourced to meet the mental health needs of children.

### **Adequate accountability, recruitment and training of detention centre staff**

- 5.23 The points above raise clear issues about whether staff at Don Dale were adequately trained, an issue which was identified in the NT Children’s Commissioner’s report on Don Dale.<sup>40</sup>
- 5.24 *Four Corners* brought to light information suggesting staff at Don Dale were “highly trained in professional fighting.”<sup>41</sup> There are questions for the Royal Commission about what sort of recruitment practices need to be in place for juvenile detention centre staff.
- 5.25 The Royal Commission should also examine what systems were in place to ensure that prior to using equipment to counter violence and threats of violence, to ensure all staff were trained in relevant international law human right law and standards, in particular the UN Basic Principles and the Code of Conduct.
- 5.26 Moreover, were staff individually accountable for the amount of force they used? This is a necessity to ensure staff actions are properly monitored so that any force is used only as a last resort and is proportional and necessary to the achievement of a legitimate objective.

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<sup>36</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 63

<sup>37</sup> Transcript, *Australia’s Shame*, ABC, 25 July 2016, <http://www.abc.net.au/4corners/stories/2016/07/25/4504895.htm#transcript> (accessed 18 October 2016)

<sup>38</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 53

<sup>39</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 81

<sup>40</sup> Northern Territory Children’s Commissioner, August 2015

<http://www.childrenscommissioner.nt.gov.au/publications/Childrens%20Commissioner%20DDYDC%20-%20Report%20to%20Minister%20170915.pdf> pp 25-26

<sup>41</sup> Transcript, *Australia’s Shame*, ABC, 25 July 2016, <http://www.abc.net.au/4corners/stories/2016/07/25/4504895.htm#transcript> (accessed 18 October 2016)

5.27 Further questions should be asked about whether staff were properly trained in human rights responsibilities. All staff carrying out law enforcement duties in detention centres must be selected through proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional human right-based training. Their continued fitness to perform these functions should also be subject to periodic review.

## **6. The Commonwealth's oversight and OPCAT**

- 6.1 Amnesty International welcomed the Commonwealth's speedy action in initiating this Royal Commission in the immediate wake of *Four Corners*. This, however, must be balanced against the fact the Commonwealth had knowledge of incidents at Don Dale for two years did not appear to take steps to address what was taking place.<sup>42</sup>
- 6.2 The fact that two reviews in the Northern Territory did not trigger any accountability mechanisms at the Commonwealth level suggest a significant failure of oversight. It is a question Amnesty International believes the Royal Commission should turn its mind to – why did it take a television program to trigger action from the Commonwealth?
- 6.3 As pointed out above, the Australian Government bears ultimate responsibility for issues related to the country's international legal responsibilities.
- 6.4 Amnesty International's National Overview (Attachment 1) makes a number of recommendations for how the Australian Government can ensure state and territory-based laws can conform with Australia's international legal responsibilities, none of which been implemented.
- 6.5 One specific way in which the Commonwealth's responsibility for international obligations within places of detention would be for a swift ratification of the Optional Protocol to the Convention Against Torture (OPCAT). The ratification of OPCAT would require the Australian Government to establish a National Preventative Mechanism to independently monitor and report on places of detention. Should the Australian Government fail to ratify OPCAT before the Royal Commission reports, Commissioners should consider recommending its immediate ratification.
- 6.6 Amnesty International holds that the Australian Government's responsibility goes further than simply ensuring the country is meeting its international responsibilities. As stated above, the Royal Commission should turn its mind not only to the failure which took place at Don Dale, but the national crisis that is the over-representation of Aboriginal and Torres Strait Islander children in detention. On the point, Amnesty International made numerous wider recommendations on what the Australian Government can do, especially through the Council of Australian Governments, to take practical steps to address this national crisis.

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<sup>42</sup> See, for example: <http://www.abc.net.au/news/2016-07-26/scullions-interest-not-piqued-before-youth-detention-abuse-video/7662466> and <http://www.abc.net.au/news/2016-08-04/scullion-admits-receiving-official-abuse-briefing-last-year/7688546>

## 7. This Royal Commission must be different

- 7.1 Numerous inquiries and reports over the past decades have made significant recommendations when it comes to the protection and detention of children in the Northern Territory. The recommendations of this Royal Commission cannot be allowed to gather dust.
- 7.2 In addition to its other enquiries, Amnesty urges the Royal Commission to look into ways to ensure accountability of governments at both territory and federal level once the Royal Commission reports.
- 7.3 While Amnesty understands the Royal Commission cannot legally bind governments, one way to help achieve this necessary accountability could be a recommendation to create a reporting mechanism to ensure the Australian and Northern Territory governments must respond to and monitor implementation progress of the Royal Commission.

## 8. Conclusion

- 8.1 Commissioner Gooda noted in his Opening Remarks that:

*“this Royal Commission must develop meaningful recommendations which, when implemented through legislation and changes in institutional culture and management, will ensure a better future for all in the Northern Territory.”<sup>43</sup>*

- 8.2 Amnesty International strongly agrees with this assessment.
- 8.3 The children detained at Don Dale suffered significant human rights abuses. Those responsible must be held accountable.
- 8.4 Yet, what came to light at Don Dale was not just a failure of policy in one particular location, but a broader failure of youth justice policy across the Northern Territory, and across Australia. It is a failure which overwhelmingly impacts Aboriginal and Torres Strait Islander children compared to their non-Indigenous peers.
- 8.5 This submission has focussed largely on the human rights implications of what took place at the Don Dale Youth Detention Centre, but Amnesty International urges the Royal Commission – and both the Northern Territory and Australian governments – to develop policy responses which are not simply focussed on how human rights are respected in places of detention, important as that is. The question that also must be asked is how do we find solutions to prevent children from being detained in the first place?
- 8.6 We urge the Royal Commission to consider the recommendations in our three attached reports. Most importantly, we urge the Royal Commission to consult widely and deeply with Aboriginal and Torres Strait Islander people to find a better way forward.

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<sup>43</sup> Commissioner Mick Gooda, Opening Remarks to the Royal Commission into the Protection and Detention on Children in the Northern Territory (2016) <https://childdetentionnt.royalcommission.gov.au/Public-Hearings/Documents/Directions-Hearing-Commissioner-Mick-Gooda-Opening-Remarks.pdf>

## Appendix

1. Amnesty International (2015) *"A brighter tomorrow: Keeping Indigenous kids in the community and out of detention in Australia"*
2. Amnesty International (2015) *"There is always a brighter future: Keeping Indigenous kids in the community and out of detention in Western Australia"*
3. Amnesty International (2016) *"Helds Held High: Keeping Queensland kids out of detention, strong in culture and community"*
4. Correspondence between Amnesty International and Northern Territory Government
  - a. Letter from Claire Mallinson (Amnesty International's National Director) to Chief Minister Adam Giles and Attorney-General John Elferink regarding the use of tear gas at the Don Dale Youth Detention Centre, 3 September 2015
  - b. Letter from Attorney-General John Elferink to Claire Mallinson regarding the use of tear gas at the Don Dale Youth Detention Centre, 7 October 2015
  - c. Letter from Claire Mallinson to Chief Minister Adam Giles, Attorney-General John Elferink and Corrective Services Minister Robyn Lambley regarding conditions at the Don Dale Youth Detention Centre, 8 January 2015
  - d. Letter from Attorney-General John Elferink to Claire Mallinson regarding conditions at the Don Dale Youth Detention Centre, 9 March 2015
  - e. Letter from Claire Mallinson to Chief Minister Adam Giles regarding the adoption of a new Aboriginal Affairs Strategy, 12 April 2016
  - f. Letter from Chief Minister Adam Giles to Claire Mallinson regarding the adoption of a new Aboriginal Affairs Strategy, 9 May 2016
  - g. Letter from Claire Mallinson and Hugh de Kretser to Chief Minister Adam Giles regarding continuing concerns about the treatment of children at Don Dale
  - h. Letter from Claire Mallinson and Hugh de Kretser to Opposition Leader Michael Gunner regarding concerns about the treatment of children at Don Dale