

UN Human Rights Committee Rules that Australian Prison Conditions Violate Human Rights of Indigenous Prisoner

Brough v Australia (Communication No 1184/2003)

In March 2006, the UN Human Rights Committee ('HRC') published a landmark finding concerning alleged breaches of articles 2(3) (right to an effective remedy), 7 (right to freedom from cruel, inhuman or degrading treatment or punishment), 10 (rights of persons deprived of their liberty) and 24 (right to adequate protection for children) of the *International Covenant on Civil and Political Rights* ('*ICCPR*') in a New South Wales prison.

The prisoner was an Aboriginal man who suffered from a mild mental disability, with significant impairments in his adaptive behaviour, communication skills and his cognitive functioning. He was sentenced to 8 months' imprisonment at age 16. In the first month of his incarceration, he was referred to an adult correctional facility after his involvement of a riot. He was segregated from other inmates on the ground that association with them would constitute a threat to the personal safety of inmates and to the security of the Correctional Centre.

The prisoner was placed in a 'safe cell', a facility designed for inmates at risk of self-harm. The prisoner's condition deteriorated in the cell and he threatened suicide. He was subsequently removed to a 'dry cell', which is used for the short-term containment of inmates, usually where inmates are unable to provide a urine sample or are suspected of concealing smuggled goods in their bodies. He was confined there for 48 hours.

About a week later, the prisoner was observed obscuring a surveillance camera. Officers came to remove all items that could be used for this purpose, including his clothes except his underwear. The same happened about a week later when the prisoner refused to return to his cell after being allowed out for exercise. Later, he was observed trying to hang himself with a noose made out of his underwear. Officers removed the noose.

The prisoner was also administered with anti-psychotic medication without his consent until he could be examined by a psychiatrist. The treatment continued after that examination.

The prisoner complained that the officers' attempts to secure him involved excessive use of force in violation of articles 7 and 10, and that continuous camera surveillance was incompatible with these provisions. The HRC however agreed with the State that the prisoner had failed to substantiate this with evidence, and that these complaints were therefore inadmissible.

The State's primary objection to the prisoner's complaint was that the prisoner had not exhausted all available domestic remedies before petitioning the HRC as required by article 5.2(b) of the First Optional Protocol to the *ICCPR*. The HRC dismissed this argument. It acknowledged that, in theory, the prisoner could have pursued certain administrative and judicial remedies, but found that the prisoner could not reasonably have been expected to have used them. The prisoner was barely able to read or write at the time of his segregation, and in all the circumstances, it would have been futile for him to commence court proceedings.

Regarding the merits of the case, the HRC found that the prisoner's treatment constituted breaches of articles 10 and 24 of the *ICCPR*. In reaching this conclusion, the HRC noted that the

purpose of the safe cell was to provide a less stressful, more supervised environment for the inmate, but found that this was negated by the fact that the prisoner's psychological development only worsened. Moreover, the HRC found that the prisoner's confinement, even if to protect him from further self-harm, was incompatible with the requirements of article 10. The HRC found:

In the circumstances, the author's extended confinement to an isolated cell without any possibility of communication, combined with his exposure to artificial light for prolonged periods and the removal of his clothes and blanket, was not commensurate with his status as a juvenile person in a particularly vulnerable position because of his disability and his status as an Aboriginal. As a consequence, the hardship of the imprisonment was manifestly incompatible with his condition, as demonstrated by his inclination to inflict self-harm and his suicide attempt.

The administration of anti-psychotic medication, however, did not constitute a breach of article 7 or any other provision of the *ICCPR*. It was intended to control the prisoner's self-destructive behaviour, was prescribed by a general practitioner and only continued once the prisoner was examined by a psychiatrist. The HRC found that the medication was therefore not administered contrary to the prisoner's human rights.

Having regard to its findings, the HRC considered that, in accordance with article 2(3) of the *ICCPR*, the prisoner was entitled to an 'effective remedy', including adequate compensation. The HRC also stated that the State is under an obligation to ensure that similar violations do not occur in the future. Finally, the HRC called for information from the State about the measures taken to give effect to the HRC's views in this matter within 90 days, and requested that the State publish the HRC's views.

A full copy of the decision is available at

[http://193.194.138.190/tbs/doc.nsf/\(Symbol\)/8aeb1fcbc458419ac125716200520f4b?Opendocument](http://193.194.138.190/tbs/doc.nsf/(Symbol)/8aeb1fcbc458419ac125716200520f4b?Opendocument).