

4. Indigenous People in Custody

This issue relates to question 13 of the List of issues to be taken up in connection with the consideration of the third and fourth reports of Australia

Summary of issue

- The rate at which Indigenous people in Australia come into contact with the criminal justice system has increased in the past decade:
 - The Indigenous prisoner population has more than doubled since 1988, and has increased by an average of 6.9% per year for the past decade. This is 1.7 times the average annual growth of the non-Indigenous prison population;
 - Figures for the June 1999 quarter indicate that 76% of all prisoners in the Northern Territory and 34% of all prisoners in Western Australia were Indigenous.
 - The rate of imprisonment for Indigenous people in the June 1999 Quarter was 21.7 times the non-Indigenous rate in Western Australia. The rate in other states and territories is also unacceptably high – 15.7 times in South Australia; 12.2 times in Victoria; 11.3 times in Queensland; 9.9 times in the Northern Territory and 5.1 times in Tasmania.
- The number of Indigenous deaths in custody in the decade since the Royal Commission into Aboriginal Deaths in Custody has also worsened:
 - To September 1999 there had been 147 deaths in custody, compared to the 99 in the decade preceding the Royal Commission;
 - In the 9 months since September 1999 there have been a further 8 Indigenous deaths in custody in Western Australia alone;
 - 17.2% of all prison deaths in the 1990s have been Indigenous people compared to 12.1% in the 1980s.

Relevance to the ICCPR

- Articles 2 and 26: Non-discrimination and Equality
- Article 6: Right to Life

The following section expands on this summary under the following headings:

- Level of incarceration and deaths in custody; and
- Relevance to ICCPR (analysis of relevant Articles of the Convention).

Level of incarceration and deaths in custody

- 4.1 The Royal Commission into Aboriginal Deaths in Custody was established in 1987 in response to concerns at the high number of Indigenous people dying in custody. The Royal Commission inquired into the deaths of ninety-nine Aboriginal and Torres Strait Islander people who had died in custody during the period between 1 January 1980 and 31 May 1989. The terms of reference of the Royal Commission required that the underlying causes of incarceration be considered.
- 4.2 The Royal Commission made 339 recommendations, which received widespread governmental support at the time.
- 4.3 Despite the recommendations, the rates at which Indigenous people come into contact with the criminal justice system has not improved in the past decade.¹
- 4.4 From 1988 to 1998, the Indigenous prisoner population (across all age groups) has more than doubled. It has grown faster than non-Indigenous prisoner rates in all jurisdictions. Nationally, Indigenous prison populations have increased by an average of 6.9% per year for the decade. This is 1.7 times the average annual growth rate of the non-Indigenous prison population.²
- 4.5 Figures for the June 1999 quarter indicate that 76% of all prisoners in the Northern Territory (NT) and 34% of all prisoners in Western Australia (WA) were Indigenous. The rate of imprisonment of Indigenous people in Western Australia was 21.7 times higher than that of the non-Indigenous population. The rates in the other states for which statistics are available are also unacceptably high - 15.7 times higher in South Australia, 12.2 times higher in Victoria, 11.3 times higher in Queensland, 9.9 times higher in the Northern Territory and 5.1 times higher in Tasmania.³
- 4.6 The number of Indigenous deaths in custody in the decade since the Royal Commission has been 150% the rate in the decade prior to the Royal Commission. To September 1999 there have been 147 Indigenous deaths in custody, compared to 99 in the decade before the Royal Commission.⁴ From October 1999 to 30 May 2000, there have been a further 8 Aboriginal deaths in custody in Western Australia alone.⁵
- 4.7 17.2% of all prison deaths in the 1990s have been Indigenous people, compared to 12.1% in the 1980s.⁶

¹ See also Australian Report to the HRC, CCPR/C/AUS/98/4, paras 67-75.

² Carcach, C., Grant, A. and Conroy, R., *Australian corrections: The imprisonment of Indigenous people* Australian Institute of Criminology (AIC), *Trends and Issues in Crime and criminal justice: No. 137*, AIC, Canberra, 1999, p2.

³ Australian Bureau of Statistics, *Corrective Services*, June Quarter 1999, Ref: 4512.0, pp5, 21-22.

⁴ Dalton, V., *Aboriginal deaths in prison 1980 to 1998: National overview*, Australian Institute of Criminology (AIC), *Trends and Issues in Crime and criminal justice: No. 131*, AIC, Canberra, 1999, p2. This figure is to September 1999, and includes the death of two Torres Strait Islanders.

⁵ Statistics provided by Western Australian Deaths in Custody Watch Committee.

⁶ Dalton, V., *op.cit.*, p6.

- 4.8 Concern is particularly expressed at the situation in Western Australia, particularly the number of deaths in custody. From 1 July 1989 to 30 June 2000, there have been 45 Aboriginal and 67 non-Indigenous deaths in custody.⁷ 33 non-Indigenous and 13 Indigenous deaths were by hanging; whereas 10 non-Indigenous and 13 Indigenous were by natural causes, illness or heart attacks.⁸ Concern has been expressed at the lack of Aboriginal medical workers in Western Australian prisons; and the failure of the Western Australian government to alter the design of Casurina prison to comply with Royal Commission recommendations, including removing hanging points from cells.

Relevance to ICCPR

- 4.9 The over-representation of Indigenous prisoners in Australian jails and the high incidence of death amongst the Indigenous prison population raises concerns in relation to the following articles of ICCPR.

Articles 2 and 26: Equality before the law

- 4.10 The inequality that exists between Indigenous and non-Indigenous peoples in Australia in relation to every major socioeconomic indicator was highlighted in the Royal Commission report. The Royal Commission identified redressing this disadvantage as crucial to reducing the rate of incarceration of Indigenous people. For example, while the effect of imprisonment on future educational and employment prospects is difficult to quantify, analysis of data from the National Aboriginal and Torres Strait Islander Survey of 1994 showed that arrest in the previous five years (as distinct from being imprisoned) reduced the probability of being in employment by 50 per cent for both males and females.⁹
- 4.11 In its Concluding Observations on Australia in March 2000, the Committee on the Elimination of Racial Discrimination stated, at paragraph 15:

The Committee notes with grave concern that the rate of incarceration of indigenous people is disproportionately high compared to the general population. Concern is also expressed that the provision of appropriate interpretation services is not always fully guaranteed to indigenous people in the criminal process. The Committee recommends that the State party increase its efforts to seek effective measures to address the socio-economic marginalization, the discriminatory approach to law enforcement, and the lack of sufficient diversionary programmes.

⁷ Figures supplied by Western Australian Deaths in Custody Watch Committee.

⁸ *Ibid.*

⁹ Australian Bureau of Statistics and Centre for Aboriginal Economic Policy Research, *National Aboriginal and Torres Strait Islander Survey: Employment Outcomes for Indigenous Australians*, p86. See also the discussion of this issue in the introductory chapter and Hunter, B. and Borland, J, 'The effect of arrest on Indigenous employment prospects' (1999) 45 *Crime and Justice Bulletin*, NSW Bureau of Crime Statistics and Research.

Article 6: Right to Life

4.12 The rate of Indigenous deaths in custody raises concerns under Article 6 of the Convention.

4.13 In a communication involving the death of Dermot Barbato in Uruguay, the Human Rights Committee stated that States parties are required to take adequate steps to protect the life of prisoners. The Committee stated:

¶ 9.2 ...While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermot committed suicide, was driven to suicide or was killed by others while in custody, the inescapable conclusion is that in all the circumstances, the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant.

¶ 10. The Human Rights Committee, acting under article 5(4) of the Optional Protocol to the International Covenant on Civil and Political Rights is of the view that the communication discloses violations of the Covenant, in particular: (a) with respect to Hugo Haroldo Dermot Barbato: Of article 6, because the Uruguayan authorities failed to take appropriate measures to protect his life while he was in custody ...

¶ 11. The Committee, accordingly, is of the view that the State party is under an obligation to take effective steps (a) to establish the facts of Hugo Dermot's death, to bring to justice any persons found to be responsible for his death and to pay appropriate compensation to his family ...¹⁰

4.14 The Committee similarly expressed concern at the 'high number of suicides among prisoners, especially among juveniles' in the United Kingdom.¹¹

4.15 Australian governments should take greater measures to combat Indigenous over-representation in prisons and to ensure that all recommendations of the Royal Commission into Aboriginal Deaths in Custody are fully implemented to ensure the highest level of protection of the lives of prisoners in State custody.

¹⁰ *Dermot Barbato v Uruguay* (84/81).

¹¹ (1996) UN doc. CCPR/C/79/Add.55, paragraph 13.