

2014 Follow-up Report backgrounder

Who would have guessed Australia has the world’s 4th-highest number of human rights complaints upheld against it by the United Nations?¹

Since Australia joined the UN complaints procedures in 1991, the UN Human Rights Committee has found Australia in breach of the *International Covenant on Civil and Political Rights* (ICCPR) in 30 individual cases brought before it. Its sister body, the Committee on the Elimination of Racial Discrimination (CERD) has found a further breach by Australia of its associated treaty, while the Committee Against Torture has found two breaches by Australia of the *Convention Against Torture* (CAT), amounting to 33 guilty verdicts in all (see over for details).

| | |
|---|----|
| Violations of the <i>International Covenant on Civil and Political Rights</i> | 30 |
| Violations of the <i>International Convention on the Elimination of Racial Discrimination</i> | 1 |
| Violations of the <i>Convention Against Torture</i> | 2 |
| Total | 33 |

How does Australia respond to these damning verdicts? Of these 33 cases, only six (18%) have been fully remedied, with partial remedies forthcoming in a further seven cases (21%). Of particular concern are cases of gross violations which are ongoing, where Australia has not acted to end these violations, to remedy the victims, or prevent the abuses recurring. Australia’s arbitrary detention of asylum seekers, condemned an extraordinary 19 times in individual complaints, is the most prominent among these.

| | |
|------------------------------|----|
| No. cases remedied | 6 |
| No. cases partially remedied | 7 |
| No. cases unremedied | 20 |
| Total | 33 |

Remedy Australia is a new human rights NGO created in response to an apparent lack of systematic monitoring of UN human rights decisions by civil society in Australia and the need to support and advocate for complainants if they are to have any hope of obtaining the substantive remedies recommended by the Committees.

As well as supporting complainants, Remedy Australia seeks to support the UN Committees and their unpaid, under-resourced members in their task of trying to persuade governments to implement the remedies they recommend for their human rights failings. To this end, we have compiled a comprehensive review of all adverse decisions from the UN Committees concerning Australia, providing the Committees themselves, and Australians, with independent, accurate and up-to-date information on the progress of each case. This is the first time this has been attempted.

¹ South Korea has the highest number, at 119, followed by Jamaica (100) and Uruguay (49).

Remedy Australia's inaugural *Follow-Up Report* delineates a baseline on which the organisation strives to build a greater respect for human rights in this country. It provides a summary of each of the 33 cases and an assessment of the degree to which the violations have been remedied. There are complaints from two very different Aboriginal men – one a diplomat, the other an illiterate kid from western Sydney. Both won their case at the UN, but with very different outcomes. The UN has also examined the controversial matter of how prisoners' human rights are handled in Australia. This report tells the stories of asylum seekers treated inhumanely; of a 'serial pest' thrown in a police cell for 5 days for making a speech in a pedestrian mall; a young woman obliged to work-for-the-dole whose dad wrote to the UN claiming it was a form of forced labour; the Darwin barrister with a debilitating mental illness who was disbarred without a fair hearing; the 'gun-toting librarian' who allegedly hijacked a helicopter during a joy-ride over Sydney Harbour and used it to bust her boyfriend out of gaol – and more.

Before all these, was the landmark case of *Toonen v Australia*. In legal circles, *Toonen* is legend. His was the first Australian case won at the UN back in 1994. **Nick Toonen** and his then-partner, **Rodney Croome**, were at the forefront of the gay rights movement in Tasmania, the last Australian state where consenting sexual contact between adult men in private remained a crime. Toonen argued that the legislation, were it to be enforced, infringed his right to privacy and the UN agreed with him. In response, the Keating Government passed the *Human Rights (Sexual Conduct) Act 1994* which prohibited laws that arbitrarily interfere with the sexual conduct of adults in private. Tasmania subsequently amended its *Criminal Code*, which made it consistent with the Committee's Views. The island state now has some of the most progressive same-sex laws in the country. Twenty years on, the *Toonen* case represents a human rights victory not just for Nick, but a legal precedent cited around the world. The UN High Commissioner for Human Rights has described it as 'a watershed with wide-ranging implications for the human rights of millions of people'.² Nick Toonen is co-founder of Remedy Australia and Rodney Croome serves on its Advisory Council.

Remedy Australia's *Follow-Up Report on violations by Australia of ICERD, ICCPR & CAT in individual communications (1994-2014)* has been sent to Geneva to the 3 UN Committees of experts which oversee the 3 human rights treaties Australia has been found to have breached.

As difficult as it is for individuals to stand up to the Australian Government when their rights are violated and to ask the UN to intervene, the tasks of getting a remedy for that violation – and ensuring the violation never happens again – are greater. These are goals Remedy Australia has set itself.

Remedy Australia is a national human rights NGO with a very specific mandate. We focus on individual complaints made to the UN which committees of independent experts have determined constitute human rights violations. We monitor Australia's compliance with committee decisions concerning these violations and we advocate for the fulfilment of the right to remedy in these cases.

Media contact:

Olivia Ball
Director, Remedy Australia

ph. (03) 9489 7202
0432 798 102

<http://Remedy.org.au>
olivia@remedy.org.au

² Navi Pillay, 'UN Human Rights Chief highlights Australian sexuality case' video address, uploaded by the Australian High Commission for Human Rights on its YouTube channel, 25 July 2011 <<http://www.youtube.com/watch?v=NT5aBa-1bXs>>.

**Human rights violations by Australia (1994-2014)
as found by UN treaty-monitoring committees**

| Article* | Human rights violated | Times found ³ | Complainants |
|-----------|--|--------------------------|--|
| CAT art 3 | non-refoulement ⁴ | 2 | Mr Elmi, Mr Ke Chun Rong |
| CERD 1 | racial discrimination | 1 | Stephen Hagan |
| 2(1) | non-discrimination | 1 | Nick Toonen |
| 2(3) | effective remedy | 10 | Mr 'A', Ms Faure, <i>Shams et al</i> ** |
| 6 | death penalty ⁵ | 1 | Ms Kwok Yin Fong |
| 7 | torture or other CIDTP ⁶ | 4 | Ms Kwok, Mr 'C', FKAG and MMM et al |
| 9(1) | arbitrary detention | 19 | Baban, Bakhtiyaris, <i>Shams et al</i> , D & E, Fardon, Tillman, Kwok, Mr 'A', Mr 'C', Mr Shafiq, FKAG et al and MMM et al |
| 9(2) | promptly informed of reasons for arrest/charges | 1 | FKAG et al |
| 9(4) | habeas corpus ⁷ | 15 | Mr Heman Baban, Mr & Mrs Bakhtiyari, Mr A, Mr C, Mr Shafiq, Shams et al, FKAG et al and MMM et al |
| 10 | inhumane prison conditions | 3 | Mr Brough, Messrs Cabal & Pasini, Mr Madafferi & Ms Madafferi |
| 12(4) | enter one's own country | 1 | Stefan Nystrom |
| 14 | fair trial | 2 | Lucy Dudko; Andrew Rogerson |
| 17(1) | arbitrary interference with family &/or right to privacy | 5 | the Bakhtiyaris, Mr Winata & Ms Li, Mr Nystrom, Mr Toonen, the Madafferis |
| 19(2) | freedom of expression | 1 | Patrick Coleman |
| 23(1) | protection of the family | 4 | Mr & Mrs Bakhtiyari, Mr Nystrom, Mr & Mrs Madafferi, Mr Winata & Ms Li |
| 24(1) | protection of children | 4 | Mr & Mrs Bakhtiyari, Mr Brough, Mr Winata & Mr Li, Mr & Mrs Madafferi |
| 26 | equality before the law | 1 | Edward Young |

* Refers to the *International Covenant on Civil and Political Rights*, unless otherwise stated

** Note that *Shams et al* is a single decision dealing with similar complaints from 8 unrelated Iranian men.

3 This column refers not to the number of victims, but the number of cases in which a violation of that treaty provision was found. Hence, *Shams et al* accounts for violations against 8 individuals, while *MMM et al*, for example, is one finding with 9 victims, including 1 child. The case of *FKAG et al* represents violations against 37 people, including 3 children.

4 Non-refoulement is a fundamental principle of refugee law. *Refoulement* means to forcibly deport or expel a person to a place where they face persecution or danger. It is prohibited.

5 Australia has abolished the death penalty, but in this case Australia attempted to deport someone to a country where she faced charges potentially attracting the death penalty.

6 That is, 'cruel, inhuman or degrading treatment or punishment', as prohibited in the ICCPR & elsewhere.

7 ICCPR art 9(4) states: 'Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.' The Latin shorthand for this is *habeas corpus*.