



human  
rights

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## Australia's compliance with CERD

### FACT SHEET 4

## Aboriginal and Torres Strait Islander Peoples

### Civil and Political Rights

Australian laws, policies and practices continue to inhibit Aboriginal peoples' equal enjoyment of civil and political rights.

#### ***Participation in Political Life***

Aboriginal people lost their national representative body when Aboriginal and Torres Strait Islander Commission (**ATSIC**) was abolished by the Australian Government in 2004. The Australian Government is sponsoring a new structure called the National Congress of Australia's First Peoples, to be operational by January 2011.<sup>1</sup> However, the new structure, is only an advisory body to Government does not comply with the rights contained in the Declaration on the Rights of Indigenous Peoples, especially self-determination, recognition of institutions, and free, prior informed consent on developments. The absence of Aboriginal representative body has deprived Aboriginal peoples of the right to effectively participate in policy formulation and public debate and reduces Australia's ability to address issues affecting Aboriginal peoples.

#### ***Native Title rights***

Aboriginal peoples do not have equal rights to own, develop, control and use communal lands, territories and resources. While there were significant judicial developments in the recognition of Aboriginal peoples in the early 1990s, native title law now requires Aboriginal peoples to satisfy onerously high standards of proof to obtain recognition of their relationship with their traditional lands. Although Aboriginal peoples might have a right to native title, in practice it is very difficult to prove and does not provide security of tenure.

#### ***Access to Legal Assistance***

Australian Government funding to Aboriginal legal services decreased by 40% (in real terms) between 1998-2008.<sup>2</sup> This is in contrast to a 120% increase to mainstream legal aid during the same time period.<sup>167</sup> The 2010 funding increase does not go far enough to address the systemic crisis in the resourcing of, and access to, specialist services.<sup>3</sup> There is also inadequate provision of interpreting services for Aboriginal peoples in the Australian justice system.

#### ***The most highly incarcerated peoples in the world***

Aboriginal peoples in Australia are among the most highly incarcerated peoples in the world, being 13 times more likely as other Australians to be imprisoned.<sup>4</sup> Aboriginal women prisoners are the fastest growing demographic amongst the prison population<sup>5</sup> and young Aboriginal people are 28 times more likely to be detained as other Australian young people.<sup>6</sup> Mandatory sentencing laws still exist in the Northern Territory and Western Australia that require terms of imprisonment for certain offences and Aboriginal people are disproportionately incarcerated under those laws. Aboriginal peoples constitute 83% of the prison population in the Northern Territory and are incarcerated at 3.5 times the national rate of imprisonment.<sup>7</sup> In Western Australia, the number of Aboriginal people in prison has doubled between 2002 and 2009.<sup>8</sup>

## Deaths in custody

Aboriginal people are still more likely than other Australians to die in custody.<sup>9</sup> The shocking case of Mr Ward's death in a prison transport vehicle highlights the gravity of the problems that persist.

### Case study: The death of Mr Ward

On 27 January 2008, a respected Ngaanyatjarra Aboriginal elder, Mr Ward, was placed in the back of a prison transport van for up to 4.5 hours while temperatures outside exceeded 40 degrees Celsius. Mr Ward was being transferred from Laverton to Kalgoorlie in remote Western Australia to face a charge of driving under the influence. Mr Ward was found unconscious in the back of the van, having suffered heat stroke. He subsequently died in hospital. The van's air-conditioning system was faulty.

A coronial inquest revealed systemic failings which contributed to the death, included over-policing, denial of bail, inhumane prisoner transport, lack of training of justices of the peace, police and private contractor staff, lack of governmental supervision of contractual duties and inadequate funding. In June 2009, the coroner found that Articles 7 and 10 of the International Covenant on Civil and Political Rights had been breached. However, despite these findings, the Director of Public Prosecutions in Western Australia has confirmed that no charges will be laid as a result of Mr Ward's death.

### Policing and access to public spaces

It is well documented that Aboriginal peoples are overrepresented in the criminal justice system in Australia and that Aboriginal peoples are both over-policed (disproportionately stopped, searched, arrested) and under policed (not provided the protection of police). One survey showed that 23.4% of Aboriginal people reported experiencing race-based discrimination by police, compared with 6.1% of people from Anglo-Celtic and non-Anglo/Celtic background.

Public order offences exist in varying forms across Australia. Although these laws are not discriminatory on their face, in practice they have a disproportionate effect on Aboriginal people. A report in June 2005 revealed that a quarter of Aboriginal people taken into custody were arrested on public order offences, contributing to over-representation in the criminal justice system and denying Aboriginal people access to public spaces.<sup>10</sup>

## TABLE OF CROSS-REFERENCES

Issue	Article	Reference
Aboriginal Representative Body	1 and 2	CERD Report Part B.2
Policing, Aboriginal legal assistance, interpreting services and transport to court in remote Northern Territory communities	5(a)	CERD Report Part E.2
Imprisonment, Aboriginal women in prison, Deaths in custody, Mandatory sentencing, Juvenile justice, Native title, Participation in political life, Freedom of movement, Property rights and Nuclear waste sites	5 (b) – (d)	CERD Report Part F.1
Access to public spaces	5(f)	CERD Report Part H.1

### Endnotes

<sup>1</sup> Commissioner Tom Calma, 'New National Congress of Australia's First Peoples Announced' (Press Release, 22 November 2009), available at [http://www.hreoc.gov.au/about/media/media\\_releases/2009/116\\_09.html](http://www.hreoc.gov.au/about/media/media_releases/2009/116_09.html)

<sup>2</sup> Parliament of Australia, Senate Legal and Constitutional Affairs Committee, *Access to Justice Inquiry Report* (2009).

<sup>3</sup> Aboriginal Legal Service of Western Australia, 'ALSWA Welcomes Announcement of Additional Funding'.

<sup>4</sup> Northern Territory Department of Justice, *Correctional Services Annual Statistics – 2008-09*.

<sup>5</sup> AHRC, *Statistical Overview 2006*, above 168, ch 9(b).

<sup>6</sup> Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2009* (2009); and Australian Bureau of Statistics, 'Prisoners in Australia', Population Distribution, Aboriginal and Torres Strait Islander Australians (2007).

<sup>7</sup> Northern Territory Department of Justice, *Correctional Services Annual Statistics – 2008-09*.

<sup>8</sup> Morgan & Wallam, *Inspecting Custodial Settlements*, May 2009.

<sup>9</sup> AHRC, *A Statistical Overview of Aboriginal and Torres Strait Islander Peoples in Australia* (2008).

<sup>10</sup> N Taylor and M Bareja, 2002 National Police Custody Survey (2005), available at [www.aic.gov.au/publications/tbp/tbp013/tbp013.pdf](http://www.aic.gov.au/publications/tbp/tbp013/tbp013.pdf).