



## Indigenous Australians and the *Convention Against Torture*

### ***Incarceration Rates of Indigenous Australians***

The Committee Against Torture has previously expressed its concern in relation to the over-representation of Indigenous Australians in prison.<sup>1</sup> Indigenous peoples in Australia are among the most highly incarcerated peoples in the world. Despite Indigenous Australians representing approximately 2.4% of the Australian population,<sup>2</sup> at least 24% of the prison population is Indigenous.<sup>3</sup>

Over the last six years, the rate of Indigenous imprisonment in Australia has risen by 23%.<sup>4</sup> The incarceration rate for Indigenous Australians is at least 11 times higher than for non-Indigenous Australians and in 2003 Indigenous women were incarcerated at a rate 19.3 times that of non-Indigenous women.<sup>5</sup> In 2003, Indigenous children between the age of 10 and 14 were 30 times more likely to be incarcerated than non-Indigenous children of the same age.<sup>6</sup>

The treatment of many Indigenous Australians in the criminal justice system, particularly in relation to the disproportionate impact of certain criminal laws and the incidence and impacts of incarceration, in many situations may amount to torture or other cruel, inhuman or degrading treatment or punishment.

The Human Rights Committee and Committee on the Rights of the Child have both expressed their concern about the over-representation of Indigenous Australians in prison, as well as the number of Indigenous deaths in custody (see below) and the lack of fair treatment of Indigenous Australians within the criminal justice system.<sup>7</sup>

### ***Mandatory Sentencing Laws***

While mandatory sentencing provisions for minor property offences in the Northern Territory were repealed in 2001, mandatory sentencing laws for many offences remain in the Northern Territory as well as in the Criminal Code in Western Australia. Indigenous Australians continue to be disproportionately affected by that legislation. Young Indigenous people, who are a small fraction of the youth population of Western Australia, comprise three quarters of mandatory sentencing cases.

### ***1991 Royal Commission into Aboriginal Deaths in Custody***

The incidence of deaths in custody of Indigenous Australians continues to be of serious concern, despite the recommendations of the *Royal Commission into Aboriginal Deaths in Custody* over 15 years ago.<sup>8</sup> Many of these recommendations still have not been implemented by the Australian Government or state and territory governments. More than half of the Aboriginal deaths in custody are of individuals detained for no more than public order offences.<sup>9</sup> The striking over-representation of Indigenous Australians in prison, as well as the disproportionate number of Indigenous deaths in custody and the lack of fair or substantively equal treatment under the criminal justice system, all raise serious concerns in relation to the *Convention*.

## TABLE OF CROSS-REFERENCES

Issue	Relevant Articles of <i>Convention Against Torture</i>	References to Issue in NGO Submissions
Incarcerations Rates of Indigenous Australians	11	NACLC/HRLRC Submission of 6 July 2007, Part 3(a) NSWCCL Shadow Report (27 July 2007) Part 5.2
Mandatory Sentencing Laws	11	NACLC/HRLRC Submission of 6 July 2007, Part 3(b)
1991 Royal Commission into Aboriginal Deaths in Custody	11	NACLC/HRLRC Submission of 6 July 2007, Part 3(c)

## Endnotes

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- <sup>1</sup> UN Doc. CAT A/56/44 (2001), [52].
  - <sup>2</sup> Australian Bureau of Statistics, *Australian Social Trends – Population – Social Circumstances of Aboriginal and Torres Strait Islander Peoples* (2005), <http://www.abs.gov.au/ausstats/abs@.nsf/94713ad445ff1425ca25682000192af2/31a4695523f0bb67ca25703b0080ccb2!OpenDocument>.
  - <sup>3</sup> Australian Bureau of Statistics, *Prisoners in Australia 2006* (2006).
  - <sup>4</sup> Australian Bureau of Statistics, *Prisoners in Australia 2005* (2005), 5.
  - <sup>5</sup> Human Rights and Equal Opportunity Commission, *A Statistical Overview of Aboriginal and Torres Strait Islander Peoples in Australia* (2004).
  - <sup>6</sup> Australian Institute of Health and Welfare, *A Picture of Australian Children* (May 2005), 72, <http://www.aihw.gov.au/publications/index.cfm/title/10127>.
  - <sup>7</sup> *Concluding Observations of the Human Rights Committee: Australia*, UN Doc A/55/40 (2000); *Concluding Observations of the Committee on the Rights of the Child: Australia*, UN Doc CRC/C/15/Add.268 (2005), [73-74].
  - <sup>8</sup> Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991).
  - <sup>9</sup> Australian Institute of Criminology, *Trends & Issues in Crime and Criminal Justice: Deaths in Custody in Australia 1990-2004*, April 2006.