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Australia's Cold-Shoulder: Setting a Dangerous Precedent for Human Rights Violators

Once considered a champion of many human rights issues, Australia has shocked the United Nations and the international community by announcing plans to restrict its cooperation with UN treaty bodies that are critical of Australia's human rights practices. Not only does Australia's decision dampen the hopes of its Aboriginal people for further human rights reform, but this dangerous precedent also has the potential to set back the gains made by the UN and encourage countries to deal with human rights issues by any standard they choose. By openly shunning the UN's goal of international human rights compliance, Australia has become an example for repressive countries that reject the legitimacy of UN human rights mechanisms and seek to avoid scrutiny.

On 29 August 2000, three Australian ministers announced their disapproval of United Nations human rights treaty bodies. Angered at recent criticisms made by these UN bodies, Foreign Minister Alexander Downer, Attorney-General Daryl Williams, and Minister for Immigration and Multicultural Affairs Philip Ruddock called for a complete overhaul of the UN monitoring system.¹ Soon after the Ministers' statements were made public, the Australian government announced that until significant changes are made, Australia will adopt a "selective and economical" approach of reporting to the treaty bodies and will only agree to monitoring visits by the bodies where there is a "compelling reason to do so."² The government further claimed that it would reject "unwarranted requests" from treaty bodies trying to delay the deportation of unsuccessful asylum seekers. The government also stated that it would not adopt the new procedures set forth by the Convention on the Elimination of Discrimination Against Women.³

¹ See *Australia Undermining Global Human Rights* (8/31/00), available at <http://hrw.org/hrw/press/2000/08/australia/htm> [hereinafter "*Australia Undermining*"].

² See ICJ Press Release: *ICJ Expresses Concerns at Australian Position on U.N. Treaty Bodies* (8/30/00), available at <http://www/icj.org/press00/english/australa/htm> [hereinafter "*ICJ Expresses Concerns*"].

³ See *Australia Undermining*, *supra* note 1. See also Convention on the Elimination of All Forms of Discrimination against Women, adopted 18 Dec. 1979,

If the Australian government follows through with its threats against the UN, it will be acting in direct violation of the human rights treaties Australia has signed and ratified under the auspices of the United Nation's Human Rights Committee. The Human Rights Committee is currently responsible for international human rights treaties with 145 countries.⁴ To assist in implementation and monitoring, many of the treaties, such as the International Covenant on Civil and Political Rights ("ICCPR"), have provisions creating committees known as treaty bodies.⁵ The treaty bodies are comprised of candidates nominated by nations that have signed the relevant treaties or covenants.⁶ The treaty bodies meet annually with the Human Rights Committee to report human rights conditions and issues within their representative countries. Based upon these reports, the Human Rights Committee may choose to censure countries it finds to be in violation of a particular human rights treaty.⁷

In order to secure compliance, treaty members are required to present periodic reports to the treaty bodies on how they are implementing the treaty's provisions.⁸ Members are also required to open their doors to the treaty bodies to investigate human rights issues within their borders.⁹ As one of the 145 countries party to the ICCPR, Australia is "duty bound to present periodic reports to the Committee on how it is implementing the provisions of that human rights instrument."¹⁰

Three of the UN's treaty bodies recent criticisms angered the Australian government. In 1999, the Committee on the Elimina-

entered into force 3 Sept. 1981, G.A. Res. 34/180, 34 U.N. GAOR, Supp. (No. 46), U.N. Doc. A/34/46, at 193 (1979), *reprinted in* 19 I.L.M. 33 (1980).

⁴ Press Release: *Human Rights Committee Continues Review of Civil and Political Rights in Australia* (21/7/00), available at www.law.unimelb.edu.au/icil/archives-topic/1-11-8-00.html [hereinafter "*Committee Continues*"].

⁵ See *Australia Undermining*, *supra* note 1. See also International Convention on Civil and Political Rights, *adopted* 16 Dec. 1966, *entered into force* 23 March 1976, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *reprinted in* 6 I.L.M. 368 (1967).

⁶ See Barbara Crossette, *Australian Action Reopens Dispute on Human Rights Monitors*, N.Y. TIMES, 30 August 2000.

⁷ See *id.*

⁸ See *Committee Continues*, *supra* note 4.

⁹ See *ICJ Expresses Concerns*, *supra* note 2.

¹⁰ See *Committee Continues*, *supra* note 4.

tion of Racial Discrimination¹¹ claimed that Australian government policies were close to violating the rights of indigenous communities. In 1998 and 2000, the Committee Against Torture¹² intervened in the deportation of asylum seekers who claimed they would be tortured if returned to their countries. Finally, in July of 2000, the Human Rights Committee of the ICCPR voiced its concerns about Australia's mandatory sentencing laws, the marginalization of Aboriginal people, and the mandatory detention of asylum seekers.¹³

The Australian government contends that the monitoring of Australia's human rights standards was disproportionate to the scrutiny given to countries with more problematic human rights issues. Foreign Minister Downing claimed that the more open and fair a nation is, the more likely they will face close scrutiny.¹⁴ Australia's Attorney-General Williams also criticized the treaty bodies and claimed that their "focus seems to be on minor marginal issues [in democratic countries] and not on major human rights breaches in countries that don't have democratically elected governments."¹⁵

In defending his government's actions, Federal Immigration Minister Ruddock stated that Australia's scaling back of its involvement was not meant to be an attack against the UN, but a statement calling for reform.¹⁶ Prime Minister John Howard further stated that the decision "represent[ed] a determination by this government to ensure that matters affecting Australia are resolved by Australians within Australia."¹⁷

The Australian government's claims of unequal treatment and misguided scrutiny would seem to have more strength if, in fact,

¹¹ See International Convention for the Elimination of All Forms of Racial Discrimination, adopted 21 Dec. 1965, entered into force 4 Jan. 1969, 660 U.N.T.S. 195, reprinted in 5 I.L.M. 352 (1966).

¹² See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 10 Dec. 1984, entered into force 26 June 1987, G.A. Res. 39/46, U.N. GAOR, Supp. (No. 51), U.N. Doc. A/39/51, at 197 (1984), reprinted in 23 I.L.M. 1027 (1984), minor changes reprinted in 24 I.L.M. 535 (1985), 5 HUM. RTS. L.J. 350 (1984).

¹³ See *Australia Undermining*, supra note 1.

¹⁴ Editorial: *A Poor Decision from Australia*, BANGKOK POST, 5 September 2000.

¹⁵ *Canberra to Bar U.N. Teams*, NEWCASTLE HERALD, 30 August 2000. See also Crossette, supra note 6.

¹⁶ Emma Macdonald, *Aid Body Slams Rebuff of UN Report*, CANBERRA TIMES, 4 September 2000.

¹⁷ See Crossette, supra note 6.

Australia had a flawless human rights record. Although Australia had been considered a strong supporter of human rights, the recent criticisms made by the treaty bodies warrant close scrutiny. Several actions taken in recent months by the Australian government not only conflict with UN standards, but also contravene Australian treaty obligations. For example, Australia's recent decision to "deport unsuccessful asylum seekers" has been interpreted as a direct violation of the UN Convention on Refugees, to which Australia is a party.¹⁸

Australia's refusal to sign or ratify the protocol to the UN Convention on the Elimination of Discrimination against Women¹⁹ is another example of its unwillingness to adopt UN sponsored human rights reform. The protocol makes it possible for women to report violations of the Convention, including workplace sexual harassment, denial of health care facilities and gender violence.²⁰ Moreover, Australia's less-than-perfect human rights record is evident in the condemnation by the UN of Australia's mandatory sentencing laws. The UN Committee on the Elimination of Race Discrimination found that mandatory sentencing schemes "appear to target offences that are committed disproportionately by indigenous Australians."²¹ Among countries that hold fast to human rights and democratic standards, a criminal justice system that singles out an individual ethnic group for particularly severe treatment is unprecedented.²²

Finally, the necessity of human rights monitoring in Australia is evidenced in the latest report of the International Save the Children Alliance which found that Australia ranked among the worst countries in the world for discriminating against indigenous children. The report found that infant mortality rates within the indigenous population was 3.5 times that of the rest of Australia's population; 74% of Aboriginal children are enrolled in school, compared to 92% of the rest of the population; and the removal of

¹⁸ Thalif Deen, *Rights: Australia Threatens to Bar U.N. Human Rights Committee*, 29 August 2000, available at 2000 WL 4092517. See also Convention Relating to the Status of Refugees, signed 28 July 1951, entered into force 22 April 1954, 189 U.N.T.S. 150 (1995).

¹⁹ See *supra* note 3.

²⁰ See Deen, *supra* note 18.

²¹ See Angela Ward, *The Human Rights Link to Our Future*, Press Release, SYDNEY MORNING HERALD, December 29, 2000.

²² See Ward, *supra* note 20.

bilingual programs in the Northern Territory of Australia was in direct violation of the UN Convention of the Rights of the Child.²³

Regardless of Australia's reasoning for ending its cooperation with the UN treaty bodies, the government's decision will have a dangerous effect on the regulation of human rights across the international spectrum. According to Sidney Jones, the Asian director of Human Rights Watch, "[t]he Australian decision on the UN is particularly unfortunate, because it will add a hitherto respectable voice to those of repressive governments seeking to undermine the international system for protecting human rights."²⁴ Kate Gilmore, the National Director of Amnesty International Australia furthered this opinion by stating "the government is tacitly encouraging other countries like Burma and China to act by any standards they choose. Other governments in the region may thank them for it, but the individuals they attack torture and kill, will not."²⁵

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²³ *Koori Kids Badly Treated*, ILLAWARRA MERCURY, November 21, 2000. See also Convention on the Rights of the Child, adopted 20 Nov. 1989, entered into force 2 Sept. 1990, G.A. Res. 44/25, 44 U.N. GAOR, Supp. (No. 49), U.N. Doc. A/44/49, at 166 (1989), reprinted in 28 I.L.M. 1448 (1989).

²⁴ See *Australia Undermining*, *supra* note 1.

²⁵ See Deen, *supra* note 18.

