

UN condemns Australia on Indigenous detentions and asylum policies

Human rights committee singles out treatment of Aboriginal woman Ms Dhu who died in police custody and calls asylum policies 'shocking'



Ms Dhu's family campaigning for justice following her death in custody. Western Australia has promised to change the law on jailing people for unpaid fines.

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Australia's castigation before the UN has continued for a second day, with the human rights committee condemning Western Australia's practice of jailing fine defaulters, and specifically highlighting the death of Indigenous woman Ms Dhu in custody.

The WA attorney general has promised to amend the laws by the end of the year.

Australia is currently before the committee for the periodic review of its human rights record, and the issues of Indigenous incarceration and asylum policy again dominated committee criticisms.

Dhu, a 22-year-old Yamatji woman, died in custody in Port Hedland on 4 August 2014, less than 48 hours after being arrested for \$3,622 in unpaid fines. She had never been jailed before.

The committee criticised the Western Australian government for failing to comply with a coronial recommendation to scrap the law allowing people to be jailed for unpaid fines.

“The case of Ms Dhu once again calls for justice,” human rights committee member Duncan Muhumuza told the Australian delegation.

Muhumuza also highlighted the case of an Indigenous mother-of-five who was jailed last month for unpaid fines, and released after an anonymous donor paid off her fine.

The woman was arrested by police who were following up a reported domestic violence incident, in which she was not the perpetrator.

“What is done to police personnel who, instead of helping a person in need, arrest that person instead?” Muhumuza said. “How is this consistent with the trauma-informed approach for children experiencing domestic violence situations?”

The coroner who oversaw the inquest into Dhu’s death recommended in December that WA amend legislation allowing people to be taken directly into custody if they have a warrant of commitment for unpaid fines, suggesting the state should either ban the practice of using jail time to pay off debt or should change the law so that the decision to jail someone for unpaid fines is made by the court.

The law has not yet been changed. WA attorney general John Quigley has said he will introduce the reforms by the end of 2017.

“I intend to introduce a package of amendments to the Fines, Penalties and Infringement Notices Enforcement Act 1994 (WA), the effect of which will be to reduce the number of people imprisoned for fine default alone,” Quigley told Guardian Australia.

“I have examined the approach taken in other jurisdictions in relation to jailing for fines and I will be in a position to bring forward a reform package to cabinet before the end of the year.”

A South African representative on the UN committee, Christof Heyns, also called for Australia to examine the practices of jailing people for fines and mandatory sentencing, both of which he said could contribute to the disproportionately high rates of imprisonment for Aboriginal and Torres Strait Islander peoples.

Both issues are being examined by an Australian Law Reform Commission inquiry, which is due to report in December.

Australia’s hardline asylum policies – in particular the practice of indefinite offshore detention – again attracted significant criticism

On a second day of questioning, Prof Yuval Shany focused on the indefinite mandatory detention of asylum seekers and refugees in harmful conditions.

“We are not questioning Australia’s right to exercise border control ... we are concerned with two elements, one is the issue of non-refoulement [returning a person to danger] ... and the second is the treatment of these migrants who are seeking asylum while present in Australian jurisdiction, in particular with their right not to be arbitrarily deprived of their liberty.”

He said Australia had contorted its asylum protection policy to one focused on deterrence. Harsh detention conditions “rising to the level of cruel treatment”, unjustified use of physical force, handcuffing of asylum seekers, appeared unreasonable actions.

“The question is: how does the state justify treating migrants as criminals?”

Committee member Prof Sarah Cleveland described Operation Sovereign Borders and Australia’s offshore processing of asylum seekers as “shocking”.

“I find the legal regime in place quite shocking for this state, particularly for a state that holds itself as broadly human rights compliant,” she said.

“It’s very disturbing both from the perspective of respect international law and humane protection of persons and from the model it suggests for other states.”

The Australian government’s delegation told the committee the issue of irregular mass movement, was a complex challenge for all countries. But it said Australia upheld its international legal obligations.

“Australia’s approach seeks to permanently disrupt the business model of the criminal syndicate people-smugglers that prey on vulnerable people, taking their money and encouraging them onto unseaworthy vessels, where there’s a significant chance they will drown,” Luke Mansfield, first assistant secretary with the department of immigration and border protection, said.

“Australia acknowledges its approach is firm and is not universally liked, but it is consistent with our international obligations, including non-refoulement.”

Since 2013, Operation Sovereign Borders has intercepted 771 asylum seekers, on 31 boats, and returned them to source or transit countries, or sent them for offshore processing, Mansfield said. He said the “on-water assessment” of protection claims was thorough and comprehensive.