

Submission to consultation on how best to protect the human rights and freedoms of Australians

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This submission is written in response to the Rudd government's commitment to conduct an inquiry into the protection of human rights and freedoms. We wholeheartedly support the proposition of a Human Rights Act in Australia. We consider the international legislation that Australia is a party to and some real life examples of current human rights violations that may be avoided with the introduction of a charter of human rights at a federal level.

Australia's Obligation to International Legislation

Australian's human rights are protected under various international conventions such as the Convention on the Rights of the Child (CROC), the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Australia has agreed to all of these conventions, yet has so far failed to meet its obligation to incorporate these into domestic law and the community remains confused and unsure of their rights.

Given the lack of national legislation, some regions at state level have taken the initiative to implement their own human rights charters, including the Australian Capital Territory and Victoria. Where some federal legislation does acknowledge particular aspects of human rights, it remains limited and uncomprehensive and does not recognise the need for a holistic perspective of human rights.

Australia has in fact been more lax in its response to international conventions than any other similar democracy. Canada, the United States and Great Britain have all adopted some form of domestic human rights legislation, either in the form of a Bill of Rights or an Act. The time has come for Australia to join in the global effort to respect and value the human rights belonging to all people.

Case Studies of the Violation of Human Rights in Australia

Despite being protected by both domestic and international law, the rights of Australians continue to be violated. In September – October 2008 we interviewed four young Australians of African background to hear their stories of how they were treated when using public space. What came out of these interviews were stories of routine discrimination based on the colour of their skin. What was more disturbing was that many of these stories involved discrimination by public authorities, namely the police.

In presenting these case studies of how real Australians are experiencing violations of their human rights, we urge the government to continue the process of developing and implementing a federal charter of rights.

Case Study 1 – Spontaneous searching and questioning by security and police while using public space

A young African-Australian man along with two others was waiting for friends in a shopping centre outside the cinema complex. While they were waiting a security guard noticed them and without any warning or apparent reason called the police to confront the young men. Upon arrival, they start questioning the young men on their motives for being in the public space. They reply by saying that they are “just sitting and waiting for mates” – this prompted the police to hold one of the young African teenagers while searching him. The police took his mobile phone and threatened to call his mother, which made the young man very distraught, fearing that if the police rang his mother she would have automatically thought that he had been causing trouble. The police officers took the boys’ details down and told them to leave the premise straight away.

The young African man said that at most times in which they use this public space in a group “the police suspect us of engaging in illegal or criminal activity”. The young man feels powerless in these situations – “I feel that if I retaliate it will give the police more reason to arrest me”. The young man added “I live in constant fear of being arrested.”

The young man highlighted ‘police harassment’ as the key problem groups of young African men experience in public space. He felt that they are unduly hassled or

threatened and are subjected to some kind of racism or inequality at the hands of police officers.

Case Study 2 – Discrepancy between the treatment of those with African background and those of other backgrounds

When asked about his experience of discrimination, one young African-Australian man began telling stories of how he has repeatedly been the victim of violence, crime and discrimination. He mentioned the tensions between different ethnic groups, having property stolen and friends and family members being beaten up. In four separate incidents when he or his family had needed the assistance of the police he felt the police response was either inadequate or blatantly discriminatory.

It was this young person's experience that police officers treat all African young people based on the bad behaviour of a select few. He tells of how, following trouble with another ethnic group, the police would let everyone from the other group go home yet would automatically take him to the police station, just because he was Sudanese. He felt that this treatment was unfair, as the police should take the time to find out what really happened before jumping to conclusions.

This discrimination also extended to the treatment he and his family received when they were the victims of other crimes. When his house was broken into and an expensive item stolen, the police did not make an effort to investigate the crime. He contrasts this with the efficient and considerate actions taken when his neighbour's TV was stolen and argues that this discrepancy between treatments is not right. Feeling that in all four of these situations the police never believed him or took him seriously he was left asking 'what kind of people are these?'

On reflecting on this treatment being a violation of his human rights as set out in international law, this young person believed that although these rights look good on paper, they are not being respected on the ground. He believed that the authorities needed to take the time to sit down with communities and listen to their concerns and their stories and then respond appropriately. He argued that this approach has worked elsewhere and it would work again if implemented in his local area.

Case Study 3 – Repeated accusations made by police with no evidence or reasonable justification

One young man of Ethiopian background detailed two separate occasions on which he had been accused of theft and randomly searched by police.

On one occasion, he was sitting in a park with some friends with a bicycle nearby. All of a sudden a policeman appeared and confronted the young man, stating that the bicycle was stolen and that he saw him sitting on it, even though he had not done so. The policeman then went on to threaten the young person, saying that there was nothing he could do and he would not be able to ‘win’ against them (policemen), because there were six of them against him. The policeman proceeded to take pictures of the group without permission. A friend of the young man shared with us his belief that “they [the police] think everything we have is stolen.”

In a second instance, the young man was out in the evening and was stopped to be searched by police for no given reason. Upon finding his mobile phone, they claimed that it looked expensive, implying that it must have therefore been stolen. Despite the suggestion that the phone was stolen, the policeman proceeded to confiscate the sim-card inside, but not the phone. The reason for this was not sufficiently explained to the young person, the only justification being that they wanted to make it ‘safe’ around the area. The young people were then warned that if any of them ‘did something’ in the area the police would just look at their pictures and catch them.

The young person made a point of noting that such ‘random’ searches by police are common and particularly so at night. He stated that young-Africans are always told what time to go home, usually before 10pm, even though no curfew is in place. He shared that groups of young men of Australian background do not get harassed in this way, unless they are doing something blatantly wrong. From his experience, he felt that his group of friends were hassled even when they were not doing anything provocative.

Further Information

Equality is a fundamental human right. The Victorian Charter of Human Rights and Responsibilities (VCHRR) recognises that ‘Every person has the right to equal recognition and protection before the law. Everyone is entitled to equal and effective

protection against discrimination, and to enjoy human rights without discrimination’. This applies regardless of a person's age, gender, race, disability, religion, marital status and a range of other personal characteristics. Also under the Charter people have the right to liberty and security of person, under section 21 (4): ‘A person who is arrested or detained must be informed at the time of arrest or detention of the reason for the arrest or detention and must be promptly informed about any proceedings to be brought against him or her’.

Participation in public life is also a human right. The VCHRR recognises that ‘Every person in Victoria has the right, and is to have the opportunity, without discrimination, to participate in the conduct of public affairs and to have access, on general terms of equality, to the Victorian public service’ (VCHRR, Article 18). As a consequence, unreasonable barriers to accessing recreational activities can be challenged.

In addition to this, young African men have been searched and asked to leave public spaces by law enforcers for no reason. The Universal Declaration of Human Rights, which Australia ratified in 1948, clearly states that ‘No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks’.

These young people also have protections under the Convention on the Rights of the Child and the Victorian Charter of Human Rights which set out that young people have a right to be presumed innocent until proven guilty. Under the Convention ‘Every child alleged as or accused of having infringed the penal law...[is] presumed innocent until proven guilty’ (Article 40, 2b) and under the Charter ‘a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law’ (VCHRR, Section 25 (1)).

Recommendation

The above examples comprise just a small illustration of how Australian citizens are not experiencing the rights they are entitled to. They are by no means unique experiences – many African-Australian young people have similar stories, and many other Australians have had some experience of human rights violations in different ways. This is unacceptable.

Therefore, we recommend that a national charter be adopted that recognises Australia's obligations to international legislation and indiscriminately recognises *all* human rights for *all* Australians.

References

State Government of Victoria 2006, *The Charter of Human Rights and Responsibilities: Protection of Freedoms and Rights of Everyone in Victoria*, State Government of Victoria.

United Nations General Assembly 1948, *Universal Declaration of Human Rights 1948*, UNGA, Geneva.

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