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HUMAN RIGHTS COMMITTEE
Seventy-sixth session
14 October-1 November 2002

DECISION

Communication No. 881/1999

Submitted by:	Mr. Robert Collins
Alleged victim:	The author
State party:	Australia
Date of communication:	14 September 1999 (initial submission)
Document references:	Special Rapporteur's rule 91 decision, transmitted to the State party on 30 May 2000 (not issued in document form)
Date of adoption of Views:	29 October 2002

[ANNEX]

* Made public by decision of the Human Rights Committee.

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Annex

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Seventy-sixth session

concerning

Communication No. 881/1999*

Submitted by: Mr. Robert Collins

Alleged victim: The author

State party: Australia

Date of communication: 14 September 1999 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 29 October 2002,

Adopts the following:

Decision on admissibility

1. The author of the communication is Mr. Robert Collins, an Australian citizen, currently in detention in South Australia. He claims to be a victim of a violation by Australia of article 10, paragraphs 1 and 2 (a), of the Covenant. He is not represented by counsel.

Facts as presented by the author

2.1 From 26 April 1994 to 21 April 1997, the author was an inmate at Adelaide Remand Centre. From 26 April 1994 to 18 January 1995, the author was an accused person held on remand[1] and housed with convicted persons. The author was not "doubled-up"[2] with a convicted

* The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen and Mr. Maxwell Walden.

prisoner during this period but had to share the prison facilities with convicted inmates. From 18 January 1995 to 29 March 1996, he was held as a "dual status" prisoner, which meant that he was a convicted prisoner with respect to one offence and accused on another charge. From 29 March 1996 to 21 April 1997, the author was held as a convicted prisoner.

2.2 On 13 February 1997, the author commenced an action in the South Australian Supreme Court against the State Government. He contended that the doubling-up, which was taking place in Adelaide Remand Centre, was contrary to international standards and complained that it caused increased sexual assaults on inmates, assaults on correctional staff, non-smokers being made to share with smokers, and increased communication of communicable diseases. He sought a declaration that the Department of Correctional Services had breached human rights.[3]

2.3 From 21 April 1997 to November 1997, the author was transferred to and held as a sentenced prisoner in Mobilong Prison. He was charged with another offence during this period. From November 1997 to November 1999, the author was transferred to and held as a dual status prisoner at Yatala Labour prison.

2.4 On 25 June 1999, the Supreme Court delivered a judgment against the author holding that the Department of Correctional Services had breached the Standard Minimum Rules for the Treatment of Prisoners at the Adelaide Remand Centre, and also breached article 10, paragraphs 1 and 2, of the Covenant, which it confirmed as part of domestic law.[4] However, the judge decided that the State of South Australia was not bound by the Human Rights and Equal Opportunity Commission Act, to which the International Covenant on Civil and Political Rights is a schedule, as section six of this Act excludes its direct operation at State level. It also decided that the Administrative Decisions Act 1995, enacted in South Australia, removes any legitimate expectation that administrative decisions will conform with the terms of treaties, conventions or covenants at international law. In addition, he decided not to issue a declaration in this case as it would be impossible or inconvenient to provide practical relief, which would necessarily involve removing all doubled-up cells and therefore require the construction of a new correctional institution. In the judge's view the Courts could not direct the Government how to spend its money.

2.5 From November 1999 to May 2000, the author was transferred to and held as a dual status prisoner at Adelaide Pre-Release Centre. From May 2000 to August 2000, the author was transferred to and held as a dual status prisoner at Yatala Labour prison. From August 2000 to date, the author has been held as a convicted prisoner at the same facility.

2.6 The author provides some general information on the corrective facilities in South Australia. By way of example, he states that in Adelaide Remand Centre, the number of inmates has increased from 166 to 240 because of the doubling up, that the building has no natural air in the cells and very little natural light, and that the occupants are restricted in their movements and in their access to fresh air. In Yatala prison, he states that, although an entire floor is now used to house accused prisoners, these prisoners "mix" with other prisoners and do not receive "any special conditions". They only have a right to receive a 10-minute telephone call per day, which must be booked the day before.

The complaint

3.1 The author alleges that due to the doubling-up in South Australian corrective facilities, in particular the Adelaide Remand Centre, his rights under article 10, paragraph 1, of the Covenant were violated. In this context, he makes a variety of complaints to the Committee, being those advanced to the Supreme Court, as to the deleterious effects of doubling-up. Such effects are said to include increased incidents of assault, including sexual assault, a decrease in the quality of life and feeling of safety, non-smokers forced to share cells with smokers, persons with communicable diseases placed in cells with persons with no diseases, and having to go to the toilet in the cell one metre from the bottom of the bed and in full view of the other occupant. Although the author was not doubled-up during his time in the Adelaide Remand Centre, he claims to have been put under stress because of the effect doubling-up had on the inmates of the facility as a whole.

3.2 The author also claims that the fact that he was held as an accused prisoner and housed in facilities with sentenced prisoners, from 26 April 1994 to 18 January 1995, constitutes a violation of article 10, paragraph 2 (a).[5] He also states that while he was a dual status prisoner, he should also have been entitled to segregation from other prisoners.

State party's submission on the admissibility and merits of the communication

4.1 By note verbale of February 2001, the State party made its submission on the admissibility and merits of the communication. On the admissibility of the communication, the State party claims that the author's case is inadmissible as he has not fulfilled the victim requirement of article 1, has failed to exhaust domestic remedies and has no claim under the Covenant. The State party highlights that in his action to the Supreme Court of Australia, the author sought a declaration that the State of South Australia, through the Department of Corrective Services, had breached the International Covenant on Civil and Political Rights and as to whether and to what extent the Covenant has been enacted into domestic law and was binding on the State of South Australia. The State party submits that the author did not claim in this action that he was a victim of any alleged violation of article 10 of the Covenant.

4.2 The State party submits that in his communication the author has failed to substantiate that he has been a victim of any alleged violation of article 10. Rather, he provides information regarding a number of South Australian corrective facilities and alleges a number of incidents that have taken place in these institutions but which do not involve and are not related to his own situation. The State party refers to the Committee's jurisprudence[6] on the interpretation of article 1 of the Optional Protocol according to which an author must demonstrate that he/she is a victim of alleged violations of the Covenant. The State party submits that the author has not claimed that he, as an individual, has been a victim of any violation. Therefore, the State party submits, that the Committee cannot express a view on the law in the abstract and that the communication should be dismissed as inadmissible.

4.3 In addition, the State party submits that the communication is inadmissible for failure to exhaust domestic remedies as required under article 2 of the Optional Protocol. According to the State party the author could have instituted an appeal to the Full Court of the Supreme Court of South Australia. Although the time limit to lodge such an appeal has now expired, it is still open

to the author to lodge an application seeking an extension of time to appeal to the Full Court. The author also has recourse to seek leave to appeal to the High Court of Australia in the event that any appeal to the Full Court of the Supreme Court of South Australia fails, or where an extension of time to appeal to the Full Court of the Supreme Court of South Australia is refused.

4.4 The State party submits that the author has no claim under the Covenant. In relation to the claim that the author was not segregated from convicted prisoners when he was held on remand, the State party refers to its reservation to article 10, paragraph 2 (a) and (b). The State party submits that there have been no objections filed by other State parties to the Covenant and received by the Secretary-General to the Australian reservation to article 10. It argues that the reservation is in accordance with the Committee's guidelines on reservations as set out in General Comment No. 24.[7] In addition, it refers to article 19, paragraph 3, of the Vienna Convention on the Law of Treaties, which provides that where a reservation is not prohibited by the treaty or falls within the specified permitted categories, a State may make a reservation provided it is not incompatible with the object and purpose of the treaty. The Covenant neither prohibits reservations generally nor mentions any type of permitted reservation. For these reasons, the State party submits that, the author has no claim under the Covenant in respect of this article.

4.5 On the merits, and in the event that the Committee finds the claims concerning doubling-up admissible, the State party submits that this claim has no merit as the author has failed to describe how the treatment he has received in South Australian prisons has breached article 10, paragraph 1, of the Covenant. Although the author claimed a number of consequences of doubling-up in his action against South Australia, he does not describe how it would amount to a violation of article 10, paragraph 1. In fact, the State party notes that the author has not stated that he shared a cell with another prisoner. However, according to the State party, it appears from the Departmental records that the author was doubled-up for a temporary period of one month in December 1997 in Yatala Labour Prison, after which he was transferred to a single cell.[8]

4.6 On the issue of the Standard Minimum Rules for the Treatment of Prisoners, the State party refers back to the drafting of the Covenant and submits that it was expressed at the time that formally linking the Rules to the article was undesirable because the Committee had not discussed or studied them in detail and some of the provisions might be contrary to the spirit and letter of the draft convention. It is submitted therefore that, although the Rules may be taken into account in determining the standards for humane conditions, the Rules do not form a code, nor are States Parties required to adhere to the Rules in order to comply with the Covenant. It is further submitted that these rules do not have the force of law in Australia.

4.7 The State party refers to rule 9 (1) of the Standard Minimum Rules for the Treatment of Prisoners which states "where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself", and submits that the exception to the rule is for temporary overcrowding. It submits that the Australian Department of Corrective Services only uses doubling-up where single cell accommodation is not available. It is stated that the prison population has reduced in the last few years, despite earlier predictions that it would increase. Fluctuations in the prison population make it difficult to assess whether new facilities are required at significant cost to the taxpayer, particularly given the lead times

necessary for new facilities to be constructed. As a result, doubling-up becomes necessary to accommodate fluctuations in the prison population. The Australian Government submits that although doubling-up occurs in South Australian prisons, this is on a temporary basis corresponding to fluctuations in the prison population.

4.8 The State party again refers to the judgment of the Supreme Court in which the judge referred to a statement made by the author that "there is no respect for human dignity when one is made to go to the lavatory within one metre of the person in the bottom bed and in his full view". The State party submits that it is not unusual for members of the same sex to share facilities where a large group of persons are accommodated. Taking into account the jurisprudence of the Committee,[9] the State party submits that it could not be reasonably asserted that the author's complaint meets the threshold of either inhuman treatment, or a failure to respect the dignity of the human person. In this regard, the State party makes reference to the types of conditions and treatment afforded to prisoners which was previously held by the Committee to be a violation of article 10, paragraph 1, including incommunicado detention, poor hygiene standards, inadequate exercise and insufficient food, and beatings by prison personnel.[10] In the State party's view, prison conditions in which the Committee has found a violation of article 10, paragraph 1, are of a much more serious nature than those described in the claim made by the author.

Comments by the author

5.1 The author responds to the State party's submission on admissibility by asserting that he has exhausted domestic remedies. According to the author, the judge of the Supreme Court of South Australia "claimed that I would not be given leave to appeal these matters because of the legislation enacted by the Governments concerned". He further states that he did not wish to waste the courts' time by appealing a matter which could not be decided in his favour because of legislation which specifically prevented the application of international law. He also states that an application to the Human Rights and Equal Opportunities Commission was rejected.

5.2 On the State party's response on the merits, the author reiterates the finding of the Supreme Court of South Australia as outlined in paragraph 2.4. The author claims that the doubling–up is contrary to article 10, paragraph 1, as it involves an individual having to sleep in the same room with another, being subjected to sexual harassment and "pressures", having to go to the toilet in front of the other occupant and within one metre from the other person's bed, having to watch another person going to the toilet and possibly sharing with a sentenced person. In a subsequent letter, he confirms that he was doubled-up in Yatala Labour Prison[11] and had to use the toilet in full view of the other inmate.

5.3 On the issue of the State party's reservation to article 10, paragraph 2, of the Covenant, the author states that this reservation was "nullified" by the inclusion of the Covenant on Civil and Political Rights in a schedule to the Human Rights and Opportunities Commission Act 1986 without any reference to the reservation.

5.4 The author goes on to argue why, in his view, the State of South Australia is bound by the International Covenant on Civil and Political Rights and bound to implement the Standard Minimum Rules for the Treatment of Prisoners and regrets that the State party failed to mention the Administrative Decisions (Effect of International Instruments) Act (SA) 1995 and other domestic legislation.

Additional observations by the State party

6.1 In response to the author's comments, the State party submits that the determination of the judge in the Supreme Court of South Australia is not determinative of the issues under international law and his views should not be substituted for those of the Committee.

6.2 With respect to the definitions of article 10, paragraphs 1 and 2, of the Covenant, the State party submits that the provisions and words of the Covenant have an autonomous independent meaning differing from meanings within domestic law.[12] Any findings relating to the words of "humanity" and "inherent dignity" within a domestic court cannot be substituted for the independent assessment of the Committee. As the judge did not make reference to any of the past views of the Committee, this implies that he did not make his decision based on the international legal meanings of the words in question. According to the State party, when the findings of the court are read in context, it is apparent, that the judge equated a failure to strictly follow the Standard Minimum Rules for the Treatment of Prisoners with a breach of article 10, paragraph 1. It states that although these rules may be taken into account in determining the standards for humane detention, they do not form a code. A failure to adhere to these Rules does not of itself lead to the conclusion that the detention violates a prisoner's humanity or inherent dignity.

6.3 In the State party's view the Administrative Decisions (Effect of International Instruments) Act 1995 (SA) is not relevant to the allegations of article 10 violations, but explains that this act affects administrative decisions and procedures under the law of the State of South Australia only to the extent that the international instrument has the force of domestic law. As a consequence, an international instrument not yet part of Australian law does not give rise to a legitimate expectation that a decision-maker will make a decision in strict conformity with the instrument.

6.4 The State party submits that the inclusion of the International Covenant on Civil and Political Rights as an attachment to a piece of legislation does not, in any way, affect Australia's reservations to the Covenant. There is no rule of international law supporting the author's contention.

6.5 The State party also submits that a large part of the author's comments discuss the relationship between international law and Australia's domestic law. In particular, he examines judicial use of international law in developing the common law. In its view, an abstract discussion of Australian judicial practice is not relevant to determining whether alleged violations of article 10 are made out in this instance.

Issues and Proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its Rules of Procedure, decide whether or not the complaint is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2 (a) of the Optional Protocol.

7.3 With regard to the requirement of article 5, paragraph 2 (b) of the Optional Protocol on the exhaustion of domestic remedies, the Committee notes that although the author has claimed a violation of his own human rights in his communication to the Committee the case he initiated in the courts of South Australia was related to general allegations on the prison conditions. In particular, the Committee observes that the author never claimed within the Australian jurisdiction that he personally had been subjected to such treatment in prison that would be contrary to article 10 of the Covenant or any comparable provisions in domestic law. The Committee, therefore, finds that the author has not exhausted domestic remedies and that the communication is therefore inadmissible.

8. The Human Rights Committee therefore decides that:

(a) The communication is inadmissible under article 5, paragraph 2 (b) of the Optional Protocol;

(b) This decision be communicated to the author and to the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Notes

[1] Prisoner awaiting trial and not yet convicted.

[2] When one inmate is made to share a cell, designated for one person, with another inmate.

[3] It transpires from the documentation submitted by the author that he did not claim to have experienced any of these negative effects personally but his claim was in general terms. According to the judgement, the author sought a declaration that the State of South Australia is bound by law to treat prisoners detained by it in accordance with the Standard Minimum Rules for the Treatment of Prisoners and insofar as the State of South Australia compels prisoners to occupy in pairs in a single roomed cell the Defendant is thereby in breach of the same rules. The

author referred to the deleterious effects of "doubling-up" in the Adelaide Remand Centre but did not refer to his own situation. During his argument the author also requested a declaration that the State of South Australia through the Department of Correctional Services "breached human rights in accordance with the articles contained in the Covenant", but again did not refer to his personal situation.

[4] The Covenant was incorporated as a schedule to the Human Rights and Equal Opportunity Commission Act.

[5] The State party made the following reservation to article 10 of the International Covenant on Civil and Political Rights, "In relation to paragraph 2 (a) the principle of segregation is accepted as an objective to be achieved progressively. In relation to paragraphs 2 (a) and 3 (second sentence) the obligation to segregate is accepted only to the extent that such segregation is considered by the responsible authorities to be beneficial to the juveniles or adults concerned." The State party ratified the Covenant on Civil and Political Rights on 13 August 1980.

[6] JH v. Canada, Case No. 187/1985, Views adopted on 12 April 1985, Lovelace v. Canada, Case No. 24/1977, Views adopted on 30 July 1981 and ARS v. Canada, Case No. 91/1980, Views adopted on 28 October 1991.

[7] HRI/GEN/1/Rev.4.

[8] [At this point the author was a dual status prisoner.]

[9] The State party refers to Lloyd Grant v. Jamaica, Case No. 353/1988, Views adopted on 31 March 1994, Berry v. Jamaica, Case No. 330/1988, Views adopted on 7 April 1994, Griffin v. Spain, Case No. 493/1992, Views adopted on 4 April 1995, and Champagnie, Palmer and Chisholm v. Jamaica, Case No. 445/1991, Views adopted on 18 July 1994 .

[10] The State party refers to many previous decisions of the Committee including some of the Uruguayan cases, Alberto Altesor v. Uruguay, Case No. 10/1977, Views adopted 29 March 1982, and Hiber Conteris v. Uruguay, Case No. 139/1983, Views adopted on 16 March 1983, Soogrim v. Trinidad and Tobago, Case No. 362/1989, Views adopted on 8 April 1993 , Luyeye Magana ex-Philibert v. Zaire, Case No. 90/1981, Views adopted on 21 July 1983, and Dieter Wolf v. Panama, Case No. 289/1988, Views adopted on 26 March 1992.

[11] He does not say for how long he was doubled-up.

[12] The State party refers to Gordon C. Van Duzen v. Canada, Case No. 50/1979, Views adopted on 7 April 1982.

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