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Title: Detention, Discrimination and Human Rights of young people

Detention, Discrimination and Human Rights of young people

It is generally taken in Australia, as around the world that children and immature people are treated for separately from the adults subject to criminal justice. While Police Force and Attorney General is responsible for both adult and young offenders, Juvenile Justice is tailored for young people committing offences. Almost all states and territories of Australia, the offenders fewer than 18 (with the exception of Queensland having a cutoff age at 17) are under the jurisdiction of juvenile justice system until the offender attain the age of 21. The offenders under 18 to have committed serious offenses may be tried in adult courts, characterized by certain conditions, where it is possible to change the case from Juvenile Justice Counters' to adult Correctional Centers.

The custody and detention issues related to the young people are an important facet of human rights violation and racial favoritism. The laws referring racial discrimination in Australia along the grounds of detention and detention are often ambiguous lacking the teeth for strict enforcement. However, Tasmania and the Northern Territory have specific laws to forbid discrimination based on criminal and custody records. On that point is no other state in Australia having specific anti-discrimination laws to protect people from discrimination based on criminal records.

There are also certain controversial counterterrorism legislations in place which allegedly violates Human Rights and discriminates on age/racial/gender/religious cause. The anti-terrorism laws sometimes violate the underlying rule that human rights are for everyone: people threatened as well as people accused of terrorist act (Office for National Statistics 2012).

The young people considered under Juvenile justice in Australia, is a conjunction of rules, institutions, and people with their involvement in controlling, punishing, and rehabilitating children and young people as suspects and offenders. The juvenile justice is a state subject under the purview of state law. A bit of international measurable benchmarks such as the UN International Covenant on Civil and Political Rights (ICCPR), the UN Convention on the Rights, UN Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules'), UN Convention on the Rights and UN Minimum Rules for the Treatment of Children Deprived; are used to develop and maintain legislations, policy and practice related juvenile justice (Office of the United Nations High Commissioner for Human Rights 1985)

However, the juvenile justice system is not represented in a single piece of legislation pertaining to Australian jurisdiction (United Nations 1985). A variety of legislation applied to children and young people in difficulty with respect to the laws belonging to Australian states and territories are provided below.

MAJOR JUVENILE JUSTICE LEGISLATION AROUND AUSTRALIA

NSW	Children (Criminal Proceedings) Act 1987
	Children’s Court Act 1987
	Children (Community Service Orders) Act 1987
	Children (Detention Centres) Act 1987
	Children (Interstate Transfer of Offenders) Act 1988
	Children (Protection and Parental Responsibility) Act 1997
	Young Offenders Act 1997
	Crimes Act 1900
	Bail Act 1978
Act	Children and Young People Act 2008
	Crimes (Restorative Justice) Act 2004
	Rehabilitation of Offenders (Interim) Act 2001
	Crimes Act 1900, pt 10 (Criminal investigation) and the Crimes Act 1914 (Cth), pt 1C (which applies in relation to the investigation of certain ACT offences)
	Magistrates Court Act 1930 (in particular Chapter 4A (The Childrens Court))

Supreme Court Act 1933

Court Procedures Act 2004 (in particular pt 7A (Procedural provisions — proceedings involving

children or young people))

Crimes (Sentence Administration) Act 2005 (in particular Chapter 8A (Sentencing young

offenders) and Chapter 14A (Sentence administration — young offenders))

Bail Act 1992

Victoria

Children, Youth and Families Act 2005

Crimes Act 1958

Sentencing Act 1991

Bail Act 197

Queensland

Child Protection (Offender Reporting) Act 2004

Children's Court Act 1992

Youth Justice Act 1992 (newly amended effective March 2010)

Youth Justice Regulations 2003

Young Offenders (Interstate Transfer) Act 1987

Bail Act 1980

**Western
Australia**

Children's Court of Western Australia Act 1988

Child Welfare Act 1947

Court Security and Custodial Services Act 1999

Inspector of Custodial Services Act 2003

Sentence Administration Act 2003

	Young Offenders Act 1994
	Young Offenders Amendment Act 2004
	Bail Act 1982
South Australia	Bail Act 1985
	Criminal Law (Sentencing) Act 1988
	Family and Community Services Act 1972
	Young Offenders Act 1993
	Youth Court Act 1993
Tasmania	Youth Justice Act 1997
	Youth Justice Amendment Act 2003
	Youth Justice Regulations 1999
Northern Territory	Youth Justice Act 2005
	Youth Justice Regulations 2005

Source: Juveniles' contact with the criminal justice system in Australia, K Richards, Monitoring Report No. 7, Australian Institute of Criminology, 2009, p 23; available at www.aic.gov.au

Some states and territories have set out new legislations for juvenile justice, while some other have integrated divisionary schemes into the existing statutes. Victoria, for example, uses the youth justice conference instead of separate laws for the young people with previous records of offense and appearing in court. The ACT initiated a new legislation in 2004, regulating the invigorating justice processes applicable to both adults and children (Australian Institute of Health and Welfare 2012)

International laws distinguish children and young people from adults with respect to the treatments meted out to each of them.

To safeguard this prophecy, it is offered for a distinct juvenile justice system for the protection of minors and young people on the basis of international rules to administer juvenile justice (Karstedt-Henke 1991)..

Australia is a signatory to the international instruments relevant to juvenile justice described as under.

International Instrument	Features
United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)	Provision of detention as a last resort and for the minimum period of time. The system for young people as separate from adults.
United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)	Implementation of social policies as preventive measures to crime.
UN Rules for the Protection of Juveniles Deprived of their Liberty	Allowance to maintain contact with family and community, providing respect and dignity and the exclusion of arbitrary treatment.
UN Convention on the Rights of the Child (CROC)	Foundations for children’s rights based on four guiding principles: <ol style="list-style-type: none"> 1. Non-discrimination (article 2); 2. Best interests of the child (article 3); 3. Survival and development (article 6); and 4. Participation in decision making (article 12).

Source: Australian Law Reform Commission

In summation, the issues of racism towards the disadvantaged groups, such as women, youth, religious minorities, racial minority, gay, disabled, and others have been addressed by measures to protect and train with the aim eradicating racism, racial discrimination, xenophobia and other intolerances.

Australia is a party to ICERD having obligations to take measures in ensuring prevention to racism and racial discrimination. ICERD require its signatories like Australia to condemn racial discrimination by undertaking appropriate measures promptly to do away with all forms discrimination and to promote harmonious understanding among races (Alder & Wundersitz 1994).

To satisfy this demand, the Australian government is bound to consider the following steps hitherto.

Australian government Obligation under the clauses of ICERD

Refrain from any act of racial discrimination by ensuring that all public authorities act in accordance with this obligation

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Taking measures effectively to review and amend laws bearing discriminatory elements in it

Emphasizing effective measures in the fields teaching, education, information and culture leading to prejudices and racial discrimination

Promoting an environment of tolerance and understanding

Australian government has put in place a broad legislative structure to eliminate racial discrimination. The Racial Discrimination Act 1975 (RDA) permits individual complaints processes against racial discrimination at a federal level. Further, anti-discrimination laws are in stead in the statute law of every territory and state.

The range of complaints provisioned in the anti-discriminatory laws have their limitations such as prevention from complaints brought against the laws per se with regards to being racially prejudiced (Australian Human Rights Commission 2008). However, Section 10 of the RDA and section 109 of the Australian Constitution allows challenging the laws which are allegedly

racially discriminatory or in conflict with the RDA. The racial hate speech is forbidden in the legislative level in NSW with related new statutes coming up in Queensland.

A number of new statutes introduced by the Australian government since September 2001 have a serious brunt of justice system in terms of fundamental human rights and freedom. The relevant human rights in question are free trial, freedom of expression, freedom related to arbitrary detention, torture in custody, demeaning treatment, freedom of movement and freedom of expression (Office of the United Nations High Commissioner for Human Rights 1989).

Some features of these counter-terrorism laws have threatened to infringe human rights concerns.

Human rights violation	Features
Detention without charge	<p>the Australian Federal Police (AFP) has the right to detain for 24 hours any suspect without charge.</p> <p>The detention can be extended even after 24 hours in case of obtaining a court order for further 24 hours</p> <p>The ‘dead time’ excluded from this 24 hours include the time taken by the suspect in contacting a law year, taking meals or sleeping</p>
Restrictions on movement	<p>Control orders can restrict movement of a person from a certain place at certain times.</p> <p>It can also restrict a person from going certain places or even talking to certain people or requiring them to put on a tracking device.</p>
Using secret evidence against an accused person	<p>Stopping a defendant and his/her lawyer accessing evidence, an usually allowed practice, which will be used against them in court.</p>

Source: Australian Human Rights Commission (AHRC)

The Australian Security Intelligence Organization Legislation Amendment (Terrorism) Act 2003 (Cth) has entrusted ASIO special powers in relation to questioning, questioning and detaining a

person suspected to possess information regarding anti - terrorism investigations without the necessity of the person being suspected of terrorist crimes. The Australian Federal Police under the Crimes Act 1914 (Cth) provides power to detain a person longer than a terrorist suspect for questioning without any cause of detention or the grounds not required to be disclosed. These laws are designed without the option for defendants to challenge the detention or have limited or largely ineffective grounds to do so (Lynch & McGarrity 2011). A UN Special Rapporteur is of the opinion that the absence of a right to judicial review “is of grave concern. ...offending the right to a fair hearing and the right to have the legality of one’s detention determined by an independent and competent authority” (Australia: Study on Human Rights Compliance while Countering Terrorism 2006).

A person suspected (or accused) to have been committed an offense under the jurisdiction of counterterrorism laws are not endowed with many sound options in asserting their human rights. The few options available in legal actions are based on the following statutes.

Laws	Features
Common law	The laws consisting of standards from cases earlier decided in the courts. Protection of human rights set up in the common law includes the right against self-incrimination, and the conjecture of innocence in criminal assessments.
Australian Constitution	Rights to challenge a government decision in High Court laid down by Australian constitution.

Australia currently does not have Human Rights laws for people who are or could be under the jurisdiction of counter- terrorism laws (Braithwaite 1989). The Australian Human Rights Commission supported the need for a Human Rights Act for Australia. A Human Rights Act would have helped to avert human rights breaches and established the rights of people subject to detention and custody by counterterrorism laws. The federal government of Australia also must consider impacts on human rights, and the violation of the same creates the following situation.

First, by allowing the laws to confine people, particularly the young people, without charge deny their right to autonomy and freedom threatened by the arbitrary detention. These 'sedition' laws also threaten freedom of expression and unreasonably impacts on the young people. Second, the Australian government's lack of regard for human rights in developing policies reflects on ASIO's disregard for human rights when its officer's questions and interrogate suspects with disparaging impact to the society and young people. Tierce, the non- necessity of public servants, like AFP officers when issuing a detention order with the consideration of human rights violation such as detaining people, particularly the young and the racial/religious minorities pose serious question mark on the intention and attitude of Australian government and law enforcing groups on their dedication to preserve human rights and integrate the racial groups. Terminal, these laws infringing on human rights of the racial/religious minorities and young people stands as a wedge to foster stronger human rights culture by preventing more serious understanding and esteem of all societal groups in Australia (Christie 1977).

With no purpose to suggest that Australia needs laws and regulations in ensuring its security demands are satisfied, the fundamental rights of its citizens and the people dwelling in the kingdom in terms of rights to equality and rights to a just trial and rights to be presumed innocent of a crime until proved guilty, must also be maintained. These individual rights are as important as right to life and security (Freiberg et al. 1988).

The report highlighted three aspects of legal and justice issues faced by the young people and young people in Australia. First, the national laws and international obligations of Australia regarding the juvenile justice system and related statutes. Second, the legislation related to racial, religious, gender and other forms of discrimination and their interrelations with relevant legislative framework in Australia. And third, the detention and custody interrogation permitted by terrorism related statutes and its interrelations with juvenile detention and racial discrimination. Australia's international obligations with regard to the fields of investigation mentioned have has been described in relation to the international agreements and legislations. The purpose of the United Nations in terminating the racial discrimination, juvenile crimes and the need for separate treatment with regard to adult crimes, and human rights of young people in relation to racial favoritism and prevention of terrorism are discussed in the report

There are discrepancies in rules, legislative acts and legislation within Australia and brief citation and description of legal distribution across its territories and states are pointed out and explicated. The essay also highlighted a judicious tradeoff required between the safety and surety of the Australian people and protection of human rights, particularly the young and the socially vulnerable groups.

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