

SPORTS AND RECREATION

III. JURISPRUDENCE

CERD

Hagan v. Australia (26/2002), CERD, A/58/18 (20 March 2003) 139 (CERD/C/62/D/26/2002) at paras. 1, 2.1, 7.2, 7.3 and 8.

1. The petitioner, Stephen Hagan, is an Australian national, born in 1960, with origins in the Kooma and Kullilli tribes of south-western Queensland. He alleges to be a victim of a violation by Australia of articles 2, in particular, paragraph 1 (c); 4; 5, paragraphs d (i) and (ix), e (vi) and f; 6 and 7 of the International Convention on the Elimination of All Forms of Racial Discrimination. He is represented by counsel.

2.1 In 1960, the grandstand of an important sporting ground in Toowoomba, Queensland, where the author lives, was named the “E.S. ‘Nigger’ Brown Stand”, in honour of a well-known sporting and civic personality, Mr. E.S. Brown. The word “nigger” (“the offending term”) appears on a large sign on the stand. Mr. Brown, who was also a member of the body overseeing the sports ground and who died in 1972, was of white Anglo-Saxon extraction who acquired the offending term as his nickname, either “because of his fair skin and blond hair or because he had a penchant for using ‘Nigger Brown’ shoe polish”. The offending term is also repeated orally in public announcements relating to facilities at the ground and in match commentaries.

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7.2 The Committee has taken due account of the context within which the sign bearing the offending term was originally erected in 1960, in particular the fact that the offending term, as a nickname probably with reference to a shoeshine brand, was not designed to demean or diminish its bearer, Mr. Brown, who was neither black nor of Aboriginal descent. Furthermore, for significant periods neither Mr. Brown (for 12 years until his death) nor the wider public (for 39 years until the petitioner’s complaint) objected to the presence of the sign.

7.3 Nevertheless, the Committee considers that use and maintenance of the offending term can at the present time be considered offensive and insulting, even if for an extended period it may not have necessarily been so regarded. The Committee considers, in fact, that the Convention, as a living instrument, must be interpreted and applied taking into the circumstances of contemporary society. In this context, the Committee considers it to be its duty to recall the increased sensitivities in respect of words such as the offending term appertaining today.

8. The Committee therefore notes with satisfaction the resolution adopted at the Toowoomba public meeting of 29 July 1999 to the effect that, in the interest of

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reconciliation, racially derogatory or offensive terms will not be used or displayed in the future. At the same time, the Committee considers that the memory of a distinguished sportsperson may be honoured in ways other than by maintaining and displaying a public sign considered to be racially offensive. The Committee recommends that the State party take the necessary measures to secure the removal of the offending term from the sign in question, and to inform the Committee of such action it takes in this respect.

ICCPR

- *Kalenga v. Zambia* (326/1988), ICCPR, A/48/40 vol. II (27 July 1993) 68 (CCPR/C/48/D/326/1988) at para. 6.5

...

6.5 As to Mr. Kalenga's claim of inhuman and degrading treatment in detention, the Committee notes that the author has provided information in substantiation of his allegation, in particular concerning the denial of recreational facilities, the occasional deprivation of food and failure to provide medical assistance when needed. Although the author has not shown that such treatment was cruel, inhuman and degrading within the meaning of article 7, the Committee considers that the State party has violated the author's right under article 10, paragraph 1, to be treated with humanity and respect for the inherent dignity of his person.