



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.
GENERAL

CAT/C/AUS/Q/4
6 June 2007

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Thirty-ninth session
5 – 23 November 2007

**List of issues to be considered during the examination of the
third periodic report of Australia (CAT/C/67/Add.7)**

Article 2

1. Section 11 of the Crimes (Torture) Act provides that it is not a defence in a proceeding that the act constituting the offence was committed under exceptional circumstances or that the accused acted under orders of a superior officer or public authority. However, these circumstances may be taken into account in determining the proper sentence. Please indicate any case that occurred during the reporting period in which exceptional circumstances or superior orders have been considered as mitigating circumstances in the determination of sentences of conviction under this Act.
2. Please provide further information on the rights of persons detained in police custody, in particular their right of access to a counsel and to a doctor of their choice, to be informed of their rights and to inform their family promptly of their detention. Has the new legislation against terrorism affected these rights?
3. Please provide information with respect to the law and practice related to the length of custody and pre-trial detention.
4. Please elaborate on the measures taken, if any, to prevent ill-treatment of women in places of deprivation of liberty. Does the State party monitor sexual violence in places of deprivation of liberty, and if so, with what results? Please provide statistical data on the number of complaints received and investigated in this respect during the reporting period, as well as the number of prosecutions and convictions thereof.
5. Please provide statistical data on the number of persons held as suspects of “terrorism”. Please also elaborate on safeguards contained in the new counter-terrorism laws, notably the Anti-

Terrorism Act (No.2) 2005, aimed at ensuring that the obligations under the Convention are met also in the context of any counter-terrorism legislation and operation.

6. Please comment on the finding of other United Nations bodies that, while detention of individuals requesting asylum is neither unlawful nor arbitrary per se, their continuing detention might become arbitrary after a certain period of time without proper justification.

Article 3

7. In relation to immigration detention, please indicate:

- a) What are the avenues to challenge the lawfulness of immigration detention;
- b) Whether legal aid is accessible for detainees with financial difficulties;
- c) Whether defence lawyers can participate in the hearings of the Refugee Review Tribunal;
- d) Whether appeals filed against decisions not to grant asylum have suspensive effect on expulsion orders;
- e) Whether the State party has a list of “safe third countries” for removal; and, if so, how this list is created and maintained;
- f) What is the legal status of those detainees whose visas have been cancelled under section 501 of the Migration Act.

8. Please indicate whether the State party seeks assurances, including diplomatic assurances, before extraditing or returning an individual to another State as a way of preventing the return to a country where he/she would be in danger of torture. If so, please also indicate whether there is any follow-up mechanism in place to assess whether these assurances are honoured.

9. Please inform the Committee on the number of cases during the reporting period in which the Minister for Immigration and Multicultural and Indigenous Affairs has exercised its power under sections 417, 454 and 501 J of the Migration Act 1958 to substitute a decision of the Refugee Review Tribunal or the Administrative Appeals Tribunal (AAT) with a more favourable decision for the applicant¹.

10. Please explain the State party’s position with respect to the concerns of the Human Rights and Equal Opportunity Commission (HREOC) expressed recently in relation to the Migration Amendment (Review Provisions) Bill 2006, which reportedly would create the potential for an unfair process and thus increase the risk of incorrect decisions and the likelihood of ‘refoulement’ of asylum seekers. Please also explain the rationale behind the changes made by the Bill.

11. Please update the Committee on measures taken to follow-up to the recommendations contained in the 2004 report of the Senate Select Committee on Ministerial Discretion in Migration Matters, and notably to the recommendation that the Government ‘give consideration to adopting a

¹ State party's report, para. 35.

system of complementary protection to ensure that Australia no longer relies solely on the minister's discretionary powers to meet its non-refoulement obligations under CAT².

12. Please provide data, disaggregated by age, sex and nationality, covering the reporting period on:

- a) The number of asylum requests registered and the number of requests granted;
- b) The number of forcible deportations or expulsions;
- c) The number of rejected asylum-seekers and/or irregular/undocumented migrants who are held in administrative detention in immigration detention facilities and alternative detention arrangements;
- d) The number of persons transferred to offshore detention centres in the context of the so-called "Pacific Solution";
- e) The countries to which these persons were expelled.

Article 4

13. Please clarify whether the criminal legislation of the different States/territories provides for a specific crime of torture (which would include acts of torture, attempted acts of torture and complicity or participation in torture) qualitatively distinguishable from other relevant offences. Please also indicate the penalties related to these offences and whether statutes of limitations apply to them.

14. Please provide more information on the National Model Criminal Code and on its implementation throughout the country. Please also clarify whether in this Code, torture is only considered as an aggravating circumstance for the commission of other offences or if it constitutes a separate offence.³

Article 5

15. Please indicate whether the State party has ever applied section VII of the Crimes (Torture) Act of 1988 which allows Australian courts to prosecute anyone present in its territory who has committed a crime of torture outside Australia.

16. Please clarify whether the State party considers that the Convention applies to persons under its jurisdiction in cases where Australian troops or police officers are stationed abroad.

Articles 6, 7, 8, 9

17. Please provide information on cases, if any, where the State party rejected a request for extradition by another State for an individual suspected of having committed a crime of torture, and thus has engaged its own prosecution as a result.

² See the 2004 report of the Senate Select Committee on Ministerial Discretion, recommendation no. 19, section 8.82.

³ State Party's report, paras. 22 and 23.

18. Please comment on the information that currently under the Mutual Assistance in Criminal Matters Act 1987 and the Extradition Act 1988, it would not be mandatory to refuse a request for extradition or mutual assistance in circumstances where there are substantial grounds for believing that granting the request may result in a breach of a person's rights under the Convention. In this respect, please explain what is the State party's view in relation to HREOC's recommendation that its extradition and mutual assistance arrangements should contain stronger safeguards against the risk of torture or other cruel, inhuman or degrading treatment.

Article 10

19. The State party's report notes that Australian defence force members are bound by the Criminal Code, as amended, upon ratification of the Statute of the International Criminal Court and that they receive training in humanitarian law principles. Please indicate whether members of the armed forces and other personnel, including contractors, are informed of their obligations under the Convention and other international human rights instruments.

20. Please elaborate on what kind of training is provided to officials dealing with the expulsion, return or extradition of asylum-seekers.

21. The Committee notes that management of immigration detention facilities has been contracted out to private companies since 1998. Please advise whether staff employed by private contractors at immigration detention centres are trained on the obligations under the Convention and other international human rights instruments that apply to them in the exercise of their functions.

Article 11

22. Please provide updated information on the number of persons and the occupancy rate of the places of deprivation of liberty in the criminal justice system.

23. Please inform the Committee of measures taken to protect and guarantee the rights of vulnerable persons deprived of their liberty, notably; women, indigenous peoples, persons suffering from mental illness and children.

24. Please provide disaggregated statistical data regarding reported deaths in custody according to location of detention, sex, age, ethnicity of the deceased and cause of death. Please make available detailed information on the results of the investigations in respect of those deaths and measures implemented to prevent the reoccurrence of similar violations. In particular, please provide the Committee with updated information relating to the investigation of the death of Mr. Mulrunji in police custody in 2004.

25. Please provide the Committee with statistics of mandatory sentencing cases, according to location, sex, age and ethnicity. Please also comment on this aspect of the concluding observations of the Committee on the Rights of the Child of September 2005 (CRC/C/15/Add.268, paras. 72-74).

26. Please advise the Committee whether the Immigration Detention Standards, applied to private contractors managing immigration detention facilities, make specific reference to the Convention and

human rights law. Please also indicate how compliance with human rights norms within the immigration detention centres is monitored by the authorities.

27. In view of the concerns expressed by the United Nations Working Group on Arbitrary Detention (E/CN.4/2003/8/Add.2) and HREOC relating to the mandatory detention of asylum-seekers and its impact upon their mental health, please inform the Committee of the number of reported incidents of self-harm, suicide attempts and suicides in immigration detention facilities since the last periodic review in 2000.

28. Also in this respect, and in view of the findings of the report published by HREOC in January 2007 containing observations following the inspection of Mainland Immigration Detention Facilities, please provide further information on the mental health care available for detained asylum-seekers and comment on the follow-up that will be given to the recommendations by HREOC.

29. The Committee, while noting the amendment to the Migration Act in July 2005 providing that the detention of children only be used as a measure of last resort, requests the State party to clarify the number of children in mandatory immigration detention since 2000 and to provide information, relating to each year, on the average length of time children spent in detention.

Article 12

30. Please provide updated detailed information on any specific cases of torture or cruel, inhuman or degrading treatment or punishment or similar offences committed by members of the armed forces and other personnel including contractors stationed abroad, notably in Afghanistan and Iraq, specifying the number of cases, their status, the authorities before which they are pending and the outcome of the investigations.

Article 13

31. Please provide data with respect to the number of reported cases, investigations carried out and persons tried and convicted at Federal and/or State/Territory level since the last periodic review in 2000, including the type of sanction imposed, for the crimes of torture, attempted torture and complicity or participation in torture.

Article 14

32. Please provide statistical information on compensation provided to victims of torture or cruel, inhuman or degrading treatment that occurred in Australia for the period between 2000 and 2006. Please indicate how this breaks down according to sex, age and ethnicity.

33. Please indicate in further detail (with reference to paras. 101-102 of the State party's report):

- a) What services exist for the treatment of trauma and other forms of rehabilitation of torture victims and what is the capacity of these services;
- b) How many victims of torture in Australia and victims of torture prior to arrival to the country have been able to access these services;

- c) What financial allocations have been made by the State party for this purpose.

34. Please advise the Committee on the compensation awarded and measures undertaken to prevent similar violations upon the decision of the case *C v. Australia* by the Human Rights Committee in 2002, resolving that the State party had incurred in violation with article 7 of the International Covenant on Civil and Political Rights.

Article 15

35. Please specify the legislation and practice relating to the prohibition of derivative evidence and the use of information obtained under torture in proceedings.

Article 16

36. As a follow-up to the concluding observations of the Committee on the Rights of the Child (2005), please inform the Committee of measures undertaken to prohibit the use of corporal punishment in all schools (private and public), detention centres and alternative care settings in all states and territories.

37. Please provide information, disaggregated by sex, age, ethnicity or origin of victims, on the number of investigations, convictions and sanctions that have been applied in cases of human trafficking and commercial sexual exploitation. Please inform the Committee of the number of Witness Protection Visas issued to victims of trafficking and how many victims of trafficking have benefited from recovery assistance.

38. With reference to paragraph 22 of the State party's report, please inform the Committee of the number of cases of female genital mutilation that have been reported and prosecuted.

Other

39. Please indicate whether there is legislation in your country aimed at preventing or prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or cruel, inhuman or degrading treatment. If so, please provide information about its content or implementation. If not, please indicate whether the adoption of such legislation is being considered.

40. Please indicate what measures are taken to ensure that individuals detained by Australian forces stationed overseas, notably in Afghanistan and Iraq, are not treated in a manner which would violate the Convention when handed over to other forces.

41. Please inform the Committee on whether - after the report of the Independent Joint Standing Committee on Treaties of March 2004 - there is any further development about the State party's position with respect to the ratification of the Optional Protocol to the Convention. In this respect, please clarify whether there is any monitoring mechanism or body with a mandate that permits it to enter into state, federal and territory prisons and other places of detention and receive complaints of alleged human rights violations from persons deprived of their liberty.