AUSTRALIA

CAT A/47/44 (1992)

181. The Committee considered the initial report of Australia (CAT/C/9/Add.8) at its 95th and 96th meetings, held on 15 November 1991 (CAT/C/SR.95 and 96).

182. The report was introduced by the representative of the State party, who stated that it was his Government's policy to ensure, before ratifying a convention, that Australia was in a position to comply with the international obligations it would assume under it. In the case of the Convention against Torture, existing domestic law was in most respects adequate for compliance, although new legislation would be needed to ensure that the Convention was fully implemented. Acts amounting to torture would generally be covered by offences under criminal law. Victims of torture could seek compensation under various criminal injuries compensation schemes or a common law action in tort and damages could be sought for both physical injury and nervous shock. The Crimes (Torture) Act 1988 fulfilled Australia's obligations under the Convention in relation to acts of torture committed outside the jurisdiction of state and territory criminal law.

183. There were special procedures in all jurisdictions to ensure competent investigation of allegations of torture by police or prison officers. Complaints about police conduct were generally dealt with first by an internal investigation body and later reviewed or monitored by an external body. Moreover, several jurisdictions had created specific legislative schemes for investigating complaints about the police. In others, a state ombudsman had been given wide powers to investigate such complaints. Complaints of mistreatment in prisons could be made to official prison visitors or inspectors and in most states, the ombudsman also had authority to deal with such complaints. On the federal level, complaints could be made to the Human Rights and Equal Opportunity Commission.

184. Military personnel were subject to the law of the land. Even in very exceptional circumstances, when the armed forces were required to protect constitutional processes, they would be involved only after the government of a state had made a request to the Governor-General, who would then take the necessary legal measures in accordance with procedures agreed by Parliament. Military personnel held in detention were protected under the Defence Force Instructions, which gave them the right to make complaints to the officer in charge. Such complaints had to be investigated without delay.

185. Australia's security and intelligence agencies had no powers of arrest or detention and members of those agencies were not in any way exempt from ordinary criminal and civil law. The Royal Commission appointed to investigate aboriginal deaths in custody had not found that any of the deaths investigated were the result of unlawful violence or brutality by police or prison officers but had made several recommendations relating to custodial practices, sentencing and training for police and custodial personnel. The Commission had also recommended that the Government should consider acceding to the Optional Protocol to the International Covenant on Civil and

Political Rights and making the declaration under article 22 of the Convention against Torture. As recommended by the Commission, Australia had acceded in September 1991 to the Optional Protocol to the Covenant and the possibility of making the declaration provided for under article 22 of the Convention against Torture was currently under discussion.

186. Members of the Committee commended the Government of Australia on its excellent and detailed report but requested clarification as to how legislation was actually applied in the Australian federal system. Information was also requested concerning the jurisdiction of federal and other courts and the division of legislative power between the central authority and the states; the mandate and powers of the Human Rights and Equal Opportunity Commission and its relationship with the different states and territories; and as to the number of posts of ombudsman, the functions of the ombudsman, and the relationship existing between the Australian and Commonwealth ombudsman.

187. With regard to article 1 of the Convention, members of the Committee wished to receive clarification about the incorporation of the definition of torture in Australian legislation. They asked, in particular, whether all forms of torture and their sequelae as referred to in the Convention were covered by Australian legislation, especially the Crimes (Torture) Act 1988.

188. With reference to article 2 of the Convention, it was asked which legislative act contained the provision that an order from a superior officer could not be invoked as a justification of torture and whether it was valid in all states and territories.

189. Concerning article 3 of the Convention, members of the Committee wished to know whether the extradition laws referred specifically to the situation where a person might be extradited to a country where there was a risk that he might be tortured. It was also pointed out that Australia's obligations under that article were not confined to persons covered by the definition of refugee, but extended to persons with well-founded fears of ill-treatment on other grounds than those listed in the 1951 Convention relating to the Status of Refugees.

190. In relation to article 4 of the Convention, members of the Committee expressed concern that a person who had committed torture or inflicted suffering might be subject to legislation which provided for penalties that varied in harshness depending on the state or territory concerned.

191. With reference to article 5 of the Convention, members of the Committee asked, in particular, whether an Australian state would have the jurisdiction to prosecute for an offence committed outside Australia under the Crimes (Torture) Act of 1988.

192. With regard to article 6 of the Convention, it was asked whether, under the provision of paragraph 1 of that article concerning extradition for offences involving acts of torture, the principle of universal jurisdiction was applied by Australia.

193. With reference to article 8 of the Convention, it was asked whether the Convention was regarded by Australia as providing a sufficient legal basis for granting extradition to a country which had requested it.

194. With respect to article 9 of the Convention, it was asked what the scope was of the provision

in Australian law whereby persons could be compelled to give evidence in relation to the prosecution of crimes in another country and whether the Mutual Assistance in Criminal Matters Act, referred to in the report, was part of federal legislation.

195. With regard to article 10 of the Convention, members of the Committee wished to know what special educational opportunities were available for medical professionals working in police stations, prisons and mental health institutions to ensure that they were made aware of their obligations to avoid ill-treatment of detainees, prisoners and patients. Information was also requested concerning training for the prevention of torture provided to police and prison officers in all states and territories of Australia. In that connection, it was observed that the staff of rehabilitation centres referred to in the report might be well qualified to provide training for medical and other professionals in connection with torture.

196. Concerning article 11 of the Convention, members of the Committee sought clarification as to how the internal review of rules and practices relating to the custody and treatment of persons in detention was carried out in practice. They also wished to know what authority was competent to decide on detention; what authority in each state was responsible for monitoring measures of detention and conditions and accommodation in prisons; whether systematic reviews of the treatment of detainees involved unannounced visits by judges to places of detention; and what federal authority was ultimately responsible for prison institutions. In addition, members of the Committee asked whether an accused person could be held incommunicado in Australia and, if so, for how long; whether an accused person had the right to communicate with his lawyer or to undergo a medical examination; within what period of time a detainee was to be brought before a judge; whether electro-convulsive therapy was part of the ordinary medical treatment given in mental health institutions; what provisions was made for the review of cases of persons held involuntarily or even voluntarily in such institutions; and what protection such persons had with regard to the duration and nature of their treatment.

197. With reference to articles 12 and 13 of the Convention, members of the Committee wished to receive statistics and details of any reported cases of torture. In that connection, information was also sought on any cases of such complaints dealt with by the Human Rights and Equal Opportunity Commission.

198. In respect of article 14 of the Convention, members of the Committee wished to know, in view of the large numbers of refugees received by Australia, whether the special rehabilitation centres referred to in the report offered social as well as medical services; whether they were financed by the state and federal authorities or privately; and how many persons benefited from such services. With reference to the matter of compensation for victims of torture, members of the Committee wished to know whether offences committed by a public official always entailed state responsibility and observed that the maximum amounts awarded as compensation were not very high and that the children of victims were not entitled to any compensation for grief.

199. With regard to article 15 of the Convention, members of the Committee pointed out that the report referred only to the non-admissibility of confessions and admissions obtained by force and not to statements of all kinds, which included evidence and expert reports, and wished to know whether there were specific arrangements made within each jurisdiction to ensure that confessions

or admissions obtained by coercion would not be admissible or used as evidence in Australian courts.

200. Concerning article 16 of the Convention, it was asked whether Australia still allowed corporal punishment in schools and what legal and administrative penalties were applicable to public officials who inflicted cruel, inhuman or degrading treatment or punishment. In addition, it was pointed out that the penalty of life sentences in cases of rape could be characterized as cruel treatment and clarification was sought as to how Australia could justify such sentences.

201. In his reply, the representative of Australia referred to the division of jurisdiction between the Federation and the states existing in his country, and explained that federal areas of jurisdiction were specifically enunciated in the Constitution; all others belonged to the states. Generally, criminal law was a matter for the jurisdiction of the states. Thus, offences which constituted a violation of the Convention were punished according to the legislation of the state concerned. On the other hand, the federal Government ensured that the legislation of each state was in conformity with the obligations resulting from international commitments.

202. With regard to the Human Rights and Equal Opportunity Commission and its links with the states, the representative explained that it worked in liaison and in cooperation with related bodies in the states. If a complaint was filed with the Commission, it conducted an investigation. If the nature of the offence justified proceedings, the Commission transmitted the results of the investigation to the police of the state concerned, which determined whether the act was a violation of the legislation of that state. The fact that the Commission was a federal body guaranteed that, if necessary, all those responsible for an offence could be charged and that complaints would not go unheard. The Human Rights Commissioner was responsible for offences which were within the scope of the Convention. Each state and the Commonwealth had either an ombudsman or a body with the same powers which was authorized to hear complaints concerning both state and federal legislation. A person who was a victim of a human rights violation could therefore apply to several bodies.

203. With regard to article 1 of the Convention, the representative informed the Committee that the offence of torture was not specifically defined in the Australian Constitution and Commonwealth legislation.

204. In relation to article 2 of the Convention, the representative stated that the principle that an order of a superior or public authority could not be invoked as a justification of torture was a common law principle, although it was also embodied in some legislative texts.

205. With reference to concerns raised under article 3 of the Convention, the representative explained that any application for asylum made by a person who could not claim refugee status as defined in the 1951 Convention relating to the Status of Refugees, but who might be subjected to torture if he returned to his country of origin, was communicated to the Minister for Immigration, who could grant an entry permit for humanitarian reasons. Equally, extradition could not be granted in Australia if it involved a breach of the obligations assumed by the country under international treaties.

206. In reply to the question on the applicability of article 4, paragraph 2, of the Convention, the representative informed the Committee that the Australian legal system was a discretionary one in which the judge had the power to determine the nature of the offence and to decide the appropriate penalty in the light of the seriousness of the offence. They system also authorized the Attorney General to appeal against a penalty which was obviously inadequate. He also pointed out that current practice tended towards uniformity of sentences and that under Australian law the offence of assault included mental and psychological suffering.

207. With reference to the concerns raised in connection with articles 5 to 9 of the Convention, the representative stated that Australia had fulfilled its obligations under article 5 of the Convention to the greatest extent possible as federal law had explicitly provided that there was no legitimate excuse for acts of torture and that such acts were unacceptable whatever the circumstances. Concerning the matter of the universal jurisdiction of Australian justice, the representative indicated that any person who had committed an offence outside Australian territory was liable to the penalties provided for by Australian criminal law. The request of a foreign national who had committed a criminal offence and who had applied to stay in Australia although he would be examined in accordance with the obligations established by the Convention and the Crimes (Torture) Act 1988.

208. In connection with article 10, the representative informed the Committee, inter alia, that the training of police officers could vary from state to state, but all states had established intensive and regular programmes in which policed officers received information about their statutory obligations. The federal police also had a similar programme. Equally, a service of the Ministry of Immigration provided its officials with training which enabled them to recognize victims of torture or serious injury.

209. With regard to article 11 of the Convention, the representative indicated that there were adequate guarantees for the systematic review of all provisions relating to interrogation since the conduct of a trial was totally independent of the police investigation and complaints would be made either to the ombudsman or to members of Parliament and the press. The federal and state Government had initiated action to apply the recommendations of the Royal Commission and the reforms being implemented were likely to be applied to all, and not just to aboriginal detainees. Police custody rules varied according to each state, the maximum duration of detention being six hours. That limit could be extended for medical reasons, to allow time to enter into contact with a lawyer or if the judge lived far away. Any statement made by a person in police custody after the expiry of the maximum period of detention was inadmissible. Thus, pre-trial detention was unusual in Australia. There was no federal prison and any person found guilty of a violation of federal law served his sentence in a state prison. Concerning the internment of mentally ill patients, no one in Australia could be detained other than by a court order. Federal rules required that a decision concerning a mentally ill person's release from an institution or the continuation of his treatment had to be taken by at least two doctors. In addition, the Human Rights and Equal Opportunity Commission was carrying out a broad study on the rights of mentally ill persons.

210. With regard to articles 12 and 13 of the Convention, the representative indicated that although the Human Rights and Equal Opportunity Commission could deal with complaints for offences within the scope of the Convention, it had never had before it an allegation of conduct amounting to a violation of the Convention. The Convention against Torture did not seem to have been invoked

in Australia and, therefore, there were no statistics on cases of torture. On the other hand, all complaints against the police in 1989-1990 had been investigated and, in many cases, the court's conclusions had been in favour of the complaints.

211. With reference to article 14 of the Convention, the representative stated that he was not in a position to provide statistics concerning people who were in rehabilitation centres, but three grants had been made in 1989 for a treatment and rehabilitation programme for victims of torture and trauma in which doctors, dentists, occupational therapists, psychiatrists and voluntary associations were taking part. Financing for that programme was continuing. Moreover, a professor of medicine had been requested to draw up a report to determine the psychological and other problems that affected refugees and other victims and to define the services and assistance to be provided to such persons. In reply to concerns raised on the matter of compensation to victims of ill-treatment or torture, the representative stated that in addition to the compensation provided by law, the victim could bring an action against the person responsible and even, as appropriate, against the Government. There was also the possibility of ex gratia compensation, especially in cases of abusive sentencing.

212. Referring to issues raised under article 15 of the Convention, the representative said that, although legal systems and structures varied from one state to another, legislation on the gathering of evidence had not in any way amended the common law rule which prohibited the use of evidence obtained other than by lawful means. Not only were confessions or admissions obtained by torture inadmissible as evidence before the courts but so was all evidence obtained under similar conditions, including expert reports and statements.

213. In relation to article 16 of the Convention, the representative stated that corporal punishment was prohibited in most if not all public educational institutions. For those private schools which had reserved the right to apply such punishment, certain requirements had to be met for this right to be applied in practice. Replying to the concern expressed over the severity of penalties which could be incurred for offences of rape, the representative explained that the sentences given as examples in the report were the maximum penalty. In each case sentencing was left to the discretion of the judiciary and the sentence imposed would also depend on the circumstances of the offence.

Concluding observations

214. The Committee thanked the representatives of Australia for their precise and clear replies, as well as for their close cooperation with the Committee. It expressed the view that Australia was in the forefront of countries defending human rights and commended Australia particularly on the rehabilitation services offered to victims of torture.

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47. The Committee considered the second report of Australia (CAT/C/25/Add.11) at its 444th, 447th, and 451st meetings, on 16, 17 and 21 November 2000 (CAT/C/SR.444, 447 and 451), and adopted the following conclusions and recommendations.

A. Introduction

48. The Committee notes that the report was submitted with a delay of six years and was said to be the combined second and third periodic reports, the latter of which was due in 1998. The Committee welcomes the constructive dialogue with the delegation of Australia and greatly appreciates the lengthy and detailed information submitted both orally and in writing, which not only updated the report, which included information only until 1997, but also contained specific reference to each component part of the Australian federation, referred to factors and difficulties affecting the federation and gave answers to nearly all specific cases referred to it.

49. The Committee wishes to express its appreciation for the additional information submitted in 1992 (CAT/C/9/Add.11) in response to questions asked during the examination of the initial report of Australia.

50. The Committee also expresses its appreciation for the contribution of non-governmental organizations and statutory agencies to its work in considering the State party's report.

B. Positive aspects

51. The Committee particularly welcomes the following:

(a) The declarations made by Australia on 28 January 1993, under articles 21 and 22 of the Convention, and its ratification of the Optional Protocol to the International Covenant on Civil and Political Rights;

(b) The many investigations and inquiries that have been undertaken by, inter alia, Royal Commissions of inquiry, parliamentary committees, the Human Rights and Equal Opportunity Commission, ombudspersons and other ad hoc bodies, at both the federal and state levels, on matters of relevance to the implementation of the Convention;

(c) The consultations with national non-governmental organizations that took place during the preparation of the report;

(d) The information contained in the report about the expansion of the rehabilitation services available for victims of torture, and the contributions of the State party to the United Nations Voluntary Fund for the Victims of Torture;

(e) The measures taken to address the historical social and economic underpinnings of the disadvantage experienced by the indigenous population;

(f) The establishment of the independent statutory office of the Inspector of Custodial Services.

C. Subjects of concern

52. The Committee expresses its concern about the following:

(a) The apparent lack of appropriate review mechanisms for ministerial decisions in respect of cases coming under article 3 of the Convention;

(b) The use by prison authorities of instruments of physical restraint that may cause unnecessary pain and humiliation;

(c) Allegations of excessive use of force or degrading treatment by police forces or prison guards;

(d) Allegations of intimidation and adverse consequences faced by inmates who complain about their treatment in prisons;

(e) Legislation imposing mandatory minimum sentences, which has allegedly had a discriminatory effect regarding the indigenous population (including women and juveniles), who are over-represented in statistics for the criminal justice system.

D. Recommendations

53. The Committee recommends that:

(a) The State party ensure that all States and territories are at all times in compliance with its obligations under the Convention;

(b) The State party consider the desirability of providing a mechanism for independent review of ministerial decisions in respect of cases coming under article 3 of the Convention;

(c) The State party continue its education and information efforts for law enforcement personnel regarding the prohibition against torture and further improve its efforts in training, especially of police, prison officers and prison medical personnel;

(d) The State party keep under constant review the use of instruments of restraint that may cause unnecessary pain and humiliation, and ensure that their use is appropriately recorded;

(e) The State party ensure that complainants are protected against intimidation and adverse consequences as a result of their complaint;

(f) The State party continue its efforts to reduce overcrowding in prisons;

(g) The State party continue its efforts to address the socio-economic disadvantage that, inter alia, leads to a disproportionate number of indigenous Australians coming into contact with the criminal justice system;

(h) The State party keep under careful review legislation imposing mandatory minimum sentences, to ensure that it does not raise questions of compliance with its international obligations under the Convention and other relevant international instruments, particularly with regard to the possible adverse effect upon disadvantaged groups;

(i) The State party submit its next periodic report by November 2004, and ensure that it contains information on the implementation of the present recommendations and disaggregated statistics.