



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

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COMMITTEE AGAINST TORTURE

Fortieth session

SUMMARY RECORD (PARTIAL)* OF THE 815th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 30 April 2008, at 3 p.m.

Chairperson: Mr. GROSSMAN

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

Third periodic report of Australia (continued) (CAT/C/67/Add.7; CAT/C/AUS/Q/4, Add.1 and Add.1/Rev.1; HRI/CORE/1/Add.44)

1. At the invitation of the Chairperson, the members of the delegation of Australia resumed places at the Committee table.
2. Ms. MILLAR (Australia), replying to the Committee's questions on the implementation of the Convention, said that while the Constitution did not contain a specific prohibition against torture, the Government had ensured that its obligations under the Convention were implemented throughout Australia. The Human Rights and Equal Opportunity Commission had the power to investigate complaints of torture and cruel, inhuman and degrading treatment made under the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. While it did not have specific functions in relation to the Convention against Torture, there was no substantive gap in its capacity to investigate complaints of torture. The Government planned to undertake a national consultation to determine how best to protect human rights. That process might consider the desirability of a bill of rights and the powers and functions of the Commission.
3. On the issue of Australia's understanding of its non-refoulement obligation, the reference to "real" as compared to "substantial" risk was a question of terminology only. Australia considered that the test as set out in article 3 (2) of the Convention and the Committee's comments on that test reflected its obligations under article 3.
4. Mr. ILLINGWORTH (Australia), turning to the Committee's questions on immigration issues, said that Australia's settlement and support services to ensure refugees integrated into the community included specialized torture and trauma counselling. In order to be granted a protection visa, applicants had to warrant protection under the Convention relating to the Status of Refugees, or be family members. As of December 2005, the authorities had been legally obliged to decide on protection visa applications within 90 days, and to submit reports on any application not finalized in that period. The applications were assessed by the Department of Immigration and Citizenship officers, who were trained in sensitive interviewing techniques and appropriate handling of people believed to be suffering from post-traumatic stress disorder or other psychological or emotional issues. People granted protection visas received work rights, access to health care and an entitlement to support payments through the social security system. Those whose applications were refused received written statements of the reasons for the decision and were advised of their rights of review and appeal, and how to pursue them before an independent administrative tribunal. Unsuccessful applicants could challenge the lawfulness of the tribunal's decision in the courts.
5. Australia met its protection obligations to people who were not refugees through statutory powers that allowed the Minister for Immigration and Citizenship to grant visas in appropriate cases. Protection claims were initially assessed against the Convention relating to the Status of Refugees. If unsuccessful, the Minister could provide protection under the Convention

against Torture or the International Covenant on Civil and Political Rights. Cases in which possible non-refoulement obligations under those two instruments might exist were referred to the Minister. Intervention powers enabled the Minister to grant a visa to a person whose administrative review tribunal decision had been unsuccessful. Those powers could not be used to overturn a tribunal decision which was favourable to the applicant, and the Minister could not override decisions made by the courts.

6. Over 98 per cent of asylum-seekers were currently legally resident in Australia. Only 44 protection visa applicants were in detention. The Minister for Immigration and Citizenship had discretionary powers to facilitate a visa application by a detainee or to grant a visa to a person in immigration detention, in order to resolve their status permanently. Temporary release from detention was also possible while applicants pursued their case to remain in Australia. Immigration detention could be challenged in federal courts and the High Court, and judicial review sought directly in the High Court. A writ of habeas corpus could also be sought from the High Court, Federal Court or from State Supreme Courts. Immigration detainees could seek review of negative decisions, and had the right to legal advice. Detainees were also informed of their right to apply for visas. Protection visa applicants in immigration detention had access, free of charge, to professional migration assistance to prepare, lodge, and present a protection visa application, and for applications for merits review by the relevant tribunal of any refused decisions. The Commonwealth Ombudsman had a statutory role to review the cases of any persons who had been in immigration detention for more than two years. The Minister for Immigration and Citizenship planned to review the cases of detainees who had been detained for two years or longer and to seek alternatives where possible.

7. After extensive reforms in 2005, all families with children had been moved from immigration detention centres into alternative detention arrangements in the community. The Government had stated that children would no longer be held in immigration detention centres under any circumstances. All such families were referred to the Minister for Immigration and Citizenship within two weeks. Community detention enabled people to move about in the community without being accompanied. Government-funded NGOs ensured that people placed in community detention were properly supported, with access to medical services and pre-approved specialist services. Children and minors in community detention had access to primary and secondary schooling and to English language classes. Informal community-based education for adults was supported and encouraged.

8. Unauthorized asylum-seekers arriving by boat stayed in the facility on Christmas Island while any protection claims were processed, in accordance with domestic law, and had access to the High Court. Where appropriate, asylum-seekers could be released from detention on Christmas Island and granted temporary visas while awaiting the outcome of protection claims or arrangements for their departure. Children and their families were housed in the Christmas Island community, in accordance with the national policy.

9. Protection visa applicants in the community had access to financial assistance to cover basic needs and to general health care, pharmaceutical assistance, torture and trauma counselling services and bereavement assistance. Asylum-seekers released from detention had access to mainstream services such as public health care, mental health-care services, social security

benefits and assistance in finding long-term accommodation. Detainees could seek redress, including financial compensation, under the law of negligence or the criminal law for conditions of detention.

10. Six known allegations of sexual assault had been recorded from immigration detainees over the reporting period. The ultimate decision on whether there was sufficient evidence to prove an allegation lay with the authority of the relevant law enforcement agency involved. None of the cases had been substantiated during the reporting period. Mental health professionals were available to all people in immigration detention who had a perceived need for psychological services, including persons who had made allegations of sexual assault.

11. Mr. MANNING (Australia), replying to Committee questions on issues relating to counter-terrorism legislation, said that people suspected of involvement in terrorism were not subject to indefinite detention or indefinite interrogation under domestic legislation. A person suspected of committing a terrorism offence could be detained for up to 24 hours. Where reasonable and approved by a judicial officer, that period could be extended for the time necessary to collect and analyse information from overseas authorities or translate material, during which time questioning was suspended. Preventive detention was permitted in order to prevent an imminent terrorist attack or to preserve evidence of a terrorist attack. There were strict requirements on issuing preventive detention orders and safeguards were in place to ensure the proper treatment of detained persons.

12. A person could be detained for 24 hours with the possibility of extension for another 24 hours for the purposes of preventive detention. The period of preventive detention was limited to a maximum of 14 days. An original period of detention could be authorized by a senior police officer. An extension could be authorized by a judicial officer only. Questioning of a person held in preventive detention was prohibited. There had been no preventive detention orders made in Australia to date. The Australian Security Intelligence Organisation Act 1979 permitted the Australian Security Intelligence Agency to seek a warrant to question and in limited circumstances detain a person who might have information relevant to a terrorism offence. The process was subject to strict criteria relating to the issuing of a warrant, time limits on the period of questioning and length of detention and a protocol setting out procedures to be followed when detaining a person. A warrant allowed a person to be questioned for a maximum of 24 hours (or 48 hours where an interpreter was used). The Intelligence Agency could initially question a person for up to eight hours and had to obtain permission from a judicial officer to continue for up to another eight hours each time. In limited circumstances, a person could be detained for a maximum of 168 hours, for which a warrant was necessary. No detention warrants had been issued to date.

13. Police in Australia did not engage in interrogation. Government agencies had developed protocols to ensure interrogation techniques did not violate the prohibition of torture or cruel, inhuman or degrading treatment. In addition to the offence of torture contained in the Crimes (Torture) Act in relation to acts committed overseas by Australian citizens, specific criminal offences applied for officials who breached the safeguards set out in the Australian Security Intelligence Organisation Act and the preventative detention regimes.

14. Australia's counter-terrorism laws had been reviewed by the Security Legislation Review Committee and the Parliamentary Joint Committee on Intelligence and Security, which had

concluded that those laws were necessary based on the current threat of terrorism to Australia. The reviews had culminated in a series of recommendations which the Government was examining, together with the report from the Special Rapporteur on the question of torture.

15. Turning to Committee questions on issues relating to extradition, he said that Australia's extradition processes involved decisions by both the judiciary and the executive. The Attorney-General or the Minister for Home Affairs decided whether to accept an extradition request, and upon accepting, ensured that a magistrate was notified. The person was then arrested and the magistrate considered bail. The magistrate also determined whether the person was eligible for surrender to the requesting country. The person or country could seek review of that decision. If the magistrate determined the person to be eligible for surrender, or if the person consented to extradition, the Attorney-General or the Minister for Home Affairs then decided whether to surrender the person. If there was a substantial risk that the person might be tortured, the person would not be surrendered. A person could seek judicial review of a surrender decision, and the Court decision in such a case was binding on the Government.

16. In answer to questions on Australia's implementation of its Convention obligations in areas outside its territory, he said that Australia fully implemented its obligations under article 5 of the Convention. Any Australian national who committed an act of torture anywhere in the world could be prosecuted, as could a non-Australian who committed an act of torture anywhere in the world and who was present in Australia. Australian legislation criminalized all acts of torture committed in the course of an armed conflict, including war crimes, crimes against humanity and genocide offences, which had extraterritorial application.

17. Measures were taken to ensure that Australian forces complied with relevant obligations under the Convention in respect of the transfer of detainees to other forces. The Australian Defence Force did not transfer any person from its custody to the custody of the host State or another State's deployed personnel where there were substantial grounds to believe the person would be in danger of torture or any other form of cruel, inhuman or degrading treatment. Since Australia did not have a detainee management role in Afghanistan or Iraq, Australian forces operated in tandem with the United Kingdom in the case of Iraq and the Netherlands in the case of Afghanistan. Both those countries ensured that any detainee transferred to Iraqi or Afghan authorities was treated humanely.

18. Australia did not interrogate prisoners and had not been involved in guarding prisoners at the Abu Ghraib prison or any other Iraqi prison. Australia, together with other countries with troops present in Iraq, had urged the United States of America to investigate the incidents at Abu Ghraib and bring those responsible for the reprehensible conduct to justice. Australia had no plans to undertake a public inquiry of its own.

19. Ms. McCOSKER (Australia), replying to questions on prison populations, said that of the states and territories that had provided statistics on prison occupancy rates, only two had occupancy rates above capacity. Reducing imprisonment rates was a critical issue for the Western Australian Government, which was currently considering a number of short-, medium-, and long-term strategies. In the Northern Territory, a new low security facility had been completed with a capacity for up to 130 low security prisoners.

20. The Human Rights Law Resource Centre had published a report showing that of the roughly 15,000 people with major mental illnesses in Australian institutions during 2001, around one third were in prisons. The researchers had found that mental health assessment occurred in all jurisdictions and sectors when detainees were taken into a correction facility, and ongoing access to mental health care was available during detention. All jurisdictions also had programmes specifically directed towards assisting indigenous prisoners.

21. All Australian prisons including high security units operated consistently with the Standard Minimum Rules on the treatment of prisoners and the Convention. Inmates were referred to, and placed in, the High Risk Management Unit in New South Wales for assessment if it was established that they could not be safely managed in mainstream correctional centres. Placement was determined according to the offenders' risks, needs and security levels. Segregated custody was used only when an inmate presented a serious threat to the personal safety of any other person, the security of a correctional centre, or good order and discipline within a correctional centre. That Unit did not constitute solitary confinement. The duration of an offender's placement in the Unit was dependent on the offender's assessed level of security risk, or any significant change to that assessed security risk. The Unit provided education and psychoeducational counselling to inmates and was managed by a multidisciplinary team including a psychologist, a Justice Health nurse and Aboriginal support staff.

22. The only State that applied mandatory sentencing was Western Australia. Since 1997 there had been 350 cases of juveniles convicted and sentenced. The Western Australian Government considered detention as an appropriate way of dealing with serious repeat offenders, and mandatory sentencing as an appropriate and proportionate penalty in such cases.

23. The Australian Government was not aware of any cases that would amount to torture within the meaning of the Convention, which explained why there had been no cases of compensation provided by states and territories to victims of torture between 2000 and 2006. Persons proven to be victims of torture or cruel, inhuman or degrading treatment had different options for seeking compensation, including criminal injuries compensation, damages based on common law rights in tort or an ex gratia payment by the Government.

24. The Australian Government had ratified the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children on 14 September 2005. Australia was recognized as a trafficking destination country; however, its border security and visa framework, and absence of a land border meant that there were few opportunities to traffic people into the country. Current data indicated that the number of trafficking victims in Australia had been approximately 100 since 2004. Australia's anti-trafficking strategy addressed the full trafficking cycle, from recruitment to reintegration, as well as prevention, detection and investigation, prosecution and victim support. Since January 2004, the 150 investigations into trafficking allegations conducted by the Federal Police had led to 34 people being charged with trafficking-related offences and 7 convictions, 5 for slavery matters and 2 for sexual servitude. There were currently seven cases before the Australian courts, three of which were at the appeal stage.

25. Since the consideration of Australia's fourth and fifth periodic reports by the Committee on the Elimination of Discrimination against Women in 2006, significant progress had been

made in detecting, investigating and prosecuting people trafficking and related offences as a result of a collaborative and proactive approach by law enforcement and other government agencies. However, the nature of people-trafficking cases made their prosecution particularly sensitive and complex, especially where the witnesses were themselves victims. Also, people who had been convicted of trafficking often lodged appeals, which made for lengthy cases.

26. The Government was establishing a National Council to develop and implement a National Plan to Reduce Violence Against Women and Children in consultation with all stakeholders. Noteworthy initiatives in that connection included the harmonization of relevant legislation, and funding for research into international best practice models for working with perpetrators of violence and for the construction of shelters for the victims of domestic violence.

27. It had not been possible in the time available to obtain the data requested by Ms. Gaer concerning allegations of sexual assault by inmates against correction officers and female genital mutilation, nor to ascertain why the information provided by Queensland was not disaggregated for complaints of sexual violence.

28. For information on measures to protect women in prisons, including to counter over-crowding, she referred Ms. Gaer to paragraphs 150 to 193 and 338 to 417 of the written replies (CAT/C/AUS/Q/4/Add.1/Rev.1). The reasons for the frequency of offences by indigenous women were complex and the information currently available to the Government was contained in paragraphs 418 to 605 of the written replies. In response to Ms. Gaer's query concerning the table providing data on deaths in custody in the State of Victoria, she said that none of the four women who had died in custody was an indigenous Australian.

29. Turning to indigenous issues, she said that while the previous Government had voted against the United Nations Declaration on the Rights of Indigenous Peoples, the new Government based its partnership with Aboriginal people and Torres Strait Islanders on respect, cooperation and mutual responsibility - the core principles underlying the Declaration. Consultations on the Declaration were currently under way with key stakeholders, and the Government would inform the Committee of the outcome of the consultations at the appropriate time.

30. The Government was committed to taking follow-up action on the historic apology to indigenous Australians. Its priority was to close the gap between indigenous and non-indigenous Australians in terms of life expectancy, education and employment through a partnership approach based on seeking solutions at the community level and setting specific targets. The Government was considering the establishment of a joint policy commission led by the Prime Minister and the Leader of the Opposition, as well as an effective national representative body for indigenous Australians.

31. Many of the recommendations by the Royal Commission into Aboriginal Deaths in Custody had been implemented by governments throughout Australia. The Royal Commission had called for reports on the implementation of its recommendations within five years, which had elapsed in 1996/97. The State of Victoria had conducted an implementation review in 2005, which could be consulted on the relevant website. Information on the other states was not available.

32. Ms. MILLAR (Australia) said that all prison staff in Australia had to comply with the law and applicable standards in the relevant jurisdiction. For the time being she was unable to provide any information on training in privately-run facilities. She welcomed the Committee's invitation to give feedback on the reporting process; the meeting of the Committee with States parties might be the appropriate forum.

33. The new Government was committed to human rights and to strengthening Australia's engagement with the United Nations human rights treaty bodies, as was borne out by its detailed written and oral submissions to the Committee. Noteworthy achievements of the new Government in the area of human rights included the formal apology by the Prime Minister for the laws and policies of previous governments towards the indigenous population and the reform of the Australian immigration system. There were plans to accede to the Optional Protocol to the Convention against Torture and to consider the enactment of a specific offence of torture in Australian law.

34. Australia had a strong human rights record domestically and promoted human rights internationally. The system of parliamentary, judicial and administrative structures, laws and institutions ensured compliance with international obligations, including the Convention against Torture. She looked forward to the Committee's concluding observations and recommendations on how to build on the existing system.

35. Mr. MARIÑO MENÉNDEZ (Country Rapporteur), after thanking the delegation for its very detailed written and oral submissions, said that he still had some concerns. Given that torture was not classified as an offence at the federal level and the Federal Parliament had absolute sovereignty, there was the risk that in specific circumstances the standards of protection for detainees against torture and ill-treatment might be lowered. Moreover, discrepancies between federal and state laws might lead to discrimination. In that connection he requested information on preparations under way for the adoption of a federal law on the offence of torture. How would it affect existing state legislation?

36. He sought clarification regarding the statement in paragraph 22 of the written replies (CAT/C/AUS/Q/4/Add.1) to the effect that the provision of a medical practitioner of the arrested person's choice was not a statutory right. He asked whether the principle of non-refoulement was enshrined in legislation. He inquired whether the Federal Government followed up the situation of persons handed over to a third country who might be the victims of torture and for whom diplomatic guarantees had been previously sought and secured.

37. He asked for further details on the case of David Hicks, who had been tortured while held in Guantanamo Bay. It was his understanding that Australia did not uphold the principle of extraterritoriality for cases of torture against its citizens committed abroad.

38. Mr. GALLEGO CHIRIBOGA (Alternate Country Rapporteur) asked whether staff in privately-run immigration detention centres received appropriate training, for instance on the Convention and the Istanbul Protocol. The Palmer Report of 2005 had pointed to serious problems in the handling of immigration detention cases and the need for a change in attitudes. How had the Government followed up the Report? He sought clarification regarding the different forms of detention for children, including what the delegation had referred to as alternative detention arrangements in the community.

39. He shared the concerns of Mr. Mariño Menéndez about issues arising from the common law system for the classification of the offence of torture and proposed new legislation. Would the definition of torture under the new legislation be broader than in the Convention? Would it be in line with the Committee's general comment No. 2 on the implementation of article 2? He hailed the Government's efforts to deal with indigenous issues, which would serve as an example for other States in their treatment of minorities. He looked forward to receiving information on sexual violence and arrest, which also tied in with the question of minorities.

40. Ms. MILLAR (Australia) reassured the Committee that the intent of the new federal legislation was to ensure greater compliance with Australia's human rights obligations and not the contrary.

41. Mr. MANNING (Australia), giving a brief explanation of the operation of the Australian Constitution, said that the Commonwealth or Federal Government retained a measure of authority to legislate over certain matters, leaving the undefined residue to state governments. However, matters pertaining to external affairs and Australia's obligations under international treaties fell within the jurisdiction of the Federal Government, which had the responsibility to ensure that state legislation was in conformity with such commitments. The risk of lowered standards was thereby averted. In situations where there existed state and federal legislation on the same issue, there were currently mechanisms in place to ensure that legislation at the state and federal levels were complementary rather than exclusive.

42. The consideration and characterization of torture as an offence was under way, but it was too early for the delegation to be definite about the extraterritorial extent of that offence and how it would operate. He assured the Committee that it would certainly not exclude the operation of complementary state criminal laws since torture was already prohibited under general state legislation.

43. With respect to diplomatic assurances, he said that Australia was fully committed to its obligations under article 3 of the Convention, and had never relied on diplomatic assurances as the basis upon which to remove a person from its territory.

44. On the subject of the extraterritorial application of norms, with respect to the Hicks case, he said that no allegations had been made to the effect that Australia had failed to comply with its obligations with regard to Mr. Hicks, and that, in fact, the Government had made a number of approaches to the United States authorities to ensure that he received a fair and expeditious trial. Australia moreover had not restricted any further action he might wish to take.

45. Mr. ILLINGWORTH (Australia), responding to the query on the codification of the principle of non-refoulement in domestic legislation, said that the principle was of fundamental importance to the Government. Under the concept of a universal visa system, Australian legislation sought to confer lawful status on all persons and codified the criteria on the basis of which visas were granted. He therefore referred to his previous explanations on the creation of codified mechanisms which granted protection and rights to migrants and refugees through the normal administrative decision-making process, and said that the principle of non-refoulement was effectively supported through arrangements established by the Government.

46. The questions on immigration detention and the Palmer Report raised some fundamental issues concerning detention management which needed urgent attention. At the time the report had been released, critical emphasis had been placed on introducing cultural change within the Department concerned. Immigration detention standards that were attached to contracts with service providers set out principles underlying care and security. Underpinning the redevelopment of Australia's detention arrangements, community groups and experts in several areas were consulted to ensure that a wide gamut of special needs of individual detainees were met. At present, Australia had a historically low number of persons in detention and each case was examined individually to ensure that it was reviewed within a period of 28 days. A vast number of persons processed as detainees annually were not asylum-seekers, but many were fishermen intercepted in Australian territorial waters.

47. According to the immigration policy, most persons received bridging visas, which did not entail their detention. A range of community-based options had been adopted to allow their freedom of movement while their status was under consideration.

48. Ms. BELMIR asked about the importance and usefulness of a charter of freedoms, whether discussion could actually lead to a solution of problems, and whether the Government believed the charter was helpful. Given the fact that detention had been delegated to the private sector under contractual arrangements, she was curious to know who determined what level of force was considered reasonable or necessary, how the use of such force was monitored, and what the Government's share of responsibility was in practice, particularly in the case of deaths in detention or with respect to conditions that could be construed as leading to the premeditated demise of a detainee.

49. Ms. GAER requested information on legislation that ensured that asylum-seekers were never returned to face the risk of torture, and asked whether there were prohibitions against such returns at the state or federal level.

50. Ms. SVEAAS stressed the need for very clear guidelines on interrogation practices, and asked whether there was an overview of transparency on interrogation methods that could cause potential physical or mental harm. The Government should closely examine the definition of torture to ensure that legislation was homogenous nationwide, so as to avoid loopholes. She also said that she was not satisfied with the response given by the delegation to the question concerning persons tortured in Australia. The fact that there had not been any recorded cases seemed to highlight the need for the definition of torture to be improved. While commending the Australian Government for its work on revising malpractices that had affected refugees in detention in the past, she said that she found the term "community detention" unacceptable, particularly with respect to the detention of children, and suggested that the expression should be reformulated.

51. Ms. KLEOPAS (Rapporteur) referred to the intention of the Australian Government to introduce a protective visa for persons who were at risk of being tortured if they were refused admission to Australia. She asked whether the intended mechanism would be similar to, but distinct from, the judicial review process applicable to refugees.

52. Ms. MILLAR (Australia), responding to the query on the bill of rights, reiterated that the Federal Government was committed to its plan to undertake nationwide consultation on the protection and promotion of human rights.

53. Mr. MANNING (Australia) said private entities providing detention services were subject to the same penal and civil legislation as the Government, and said that there were appropriate procedures in place to implement existing laws for the prevention of human rights violations. In terms of the monitoring of interrogation methods, he assured the Committee that Australia accepted the full definition of torture, including its impact on mental suffering.

54. Mr. ILLINGWORTH (Australia) said that the procedures adopted by Australia to handle immigration cases were intended to deliver practical outcomes. Persons who believed they had been subjected to mistreatment during detention were able to avail themselves of a number of domestic remedies, and that possibility was clearly indicated in the immigration standards. He clarified that apart from the fact that their legal status meant that they did not have a visa, persons in community detention were in no way hampered in terms of mobility, and they were able to lead normal lives. Their care and living conditions were comparable to those of a regular residential arrangement. All persons seeking protection under the Convention against Torture were channelled into a process through which their cases were meticulously examined to determine the appropriate form of protective visa regime covering their particular set of circumstances.

55. The members of the delegation of Australia withdrew.

The discussion covered in the summary record ended at 5.10 p.m.