

## Committee against Torture

### **Concluding observations on the fourth and fifth periodic reports of Australia**

#### **ADVANCE UNEDITED VERSION**

1. The Committee against Torture considered the combined fourth and fifth periodic reports of Australia (CAT/C/AUS/4-5) at its 1260th and 1263th meetings, held on 10 and 11 November 2014 (see CAT/C/SR.1260 and 1263), and adopted at its 1284th and 1285th meetings, held on 26 November 2014 (see CAT/C/SR.1284 and 1285), the following concluding observations.

#### **A. Introduction**

2. The Committee expresses its appreciation to the State party for having accepted the optional Simplified Reporting Procedure (LOIPR) allowing for a more focused dialogue between the State party and the Committee.

3. The Committee welcomes the interactive dialogue held with the State party's high-level multisectoral delegation, as well as the additional information and explanations provided by the delegation to the Committee.

#### **B. Positive aspects**

4. The Committee welcomes the State party's ratification of or accession to the following international instruments:

(a) The Convention on the Rights of Persons with Disabilities, in 2008;

(b) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in 2008;

(c) The Optional Protocol to the Convention on the Rights of Persons with Disabilities, in 2009.

5. The Committee welcomes the legislative changes in areas of relevance to the Convention, including:

(a) The Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act 2010, enacting a new offence of torture in the Criminal Code and ensuring non-reintroduction of the death penalty by a State or a Territory;

(b) The Human Rights (Parliamentary Scrutiny) Act 2011, which requires an assessment of compatibility of new legislation with human rights and establishes a Commonwealth Parliamentary Joint Committee dedicated to human rights scrutiny;

(c) The Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011;

(d) The Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2012;

(e) The Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013;

(f) The Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013.

6. The Committee welcomes the efforts of the State party to give effect to the Convention, including:

(a) The release of the National Human Rights Action Plan, in December 2012;

(b) The adoption of a National Action Plan to reduce Violence against Women and Their Children 2010-2022;

(c) The creation of the position of the Independent National Security Legislation Monitor in 2010, to, *inter alia*, review counter-terrorism and national security legislation taking into account international human rights obligations;

(d) The establishment of a public online database of recommendations from United Nations human rights mechanisms.

7. The Committee notes with appreciation the existence of a vibrant civil society that significantly contributes to the monitoring of torture and ill-treatment, thereby facilitating the effective implementation of the Convention in the State party.

## **C. Principal subjects of concern and recommendations**

### **National Human Rights Institution**

8. The Committee welcomes the work of the Australian Human Rights Commission. However, it notes that the Commission does not yet have statutory powers to monitor the implementation of the State party's obligations under the Convention (art. 2).

**The State party should consider strengthening the Commission by providing it statutory powers to monitor the implementation of the State party's obligations under the Convention.**

### **Violence against women**

9. While welcoming the legislative and other measures adopted by the State party to prevent and combat violence against women, the Committee notes with concern reports on the persistence of violence against women, which disproportionately affects indigenous women and women with disabilities. The Committee is also concerned at information received that over 50 percent of the cases of violence against women are not reported (arts. 2, 12, 13, 14 and 16).

**In light of its General Comment No. 2 (CAT/C/GC/2), the Committee recommends that the State party redouble its efforts to prevent and combat all forms of violence against women throughout its territory by *inter alia*:**

(a) **Taking measures to facilitate the lodging of complaints by victims and to effectively address the barriers that may prevent women from reporting acts of violence against them;**

(b) **Ensuring the effective enforcement of the existing legal framework by promptly, effectively and impartially investigating all reports of violence and prosecuting and punishing perpetrators in accordance with the gravity of their acts;**

(c) **Strengthening public awareness-raising activities to fight violence against women and gender stereotypes;**

**(d) Increasing its efforts to address violence against indigenous women and women with disabilities;**

**(e) Guaranteeing in practice that all victims benefit from protection and have access to sufficient and adequately funded medical and legal aid, psychosocial counselling and social support schemes, that take into account their special needs, and that victims not placed under the “safe at home” model have access to adequate shelters;**

**(f) Further intensify community based approaches to address violence against women with the involvement of all relevant stakeholders.**

#### **Trafficking in persons**

10. The Committee greatly values the comprehensive and strong legislative framework and other measures adopted to address trafficking in persons. Human trafficking remains however a matter of concern as the State party reportedly continues to be a destination country. The Committee notes with satisfaction the Human Trafficking Visa Framework adopted by the State party. Temporary Bridging F visas are granted to any person identified as a suspected victim of human trafficking, but the further visas that would allow victims *inter alia* to have access to benefits of family reunification and effective support are linked to the involvement of the victim in criminal proceedings (arts. 2, 12, 13, 14 and 16).

**The State party should continue and strengthen its efforts to combat trafficking in persons. In this respect, additional necessary measures required include:**

**(a) Vigorously enforce the existing legislative framework and promptly, thoroughly and effectively investigate, prosecute and punish with appropriate penalties trafficking in persons and related practices, ensuring the allocation of all means required for such purpose;**

**(b) Guarantee that sustained, equal and effective assistance is provided to all victims of trafficking, in particular taking into consideration that in numerous circumstances victims are in a psychological or familiar situation that prevents them from participating in criminal proceedings.**

#### **Arrangements for the custody and treatment of persons deprived of liberty**

11. The Committee is concerned at reports that, despite remedial measures taken by authorities, overcrowding remains a problem in many places of deprivation of liberty. It is also concerned at reports that, in a number of places of deprivation of liberty, the material conditions, including in the Roebourne Regional Prison, and health care services, in particular mental health services, are inadequate. The Committee, while taking note the information provided by the delegation, is also concerned that, during the reporting period, the reported number of deaths in custody, including of indigenous people, is high. In this respect, the Committee takes note of the information provided by the delegation that all deaths in custody must be referred to a coroner for investigation (arts. 2, 11 and 16).

**The State party should strengthen its efforts to bring the conditions of detention in all places of deprivation of liberty in line with relevant international norms and standards, including the Standard Minimum Rules for the Treatment of Prisoners and the Bangkok rules, in particular by: a) continuing to reduce overcrowding, particularly through the wider application of non-custodial measures as an alternative to imprisonment, in the light of the Tokyo Rules; and b) ensuring that adequate somatic and mental health care is provided for all persons deprived of their liberty, including those in immigration detention. It should also increase its efforts to prevent deaths in custody and further strengthen its efforts to ensure that all incidents of**

**death in custody are promptly, effectively and impartially investigated and, on a finding of criminal responsibility, lead to a penalty proportional to the gravity of the offence.**

#### **Indigenous people in the criminal justice system**

12. Noting with satisfaction the measures taken by the State party to address the situation of indigenous people, including the Indigenous Advancement Strategy, the Committee is concerned at information received that indigenous people continue to be disproportionately affected by incarceration, reportedly representing around 27 percent of the total prisoner population while constituting between two and three percent of the total population. In this respect, the Committee notes with concern the reports indicating that overrepresentation of indigenous people in prisons has a serious impact on indigenous young people and indigenous women. The Committee is also concerned at reports that mandatory sentencing, still in force in several jurisdictions, continues to disproportionately affect indigenous people. Furthermore, and while welcoming the information concerning the legal assistance services available for indigenous people, the Committee is concerned at reports that these services are not adequately funded (arts. 2, 11 and 16).

**The State party should increase its efforts to address the overrepresentation of indigenous people in prisons, in particular its underlying causes. It should also review mandatory sentencing laws with a view to abolishing them, giving judges the necessary discretion to determine relevant individual circumstances. The State party should also guarantee that adequately funded, specific, qualified and free-of-charge legal and interpretation services are provided as from the outset of deprivation of liberty.**

#### **Use of conducted energy weapons (Tasers)**

13. While noting the information provided by the delegation that the use of conducted energy weapons is tightly regulated and controlled in each jurisdiction and subject to oversight and scrutiny processes, the Committee is concerned at reports of cases of inappropriate or excessive use (arts. 2, 12, 13, 14 and 16).

**Taking into consideration the lethal and dangerous impact of conducted energy weapons on the physical and mental state of targeted persons, the State party should consider abolishing their use. If that is not the case, it should adopt the necessary measures to effectively ensure that, in all jurisdictions, conducted energy weapons are used exclusively in extreme and limited situations – where there is a real and immediate threat to life or risk of serious injury – as a substitute for lethal weapons and by trained law enforcement personnel only. In this respect, the State party should consider adopting national uniform rules governing the use of such weapons with a view to ensuring that a high threshold for their use is established and expressly prohibiting their use on children and pregnant women. The State party should also ensure that all jurisdictions strengthen their efforts to effectively provide regular adequate training to law enforcement personnel entitled to use conducted energy weapons. In addition, the State party should ensure that all allegations of excessive or inappropriate use of these weapons are promptly, impartially and thoroughly investigated and that victims obtain redress and fair and adequate compensation.**

#### **Counter-terrorism legislation**

14. Bearing in mind its previous concluding observations (CAT/C/AUS/CO/3, para. 10) and the latest concluding observations of the Human Rights Committee (CCPR/C/AUS/CO/5, para. 11), the Committee remains concerned about aspects of the State party's counter-terrorism legislation, including the broad definition of "terrorist act"

as well the reports concerning the need to further restrict the warrant powers provided to the Australian Security Intelligence Organisation (ASIO) to detain a person for the purpose of questioning with the possibility of restricting access to a lawyer of choice. In this respect, the Committee appreciates the information provided by the State party that ASIO's detention powers have never been utilised (art. 2).

**The State party should take the necessary legislative or other measures to adopt a more precise definition of terrorist act as well as to ensure that all counter-terrorism and national security legislation, policies and practices are in full compliance with the Convention and that adequate and effective legal safeguards are in place.**

#### **Non-refoulement**

15. The Committee is concerned at policies and practices currently applied in relation to persons who attempt to arrive or arrive irregularly in the State party, in particular the policy of intercepting and turning back boats, without due consideration of the State party's obligations under article 3 of the Convention. In addition, the Committee is concerned at bills introduced into Parliament that would reduce some of the existing statutory standards against refoulement, in particular the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014, which *inter alia* establishes that "An officer's duty to remove as soon as reasonably practicable an unlawful non-citizen under section 198 [of the Migration Act 1958] arises irrespective of whether there has been an assessment, according to law, of Australia's non-refoulement obligations in respect of the non-citizen" (arts. 2 and 3).

**The State party should adopt all the necessary legislative and other measures with a view to ensuring that it effectively meets its non-refoulement obligations under the Convention, in particular with regard to all asylum seekers and other persons in need of international protection who attempt to arrive or arrive in the State party, regardless of the mode and date of arrival. The State party should guarantee that all asylum claims are thoroughly examined and that the persons concerned have a real opportunity to effectively challenge any adverse decisions adopted concerning their claims. It should also guarantee that all asylum seekers have access to independent, qualified and free-of-charge legal assistance during the entire asylum procedure. The State party should also refrain from adopting any legislative or other measures that may lower the existing safeguards and standards of protection which could constitute a violation of its obligations under the Convention.**

#### **Mandatory immigration detention, including of children**

16. The Committee remains concerned that detention continues to be mandatory for all unauthorised arrivals, including for children, until the person concerned is granted a visa or removed from the State party. It is also concerned that the law does not establish a maximum length for a person to be held in immigration detention, reportedly resulting in protracted periods of deprivation of liberty. The Committee is further concerned at reports that stateless persons whose asylum claims have not been accepted and refugees with an adverse security or character assessment can be detained indefinitely (arts. 2, 11 and 16).

**The State party should adopt the necessary measures with a view to considering: a) repealing the provisions establishing the mandatory detention of persons entering its territory irregularly; b) ensuring that detention should be only applied as a last resort, when determined to be strictly necessary and proportionate in each individual case, and for as short a period as possible; and c) establishing, in case it is necessary and proportionate that a person should be detained, statutory time limits for detention and access to an effective judicial remedy to review the necessity of the detention. It should also ensure that persons in need of international protection, children and**

families with children are not detained or, if at all, only as a measure of last resort, after alternatives to detention have been duly examined and exhausted, when determined to be necessary and proportionate in each individual case, and for as short a period as possible. The State party should also continue and redouble its efforts with a view to expanding the use of alternatives to closed immigration detention. It should also adopt all necessary measures to ensure that stateless persons whose asylum claims were refused and of refugees with adverse security or character assessments are not held in detention indefinitely, including by resorting to non-custodial measures and alternatives to closed immigration detention.

#### **Offshore processing of asylum claims**

17. The Committee is concerned at the State party's policy of transferring asylum seekers to the regional processing centres located in Papua New Guinea (Manus Island) and Nauru for the processing of their claims, despite reports on the harsh conditions prevailing in these centres, including mandatory detention, including for children; overcrowding, inadequate health care; and even allegations of sexual abuse and ill-treatment. The combination of these harsh conditions, the protracted periods of closed detention and the uncertainty about the future reportedly creates serious physical and mental pain and suffering. All persons who are under the effective control of the State party, because *inter alia* they were transferred by the State party to centres run with its financial aid and with the involvement of private contractors of its choice, enjoy the same protection from torture and ill-treatment under the Convention (arts. 2, 3, 16).

**The State party should adopt the necessary measures to guarantee that all asylum seekers or persons in need of international protection who are under its effective control are afforded the same standards of protection against violations of the Convention regardless of their mode and/or date of arrival. The transfers to the regional processing centres in Papua New Guinea (Manus Island) and Nauru, which in 2013 were deemed by UNHCR not to provide "humane conditions of treatment in detention", does not release the State party from its obligations under the Convention, including prompt, thorough and individual examination of the applicability of article 3 in each case and redress and rehabilitation when appropriate.**

#### **Identification of victims of torture among asylum seekers**

18. While taking note of the information provided during and after the dialogue, the Committee considers that it does not have sufficient information on the screening carried out with regard to persons who irregularly seek to arrive or arrive to the State party, in particular in the context of the policy of intercepting and turning back boats, so as to be able to assess whether adequate conditions to conduct thorough evaluations that permit to effectively identify victims of torture are in place (arts. 2, 3 and 16).

#### **The State party should:**

(a) **Ensure that effective measures are in place to identify as early as possible all victims of torture among asylum seekers and other persons in need of international protection, and provide them with priority access to the refugee determination procedure and access to treatment of urgent conditions;**

(b) **Provide a thorough medical and psychological examination and report, considering the application of the procedures set out in the Istanbul Protocol, by adequately trained independent health experts, with the support of professional interpreters, when signs of torture or traumatization have been detected during the personal interviews and, on that basis, provide access to immediate rehabilitation;**

**(c) Provide regular training on the procedures established in the Istanbul Protocol to asylum officers and health experts participating in the asylum determination procedure, including on training on detecting psychological traces of torture and on gender-sensitive approaches.**

#### **Child sexual abuse**

19. While welcoming the establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse, the Committee remains concerned *inter alia* as to whether the outcome of its work will result in criminal investigations, prosecutions and redress and compensation for victims. Furthermore, the Committee is concerned at the information received regarding the reported reply that the representative of another State party provided to the Royal Commission at one of its hearings that providing all documents regarding sexual abuse by priests in the State party was “unreasonable” and that they represented the “internal working documents of another sovereign State.” The Committee, while taking note of the information provided by the delegation that the Royal Commission is independent and that it has statutory powers to compel the provision of documents, reminds the State party that it has the responsibility to ensure that all reports of breaches of the Convention are promptly and impartially investigated and that assistance is sought from other States parties when necessary to conduct such investigations (arts. 2, 9, 12, 14 and 16).

**The State party should adopt the necessary measures to ensure that:**

**(a) Adequate support is provided to the Royal Commission to enable it to carry out its work efficiently, including by assisting it in seeking relevant information from other States parties;**

**(b) All allegations of sexual abuse, regardless of the time of their commission, are promptly, impartially, thoroughly and effectively investigated and perpetrators brought to justice and, if found responsible, punished in accordance with the gravity of their acts. In this respect, it should ensure that the work of the Royal Commission supplements criminal prosecutions and court proceedings and is not a substitute for them. The State party should also take all appropriate measures to seek from other States parties the assistance that is necessary, including the supply of all evidence at their disposal, to ensure that meaningful and thorough investigations are carried out;**

**(c) Victims obtain redress and fair and adequate compensation, including the means for as full rehabilitation as possible.**

#### **Sterilisation of persons with disabilities**

20. The Committee is concerned at reports received indicating that involuntary or coerced sterilization of children and adults with disabilities is an ongoing practice in the State party (arts 2 and 16).

**The Committee recommends that the State party enact national uniform legislation prohibiting, except where there is a serious threat to life or health, the use of sterilisation without the prior, free and informed consent of the person concerned, and ensure that, once adopted, this legislation is effectively applied.**

#### **Parliamentary Joint Committee on Human Rights**

21. While noting with great appreciation the establishment of the Parliamentary Joint Committee on Human Rights (see paragraph 5(b) above), the Committee observes with concern the reports that its recommendations are not always taken into account (art. 2).

**The Committee encourages the State party to implement the recommendations of the Parliamentary Joint Committee on Human Rights as a means of guaranteeing that its legislative framework is fully in line with its human rights obligations, including under the Convention.**

**Other issues**

22. While welcoming that the State party has signed the Optional Protocol to the Convention against Torture on 19 May 2009 and that it is committed to its ratification as a matter of priority (A/HRC/17/10, para. 31), the Committee encourages it to adopt all the necessary measures to accelerate the process of ratification in order to become a party to the Optional Protocol as soon as possible.

23. The Committee invites the State party to become a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; the Optional Protocol to the Convention on the Rights of the Child on a communications procedure and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

24. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in all appropriate languages, through official websites, the media and non-governmental organizations.

25. The Committee requests the State party to provide, by 28 November 2015, follow-up information in response to the Committee's recommendations contained in paragraphs 9, 12, 15 and 16 of the present document.

26. The State party is invited to submit its next report, which will be the sixth periodic report, by 28 November 2018. For that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.

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