



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

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**Committee against Torture**

**Fifty-third session**

**Summary record of the 1260th meeting**

Held at the Palais Wilson, Geneva, on Monday, 10 November 2014, at 10 a.m.

*Chairperson:* Mr. Grossman

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(*continued*)

*Combined fourth and fifth periodic reports of Australia*

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*The meeting was called to order at 10 a.m.*

**Consideration of reports submitted by States parties under article 19 of the Convention** *(continued)*

*Combined fourth and fifth periodic reports of Australia (CAT/C/AUS/4-5; CAT/C/AUS/Q/5)*

1. *At the invitation of the Chairperson, the delegation of Australia took places at the Committee table.*
2. **Mr. Quinn** (Australia), introducing his country's combined fourth and fifth periodic reports (CAT/C/AUS/4-5), said that, since ratifying the Convention in 1989, Australia had worked to ensure that its laws, policies and practices were consistent with its obligations under the Convention. Under the federal constitutional system, legislative, executive and judicial powers were shared between the central Government and the governments of the six states and two self-governing territories. The Government worked closely with the state and territory governments on many key law and policy areas and had consulted them in responding to the Committee's list of issues (CAT/C/AUS/Q/5). It also worked closely with the Australian Human Rights Commission and was grateful for assistance provided by non-governmental organizations (NGOs) in the preparations for the current dialogue. Civil society played an important role in implementing the Convention and in monitoring the Government's policies and programmes in relation to Australia's international obligations.
3. In 2010, the Government had included a specific offence of torture in the Commonwealth Criminal Code, extending geographical jurisdiction, as the Committee had recommended in its previous concluding observations (CAT/C/AUS/CO/3, para. 8). In recognition of the serious nature of the crime of torture and its widespread international condemnation, the federal offence of torture under the Commonwealth Criminal Code now applied to acts of torture, whether or not the conduct constituting the alleged offence occurred in Australia, and whether or not the result of the conduct occurred in Australia.
4. The Government had taken a comprehensive approach to combating human trafficking, slavery and forced marriage. In 2012, it had amended the Commonwealth Criminal Code to strengthen the existing offences of human trafficking, slavery and slavery-like practices and to introduce the new stand-alone offences of forced marriage and forced labour, including a new offence of causing a person to enter into a forced marriage and being a party to a forced marriage. In 2013, it had also amended domestic legislation to protect vulnerable witnesses giving evidence in Commonwealth criminal proceedings, including victims of human trafficking, slavery and slavery-like offences. Key amendments allowed victims of trafficking to give evidence by closed-circuit television, videolink or video recording, to have their contact with defendants or members of the public limited, and to have a support person with them while they gave evidence. It was also an offence to publish material identifying a trafficked person. The Government had provided more than \$A 150 million over the previous 10 years to support several domestic, regional and international anti-trafficking initiatives.
5. The Government remained committed to an effective and robust international protection regime for immigration matters. In response to the increasing numbers of women, men and children lost at sea in recent years while seeking to reach Australia, the Government had strengthened its policies to ensure the protection of migrants, including asylum seekers, and prevent their exploitation at the hands of people smugglers. It had increased its Special Humanitarian Programme from 500 to 5,000 places, within a general humanitarian programme of 13,750 places, thereby responding to the call by the United Nations High Commissioner for Human Rights for a coordinated resettlement response to humanitarian crises. In 2014–2015, it had pledged to provide a minimum of 2,200 places

for Iraqi nationals, including ethnic and religious minorities escaping the violence in northern Iraq and fleeing to neighbouring countries. It had improved the design and procedures of its migration programmes to enhance fairness, accountability and integrity. It recognized the dual humanitarian imperative of affording protection where it was owed and protecting people from abuse and exploitation. It was committed to working with other countries in the region and international agencies to enhance protection, including through the implementation of effective refugee status determination processes. However, a robust returns process for dealing with those found not to be in need of protection was fundamental to the integrity of status determination processes.

6. In March 2012, the Parliamentary Joint Committee on Human Rights had been established in order to ensure that all federal legislation was scrutinized against the country's international human rights obligations, including the Convention. New legislation also required that all bills and legislative instruments brought before Parliament were tabled with a statement of compatibility, setting out how the legislation was consistent with the country's international human rights obligations. The Joint Committee engaged directly with the sponsors of legislation to seek further information before forming a view on compatibility, thus encouraging early and ongoing consideration of human rights issues in policy and legislative development.

7. The Government had made significant changes to the way it managed indigenous affairs, prioritizing them at the highest levels of government, including by establishing the Prime Minister's Indigenous Advisory Council and working towards recognition of indigenous peoples in the Constitution. Working in close cooperation with states and territories to further the rights and interests of the indigenous population, the Government had committed \$A 4.8 billion over four years to the Indigenous Advancement Strategy. The Strategy would support the two key priorities of getting children to school and adults to work, as well as providing an opportunity for practical engagement with indigenous Australians, service providers, business and government to make sure solutions were tailored to local needs and targeted the Government's priority areas. The Government was currently considering ways to improve community safety and reduce indigenous contact with the justice system, within its wider aim of delivering real and lasting improvements to the lives of indigenous peoples in Australia.

8. **The Chairperson**, speaking as Country Rapporteur, welcomed the introduction of the specific offence of torture in the Commonwealth Criminal Code, the legislative amendments on human trafficking, the Human Rights Framework, the National Plan to Reduce Violence against Women and their Children, the Migration Amendment (Complementary Protection) Act 2011 and the Parliamentary Joint Committee on Human Rights.

9. The Committee was concerned that mandatory detention was the rule for all refugee applicants and asylum seekers arriving in Australia by boat, regardless of their individual circumstances. He asked whether they were informed, in a language they understood, about how they could challenge their detention and whether they were provided with legal support in sufficient time to prepare their claims. It would be useful to have additional information on how the State party processed claims for refugee status, particularly on the time frames for such processing in Nauru and Papua New Guinea. He asked how refugee determination had been handled in several recent, widely publicized cases of high numbers of asylum seekers arriving by boat from Sri Lanka. The Committee would appreciate information on any investigations into deaths of detainees and cases in which detainees were denied appropriate treatment in the regional processing centres. He asked whether the State party planned to amend its policy of detaining children in those centres. He would welcome the delegation's comments on the somewhat wide-ranging provisions in the code of conduct for asylum seekers who were released from detention. He requested details of

the steps the State party took to ascertain whether the victims of people smuggling had valid refugee claims. It would be useful to receive data on the people smugglers who had been detained and sentenced by the State party.

10. Domestic violence had been considered to be within the purview of the Convention since at least 2004 and he was surprised by the State party's assertion to the contrary. Aboriginal women accounted for a disproportionately large share of the victims of domestic violence, and although the State party's adoption of legislation to combat that scourge was commendable, he wished to know what resources had been allocated to ensure its implementation.

11. He asked what had happened to the asylum seekers being held on Manus Island, none of whom, it seemed, had been found to have a valid claim to refugee status. In the detention centre on Nauru, by contrast, there had been allegations of sexual abuse of children. Information on whether there had been an investigation, punishment or compensation, and on whether the detention centre staff included psychiatrists, would be welcome. He wondered, too, whether the State party did not draw on its many civil society organizations quite as heavily as it could in an effort to improve the lot of those being held in immigrant detention centres. He asked the delegation for a response to reports that some NGOs working with the Government had been contractually obliged to refrain from making statements critical of the Government; the Committee would appreciate seeing copies of the contracts entered into with those NGOs. Questions had also been raised about the training received by the private security guards and welfare staff in the centres. The Committee would thus welcome the chance to peruse any relevant training manuals. He requested information on the status of the Human Rights and Anti-Discrimination Bill 2012, the plans to amend the Constitution in order to prevent race-based discrimination, and the plans to involve the country's commendably large number of NGOs more closely in work relating to such issues as immigration and violence against women.

12. He asked what was the Government's thinking on the threats often faced by the relatives of trafficking victims in their home countries, requested clarification of the steps taken to ensure that obligations under international treaties applied equally in all the country's states and territories, and enquired whether at long last ratification of the Optional Protocol to the Convention against Torture was imminent.

13. **Mr. Zhang** Kening (Country Rapporteur) noted a number of encouraging developments in the area of promoting human rights awareness. He nonetheless asked how the Government was responding to reports that in some prisons inmates were being held in stacked shipping containers or in otherwise unsatisfactory conditions, and wondered what it was doing to meet the health needs of the prison population, which were greater than those of the general population. Mental health services, for instance, were rarely available to prisoners, and access to alternative health-care providers was severely restricted. He also wished to know what steps the Government was taking to reduce the comparatively high numbers of imprisoned Aboriginal people, including women and young people, and people with disabilities. In addition, he wondered what had been done to ensure that the recommendations of the Royal Commission into Aboriginal Deaths in Custody had been implemented in all the country's states and territories. The news, announced just four days earlier, that the regional processing centre on the island of Nauru would become an open centre that would allow transferees freedom of movement on the island was most welcome. Lastly, he enquired whether the delegation could provide information on any decisions in which police or prison officers had been prosecuted for torture or excessive use of force, and how the delegation would characterize the prospects for further developing alternatives to prison sentences.

14. **Mr. Modvig** asked how asylum seekers who had been victims of torture were identified. He expressed particular interest in learning how such identification could be

effected at sea. He also requested information on the health-care facilities available to detained asylum seekers on Manus Island and wished to know whether the standard of care available there was equivalent to that available in Australia. Lastly, regarding the investigation into allegations of sexual abuse at the processing centre on Nauru, he asked how the State party intended to ensure that fear of reprisals would not prevent detainees from coming forward.

15. **Mr. Bruni** asked whether Australian officials had inspected the Nauru and Manus Island regional processing centres, where conditions had been described as cruel and inhumane by the United Nations High Commissioner for Refugees. He enquired whether any recommendations for improving conditions there had been adopted and, if conditions could not be improved, whether the Government had considered simply closing the centres.

16. In general, conditions in prisons and detention centres varied from one facility to the next. Mount Gambier prison, for instance, was operating at less than full capacity, but the situation in other facilities posed problems. He therefore wished to know what Australia was doing to reduce overcrowding in Port Augusta prison and improve the inhumane conditions in Roebourne regional prison. He would also appreciate a description of conditions in the suicide-resistant cells mentioned in the State party's report and reiterated his view that a prisoner's right to health care should be specifically guaranteed by law.

17. **Mr. Tugushi** asked what were the reasons for the country's apparently growing prison population and whether there were any plans to make more frequent use of alternatives to imprisonment, especially in view of deteriorating conditions in prisons and pretrial detention facilities. He wondered whether there were any plans to remedy the shortcomings in prisoners' access to health care and requested information on any measures being taken to remedy the problem of deaths in custody. The detention of unaccompanied minors in immigration holding facilities was also an alarming problem, and he wished to know whether the Australian authorities had any plans to put an end to the practice. Lastly, were there any official policies on training programmes for law enforcement officials that would prevent the excessive use of force and reduce the risk of police-related deaths?

18. **Mr. Gaye** enquired about the Australian Government's current stance on provisions that allowed the police to keep terrorism suspects in custody, without an arrest warrant, for what amounted to indefinite periods of time. He asked whether the lodging of complaints against law enforcement officials directly with the relevant police force, as described in the State party's report, did not lead to conflicts of interest or possible breaches of article 12 of the Convention, which required an impartial investigation. More information on the police units responsible for investigating complaints against the police themselves would thus be welcome. He noted that a member of the Australian federal police had been found guilty of criminal assault and wondered what punishment he had been given.

19. Reports had indicated that persons with intellectual or emotional disabilities were often imprisoned indefinitely. He therefore wished to know whether such persons were considered responsible for their acts and whether there were specific rules regarding their detention. Lastly, he asked whether the delegation was aware of the June 2014 death of an Aboriginal woman in a police station or shortly after her transfer to a hospital. If so, had the incident been investigated?

20. **Ms. Gaer** noted that in its response to question 13 of the list of issues Australia had stated that domestic violence was not a factor under the Convention. However according to paragraph 18 of the Committee's general comment No. 2 States parties also bore responsibility when they had grounds to believe that acts of torture or ill-treatment were being committed by private individuals and failed to act against them. The Committee had applied that principle to States parties' failure to protect victims from gender-based violence, such as domestic violence. In view of that situation and the fact that, according to

NGOs, domestic violence was endemic, she wished to know if Australia intended to amend its report.

21. She asked about the Parliamentary Joint Committee on Human Rights which, in examining the issue of immunities, had suggested that the Government had not acted in conformity with the Convention. Could the delegation comment on the Joint Committee's recommendations to provide for exceptions to immunities when an individual was suspected of torture? She also requested further information about the status of the Joint Committee's recommendations.

22. She asked the State party to comment on claims by NGOs that the Government had been compliant and wilfully inactive in responding to systematic sexual violence by Catholic clergy and other institutional officials, and on the fact that the Holy See only intended to make selected files available to the Royal Commission into Institutional Responses to Child Sex Abuse. She also wished to know whether the Royal Commission merely gathered information or whether it was also involved in criminal investigations.

23. She asked to be informed about the causes underlying a reported 5 per cent increase in the incarceration of Aboriginal women.

24. **Ms. Belmir** asked why the High Court had ruled that stateless persons could be held in detention indefinitely. If, as the Government had stated, persons without visas arriving at the detention centre on Christmas Island did not fall under its jurisdiction, what legislation was applicable to them?

25. She requested further information about the powers of detention of the Australian Security and Intelligence Organisation and the police, and expressed concern about the lack of judicial control over the legality of detention, especially in the cases of migrants. She was concerned about the fact that the majority of the prison population was made up of Aboriginal persons, and that migrant children were subjected to the same rules of mandatory detention as adults. She asked for further information about the power of the Attorney-General to extradite people who could face the death penalty.

26. She asked to be informed why those responsible for torturing four persons suspected of killing an Australian soldier in Afghanistan had not been subjected to criminal proceedings.

27. **Mr. Domah** commended Australia for its criminalization of torture and application of penalties commensurate with the gravity of the offence. He noted, however, that the Australian position on issues relating to the Convention — including domestic violence, refugees and migrants — was not entirely consistent with that of other States and seemed to reflect a parochial view of the concept of a nation State. The Committee had learned of public comments made by high-ranking officials to the effect that national and not international law should determine how Australia was run. Such comments were unfortunate; the Convention served to ensure that minimum human rights were upheld in public affairs.

28. Australia had the Parliamentary Joint Committee on Human Rights and an advanced judicial review system, but it lacked a bill of rights and there was no regional court overseeing human rights issues. The result was that there was no system of enforceability of human rights, and therefore Aboriginal people, people with disabilities and other disadvantaged and marginalized groups had no avenue through which to enforce observance of their rights under article 14 of the Convention.

29. He asked to be informed of the position of the State party vis-à-vis the ratification of the Optional Protocol to the Convention.

30. **Ms. Pradhan-Malla** wished to know what structures Australia had in place to examine and respond to the issue of domestic violence, specifically as it related to Aboriginal and Torres Strait Islander women and to women with disabilities. The Committee was concerned at reports that 67 per cent of violence went unreported and wished to know of any initiatives taken to identify barriers to reporting.

31. Despite the fact that forced sterilization was globally recognized as a violation of the right to be free from torture, the Committee had received information that the sterilization of children and adults with disabilities was permissible in Australia under certain conditions. What measures had been put in place to ensure the reproductive health rights of such people? And what institutional structures existed to follow up on and implement the recommendations of United Nations treaty bodies?

32. **The Chairperson** noted that the Special Rapporteur on the question of torture had suggested that solitary confinement could be considered as a form of torture and asked the delegation to provide more information on the use of solitary confinement in Australia. He asked what measures were in place to guarantee a special regime for transgender persons in prison and what financial and human resources were allocated to prisoners with mental health problems. He requested further information about the fact that persons unfit to stand trial were apparently imprisoned for life and wished to know what resources were allocated for their rehabilitation. There had been progress in the treatment of persons with disabilities in prison but complaints continued.

33. He asked for clarification on the very high rates of pretrial detention, especially among young people, and asked about the use of special accommodation which could be used as an alternative to such detention. He was concerned that mandatory sentencing was part of a populist “tough on crime” approach to law enforcement, which experience had shown to be ineffective.

34. He asked for further information about the military training which, according to NGO reports, Australia supplied to Sri Lanka and Indonesia.

35. He wished to know whether Australia was considering amending its definition of terrorism in accordance with the recommendations of the Human Rights Committee and how many days a person could be held in detention without being given access to a lawyer.

36. **Mr. Bruni** expressed concern that provisions for determining the risk of torture faced by persons whose request for asylum had been refused, contained in the new Migration Amendment (Protection and Other Measures) Bill, did not meet the standards for such assessment laid down in the Committee’s general comment No. 1.

37. **Mr. Modvig** requested detailed statistics concerning asylum seekers.

38. **Mr. Tugushi** asked about plans to establish an effective national mechanism for monitoring places of detention, including those in which migrants were held.

39. **Mr. Gaye** asked for clarification of paragraph 244 of the periodic report, according to which judicial discretion would operate to prevent evidence obtained by torture from being admitted in court, and paragraph 245, which stated that evidence influenced by violence or other inappropriate conduct would be inadmissible. It was important to specify that any statement established to have been made as a result of torture was inadmissible.

40. **Ms. Gaer** asked the delegation to comment on the case of Peter Solway, as detailed in the report of Care Leavers Australia Network (CLAN), and on that of Nicky, referred to in section 16 of the joint NGO report.

*The meeting rose at noon.*