

UNITED NATIONS ASSOCIATION OF AUSTRALIA
SUBMISSION ON CONVENTION AGAINST TORTURE (C.A.T.)

The United Nations Association of Australia (U.N.A.A.) submits this, an independent non-government report in relation to Australia's Fourth Report under the Convention against Torture (C.A.T.)

In doing so we wish to thank the officers of the Department of the Attorney General for providing us with a copy of the Draft Report and for inviting us to participate in the preparation of that Report.

However, we note that the specific concerns we have raised have not been included in the official Australian Government response.

Therefore, we have independently prepared a report from UNAA which

....details the original issues submitted to the Australian Government.

....comments on the Government's Report

....documents references that independently claim experience of torture.

Background

1. In April, 2002, UNAA was represented at the Commission on Human Rights in Geneva by our national president Margaret Reynolds who observed the debate and vote on the resolution to adopt the Draft Optional Protocol. At the time UNAA issued a press release which noted:

“Opponents of the Optional Protocol include Cuba, Russia, China and Saudi Arabia, so Australians would not expect their national government to follow these countries in denying preventive policy against torture”. (Press Release 26 April 2002).

In July 2002 it became clear at the United Nations Economic and Social Council meeting that the Australian Government was opposed to the Optional Protocol and voted against its adoption. This put Australia in a minority as the vote was 35 in favour, 8 against with 10 abstentions

In November 2002, in the Third Committee of the United Nations General Assembly, Australia again was in a minority when the vote was 104 in favour, 8 against with 37 abstentions in the General Assembly in December 2002 Australia's isolation was highlighted by the final vote 127 in favour, 4 against with 42 abstentions.

2. In 2004 The United Nations of Australia (UNAA) contributed to the inquiry of the Joint Standing Committee on Treaties into the Optional Protocol to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT).

Recommendation to this Inquiry

UNAA respectfully requests the Australian Government to re consider its opposition to the Optional Protocol and agree to sign this international human rights protocol to strengthen the Convention against Torture. We consider this would provide significant leadership in the Asia Pacific Region and would re-establish Australia as a strong advocate of human rights. Such a decision would be most timely as Australia takes the Chair of the Commission on Human Rights in Geneva in March, 2004.

UNAA's PRIORITIES SUBMITTED FOR INCLUSION IN THE AUSTRALIAN GOVERNMENT C.A.T. REPORT

"We are disturbed that there appears little progress in regard to the Subjects of Concern named in Concluding Observations of the Committee against Torture 21/11/2000.

- (a) There remains no independent review of ministerial decision making.
- (b) Prison authorities continue to use various instruments of physical restraint.
- (c) There are ongoing allegations that police and prison staff resort to physical abuse and degrading treatment of citizens and prisoners.
- (d) There are no national training programs to assist detail state obligations in complying with international human rights standards.
- (e) We believe there is inadequate knowledge of the role of the inspector of Custodial Services and no detail about the independent role of that office.

In addition to these concerns we would submit that there has been an alarming increase in reports of breaches of the Convention against Torture within Australia's detention camps both in isolated regions onshore as well as offshore islands.

The location of these places of detention and the privatisation of management has contributed to a culture of humiliation and abuse which amounts to cruel and degrading treatment.

UNAA has received numerous complaints of breaches of the Convention against Torture, yet complaints to the Australian Federal Police and calls for a Royal Commission of Inquiry into standards of care in privately managed detention camps have failed to elicit official government response.

Further more there have been a range of disturbing reports by the Human Rights and Equal Opportunity Commission, Doctors, Lawyers, Churches, the

Media and non-government organisations which have been rejected by Government, despite the professional material presented. UNAA has also received complaints of forced deportations carried out in a manner which is inconsistent with Australia's obligations as a signatory to C.A.T.

The continued isolation of men, women and children has already attracted criticism from National and International human rights advocates. The United Nations itself and a number of Diplomats have expressed their concern that a democratic, humanitarian country like Australia would allow policies which create the conditions for serious breaches of the C.A.T.

Finally, the failure of Australia to support the Optional Protocol on Torture has deepened the level of distrust in Australia's capacity to protect the human rights of those held in detention.

This statement can be supported by specific case studies from UNAA files over the past three years but we do have a responsibility to protect privacy of vulnerable people and their advocates. However, we would be pleased to provide further detail on request.

In conclusion, we strongly recommend that the Australian Government present a detailed and transparent report of the abuses that have occurred in places of detention over the past three years.

Furthermore, the Government must recognise its fiduciary duty by submitting a comprehensive action plan which overhauls both policy and practice, so that vulnerable people seeking asylum are guaranteed care and protection according to international best practice.

We would urge the government to demonstrate its commitment to the fundamentals of the Convention against Torture by releasing all children held in detention and urgently reviewing its thoroughly discredited arbitrary detention policy.

We look forward to commenting on the Draft Report."

However when the Draft Report was released UNAA found none of its concerns had been addressed.

The Australian Government's Report produced by the Office of International Law within the Attorney General's Department avoids the fundamental recommendations made in November 2000.

It lists the nine recommendations on Page 4 and indicates the relevant paragraphs in the Report which are supposedly the Australian Government's official response about action taken.

However each response is totally inadequate and virtually dismisses the fundamental issue raised

Recommendation (a)

The State party ensure that all States and Territories are at all times in compliance with its obligations under the convention.

RESPONSE PARAGRAPH 11

ACTS CONSTITUTING TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT ARE A CRIMINAL OFFENCE AND /OR CIVIL WRONG IN ALL AUSTRALIAN JURISDICTIONS.

Yet the response fails to document the number of allegations of torture in State prisons and youth detention centres nor the action taken to prevent instances of cruel and degrading treatment within State administrations. Further there is no acknowledgement of the continual professional advice the Federal Government has received that its long term mandatory detention policy causes mental illness. Australia's specialist statutory authority, the Human Rights and Equal Opportunity Commission has thoroughly investigated numerous cases of physical and mental harm to children in detention, as well as other individual adult cases. Yet its reports are ignored or strongly criticised by the Federal Government. Professional medical, legal and psychological individuals and organisations as well as community and media advocates have been documenting individual cases of abuse for at least the last four years, but this great volume of work has not been acknowledged as relevant to this Report.

Efforts by the United Nations Association of Australia to have the Federal Police investigate allegations of torture within detention have also been ignored because "such enquiry is not a priority of government"

Recommendation (b)

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

RESPONSE PARAGRAPH 28

THE FEDERAL GOVERNMENT NOTES THE COMMITTEE'S RECOMMENDATION

Clearly the Australian Government continues to ignore this recommendation as there has been no change in policy.

Recommendation (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 police, prison officers and prison medical personnel.

RESPONSE PARAGRAPH 39

THE REPORT DETAILS AUSTRALIAN PRACTICE IN THE EDUCATION AND TRAINING OF PERSONEL RESPONSIBLE FOR PRISONERS AND DETAINEES.

While there is no doubt that official training highlights the responsibility of officers to comply with the relevant law particularly with regard to the use of force, there is no recorded evidence of incidents of abuse nor efforts to reduce such abuse. The ongoing culture of violence within institutional living appears to be accepted as the norm with no apparent national initiative for reform.

The Australian Government's attitudes to "the use of force and instruments of restraint" are documented in its Immigration Detention Standards in the qualifying statement

"only such force as is reasonably necessary and proportionate in the circumstances is to be used"

No attempt is made to define precisely how this requirement is to be interpreted .

There is limited monitoring of private contractors responsible for the well being of detainees and there is a huge volume of reports from detainees and former staff that these standards are routinely abused with individuals deciding what is "reasonable " at the time.

Recommendation (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.

RESPONSE PARAGRAPH 39

NO INFORMATION PROVIDED

The Report makes no effort to deal with this issue in a transparent manner.

Excessive force and use of restraints DOES occur within both State and Federal administrations yet there is no public record of the circumstances nor attempts to justify these extreme methods.

Forced deportations have been reported with people chemically restrained as well as hand cuffed and beaten.

Recommendation (e)

The state party ensure complainants are protected against intimidation and adverse consequences as a result of their complaint.

RESPONSE PARAGRAPH 69

THE FEDERAL GOVERNMENT NOTES THE RECOMMENDATION

Clearly the Australian Government is unprepared to comment on its own commitment to this recommendation. Certainly the ongoing vilification and eventual deportation of some high profile individuals and families appear to indicate a level of reprisal from within the government.

Recommendation (f)

The state party continue to its efforts to reduce overcrowding in prisons.

RESPONSE PARAGRAPH 62

THE FEDERAL GOVERNMENT NOTES THE RECOMMENDATION

This is another example of the Australian Government's failure to take seriously its obligations to report in a constructive manner. Australian prison populations continue to grow as more minor offenders are gaoled. State and Federal governments now rely increasingly on the private sector to run its prisons and detention centres which makes it even more difficult to set and monitor detention standards.

Recommendation (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

RESPONSE PARAGRAPH 55

THE FEDERAL GOVERNMENT NOTES THE RECOMMENDATION

Given the continual tragedy of high rates of custody and general disadvantage of Australia's indigenous population this is a totally inadequate response to such a national challenge and continues to shame Australia in the international community.

Recommendation (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 in regard to the possible adverse effect upon disadvantaged groups

RESPONSE PARAGRAPH 58

THE FEDERAL GOVERNMENT NOTES THE RECOMMENDATION

Clearly the Australian Government fails to understand its obligations under the Convention against Torture and continues to justify mandatory sentencing alleging that it “serves important policy functions” even though in 2001 the Northern Territory Parliament repealed all mandatory minimum sentences that applied to property offences in relation to both adults and juveniles.

Recommendation (i)

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

RESPONSE PARAGRAPH 1

THE AUSTRALIAN GOVERNMENT IS PLEASED TO PRESENT TO THE COMMITTEE AGAINST TORTURE AUSTRALIA’S FOURTH REPORT

This report has studiously avoided coming to terms with the real policy issues for which the Australian Government has responsibility. The 51 page document fails to address the harsh reality that some individuals HAVE experienced cruel, inhuman and degrading treatment as a result of their being within the jurisdiction of State or Federal institutions.

It fails to acknowledge the fact that allegations of torture by state and federal sanctioned authorities continue to be received by human rights monitors in Australia .Both Australian and international advocates have made ongoing representations and comment about standards of treatment in domestic detention centres as well as those on Christmas Island and Nauru. There has been public criticism about forced deportations.

Therefore in the opinion of the United Nations Association of Australia it is impossible to accept the Australian Government’s claim that

“This report demonstrates that Australia takes its obligations under the Convention seriously an continues to progressively implement, monitor and enforce mechanisms to proscribe and prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in all Australian jurisdictions.”

IINDEPENDENT REFERENCES ABOUT AUSTRALIA’S COMPLIANCE WITH THE CONVENTION AGAINST TORTURE

A Google search of the internet reveals 3,920 results in which a variety of individuals and non government organisations question the extent to which Australia complies with its international obligations under the Convention .

Furthermore the following small selection of complaints reported by asylum seekers in the South Australian Immigration Detention Centre reveals that a culture of abuse has not been reported by the Australian Government

1. Baxter Watch July 2004 reported.....

“A 23 year old Afghani detainee with an injured back waited 13 days before seeing a doctor. The man had been injured when five guards broke down the door of his room and they allegedly sat on top of him wrenching his spine and after being forcibly handcuffed he was taken to the Management Unit wearing only his underpants.

Last year the same detainee underwent an operation and during four days in recovery the detainee was handcuffed to the bed 24 hours a day while watched by two security guards”

“A man was stripped naked in front of two female officers and examined internally”

“A detainee was injured when five guards sat on him causing damage to two spinal discs”

“Channel Seven News Adelaide reported that on June 6th water torture was used to keep detainees awake”

2. A deported man made the following complaint.

“I was handcuffed but two policemen treated me like an animal. The first held me by the throat causing me congestion and difficulty in eating. The other fiercely used the chain which left a scar.

Soon the doctor entered the cell carrying an injection and four tablets asking me to choose. I refused them both. He, the doctor then ordered the security officers to do their job and they laid me on the floor and sat on my back, took my pants down to give me the injection. So I choose the tablets but they didn't work so they force me to take a fifth tablet at the airport when they got me on the plane with a wheel chair accompanied by a nurse ,two companions and three other ACM officers. All that continued for about six hours with three types of hand cuffs and ties of leather plastic and steel around my hands and belly that gathered my arms to my trunk.

I stood screaming and asking for help from the passengers. I immediately regretted that for those escort officers started to hit me and beat me cruelly with kicks all over my body especially my genitalia with their knees and feet, which subsequently caused my left testis congested lesions and pain. The nurse on trying to inject my leg missed my body to hit the plane seat where the needle got bent. But he didn't change the needle and injected me again with the contaminated needle. I continued to scream and ask for help until a few passengers cried and tried to relieve my oppression”

This individual was returned to detention where he remains suffering the effects of this attempted forced deportation.

UNAA thanks the Committee for considering this report.

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