



Level 1, 550 Lonsdale Street
Melbourne VIC 3000
DX 38227
P: + 61 3 9225 6695
F: + 61 3 9225 6686
hrirc@vicbar.com.au
www.pilch.org.au

30 March 2006

Extradition and Mutual Assistance Review Team
International Crime Cooperation Branch
Attorney-General's Department
Robert Garran Offices
National Circuit
Barton ACT 2600

By email: reviews@ag.gov.au

Dear Extradition and Mutual Assistance Review Team

Review of Australia's Extradition Law and Practice

Thank you for the opportunity to contribute to the Review of Australia's Extradition Law and Practice.

About the Human Rights Law Resource Centre

The Human Rights Law Resource Centre Ltd ('HRLRC'), a joint initiative of the Public Interest Law Clearing House (Vic) and Liberty Victoria, is an independent community legal centre.

The HRLRC aims to promote human rights in Victoria and Australia, particularly the human rights of people that are disadvantaged or living in poverty, through the practice of law. It also aims to promote the development of Australian law and policy consistently with international human rights standards, including through casework, litigation, policy analysis, education and advocacy.

Having regard to these aims, this submission considers the relevance of international human rights law to the review of the *Extradition Act 1988* (Cth) and Australia's extradition policy and practice.

Guiding Principles

The HRLRC considers that a guiding principle of the Review should be that the principles and processes applicable to extradition must be consistent and comply with Australia's human rights obligations.

These obligations arise from treaties ratified by Australia, including the *International Covenant on Civil and Political Rights* ('ICCPR');¹ the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR');² the *Convention on the Elimination of All Forms of Discrimination Against Women* ('CEDAW');³ the *Convention on the Elimination of All Forms of Racial Discrimination* ('CERD');⁴ the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ('CAT');⁵ and the *Convention on the Rights of the Child* ('CROC').⁶ Human rights obligations also arise from customary international law.

In relation to the substantive rights contained in each of these sources of human rights law, Australia has a range of responsibilities and obligations; namely obligations to *respect*, *protect* and *fulfil* each human right.⁷ The obligation to *respect* requires that Australia refrain from interfering, directly or indirectly, with the enjoyment of human rights. The obligation to *fulfil* requires that Australia take positive steps to promote and support the realisation of human rights and, where necessary, to provide for the realisation of human rights for marginalised or disadvantaged groups. Most relevantly for the purposes of this Review, the obligation to *protect* requires that Australia prevent third parties – including other countries, governments, individuals, organisations and enterprises – from interfering in any way with the enjoyment of human rights.

The obligation to *protect* means that Australia will be in breach of its human rights commitments if it extradites a person in circumstances in which that person may be vulnerable to human rights violations by a third party, including, for example, in relation to the right to health, the right to non-discrimination, or the right to be free from cruel, inhuman or degrading treatment or punishment.

Specific Human Rights Obligations

In addition to the general obligation to protect people from human rights violations referred to above, there are also a number of specific rights and obligations of critical relevance to Australia's extradition law and practice. These rights and obligations are discussed in detail below.

¹ Opened for signature 19 December 1966, 999 UNTS 171 (entered into force generally 23 March 1976 and for Australia 13 August 1980).

² Opened for signature 16 December 1966, 993 UNTS 2 (entered into force generally 3 January 1976 and for Australia 10 March 1976).

³ Opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981 and for Australia 28 July 1983).

⁴ Opened for signature 21 December 1965, 660 UNTS 195 (entered into force generally 4 January 1969 and for Australia 30 September 1975).

⁵ Opened for signature 10 December 1984, 1465 UNTS 85 (entered into force generally 26 June 1987 and for Australia 8 July 1989).

⁶ Opened for signature 20 November 1989, 1577 UNTS 3 (entered into force generally 2 September 1990 and for Australia 17 December 1990).

⁷ See, for example, ICCPR art 2; ICESCR art 2. See also HRC, *General Comment 31: Nature of the Legal Obligation Imposed on State Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add.13 (2004); CESCR, *General Comment 15: The Right to Water*, [17]–[29], UN Doc E/C.12/2002/11 (2002).

1. Article 6 of the *ICCPR* provides that every person has the inherent right to life. This right imposes a correlate non-derogable obligation not to extradite a person to a country in circumstances where it is foreseeable that the person will be executed.⁸
2. Article 7 of the *ICCPR* enshrines the right to be free from torture or cruel, inhuman or degrading treatment or punishment. In *General Comment 20*, the UN Human Rights Committee stated that this right imposes a non-derogable obligation not to extradite a person to a country in circumstances in which it is foreseeable that the person may be subject to cruel, inhuman or degrading treatment or punishment.⁹ This jurisprudence was further developed by the Committee in *General Comment 31* in which it was stated that:

The article 2 obligation requiring that States Parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed. The relevant judicial and administrative authorities should be made aware of the need to ensure compliance with the Covenant obligations in such matters.¹⁰

3. The obligation arising under art 7 of the *ICCPR* is in addition to the obligation arising under art 3 of the *CAT*, which specifically refers to the prohibition on a State Party extraditing a person to another State 'where there are substantial grounds for believing that he would be in danger of being subjected to torture'.¹¹ Again, this is a non-derogable obligation.
4. Article 10 of the *ICCPR* provides that all persons deprived of their liberty shall be treated with humanity and respect for their inherent dignity. Read in conjunction with art 2, this provision imposes an obligation on Australia not to extradite a person to a country in circumstances in which it is foreseeable that the person will be deprived of their liberty and that the conditions of detention will violate that person's humanity and inherent dignity. In a series of determinations, the UN Human Rights Committee has held that, in order to satisfy the requirements of art 10, conditions of detention should, at the very least, be consistent with the *United Nations Standard Minimum Rules for the Treatment of Prisoners*.¹² This means that Australia is under an obligation not to extradite a person unless it is satisfied that the conditions of the person's detention will comply with the *Standard Minimum Rules*.

In the HRLRC's view, it is imperative that Australia's extradition law and practice contain mechanisms and safeguards to ensure that each of the obligations referred to above is discharged.

Please contact me on (03) 9225 6695 if you would like to discuss this submission further.

Yours sincerely

⁸ See, eg, *Judge v Canada* (HRC 829/98).

⁹ HRC, *General Comment 20: Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment (Art 7)*, 10/3/92.

¹⁰ HRC, *General Comment 31: Nature of the General Legal Obligation on States Parties to the Covenant*, [12], UN Doc CCPR/C/21/Rev 1/Add.13 (2004).

¹¹ See also *BS v Canada* (CAT 166/00).

¹² See, eg, *Mukong v Cameroon* (HRC 458/91); *Potter v New Zealand* (HRC 632/95).

Philip Lynch
Director