Crimes (Torture) Bill 1988

Date Introduced: 23 March 1988
House: House of Representatives
Presented by: The Hon. Lionel Bowen, M.P., Attorney-General

Digest of Bill

Purpose
To provide for the prosecution of Australian citizens and people present in Australia for acts of torture committed outside Australia.

Background
The use of torture to achieve political aims and to coerce false confessions has existed for a very long time. The methods of torture vary from physical beatings to, particularly in more modern times, the use of psychological torture such as long periods of sensory deprivation. While a number of international bodies gather information on torture, the most well known is Amnesty International.

In 1984, Amnesty published a report titled 'Torture in the Eighties'. The report lists a number of 'preconditions' for torture, including emergency or other legislation that allows wide powers of arrest and detention, the suspension of rights such as habeas corpus, the use of military tribunals to judge people and the lack of independent medical evidence. While all of these matters need not be present for torture to exist, each opens additional opportunities to escape prosecution for the ill treatment of detainees. The report also rejects arguments in favour of torture, such as the need to gain information rapidly to defeat internal threats or that insurgents are using torture and the government is justified to respond in the same manner.

The report also deals with torture in specific countries, referring to allegations of torture in the period January 1980 to mid 1983. The report deals with allegations as it is often very difficult to prove torture. Without going through the full list of countries examined, (66 countries were examined), some of the allegations were:

Ethiopia: 'Amnesty International received numerous reports during the period under review indicating the frequent torture of political prisoners in Ethiopia. Torture was used as a routine method of interrogating prisoners about their alleged knowledge of or involvement with opposition organisations.'

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South Africa: ‘There was considerable evidence to show that political detainees were commonly tortured and ill-treated during interrogation by security police.’

Chile: Torture of political prisoners by members of the security forces has been reported regularly since the present military government seized power in 1973 and has continued during the period under review. Although most of the information available to Amnesty International refers to cases of a political nature, allegations of torture and ill-treatment of detainees accused of ordinary crimes have also been widespread.

Guatemala: ‘The use of torture and ill-treatment in an attempt to control all forms of dissent has been a long-standing problem in Guatemala. Under successive regimes during the period under review, opponents or suspected opponents of the government have been systematically seized without warrant, tortured and murdered.’

Afghanistan: ‘Amnesty International received reports of the torture and ill-treatment of people taken into custody by Afghan military personnel, and more especially by the state information police. Prisoners are alleged to have been subjected to beatings, deprivation of sleep and electric shock torture.’

India: ‘Police brutality and torture have long been common and widespread in India and have continued during the period under review. Such methods are frequently used when people suspected of ordinary criminal offences are interrogated, in order to extract confessions or for the purposes of intimidation.’

USSR: ‘Prisoners have been subject to ill-treatment in Soviet corrective labour institutions and in prison while awaiting trial during the period under review. Many prisoners of conscience compulsorily confined to psychiatric hospitals have been forcibly administered disorienting and pain-causing drugs and some are reported to have been beaten.’

Israel: ‘Amnesty International has continued to receive reports of ill-treatment during the period under review in the form of testimonies from former detainees held in the Occupied Territories, statements from lawyers and eye-witness accounts. The frequency and consistency of these reports indicate that some Palestinians from the Occupied Territories arrested for security reasons and interrogated by the intelligence services in a number of detention centres have been hooded, handcuffed and forced to stand without moving for many hours at a time for several days, and have been exposed while naked to cold showers or cold air ventilators for long periods of time. Detainees have also been deprived of food, sleep, and toilet and medical facilities, and have been subjected to abuse, insults and threats against themselves and the female members of their families.’
Main Provisions
Clause 3 contains the definition of ‘act of torture’. This term is defined to mean any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted to obtain information or a confession, as punishment, to intimidate or coerce, or for any reason based on discrimination. The definition specifically excludes acts that are consistent with the International Covenant on Civil and Political Rights.

Clause 6 is the major operative provision. Where, after the commencement of this Bill, a person who is a public official, or acting with the consent of a public official, commits an act that falls within the definition of an act of torture and, if the act had been committed in Australia it would have been an offence, the person will be guilty of an offence against this Bill. On conviction, the person will be liable to the same punishment as if they had been found guilty of the offence against Australian law.

Only Australian citizens and people in Australia will be liable for conviction under this Bill (clause 7).

This Bill is not intended to effect the operation of other laws, except to prevent a person being prosecuted for the same offence both under this Bill and another law (clause 5).

Though a person may be arrested, charged and held on remand in custody or on bail, proceedings are to go no further without the written consent of the Attorney-General (clause 8).

Where a person has been charged with an offence against this Bill and at the trial the jury finds the person not guilty of that offence, the jury may find the person guilty of different offence against this Bill (clause 10).

It will not be a defence in an action under this Bill that the person was obeying superior orders or that the act was done as a matter of necessity due to a state of war, political instability or any other exceptional circumstance. However, these matters may be taken into account in sentencing (clause 11).

The Schedule to the Bill contains the text of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

References
2. Ibid., p.127.
3. Ibid., p.150.
4. Ibid., p.158.
5. Ibid., p.180.
6. Ibid., p.186.
7. Ibid., p.220.
8. Ibid., p.233.
For further information, if required, contact the Law and Government Group.

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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