

Secretary to the Committee
House of Representatives Standing Committee on
Social Policy and Legal Affairs
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Secretary,

Further to our comments provided at the public hearing into the Inquiry, the Australian Lawyers Alliance (“the ALA”) wishes to provide answers to the following questions on notice:

Questions on notice

1. Just to clarify, the US is not a signatory to that convention [i.e. *The Convention Against Torture, Cruel, Inhuman and Degrading Punishment*]; is that right? Is that how they were able to get away with the water boarding?
2. I am interested in the views of your association on the whole business of a foreign country being able to request an extradition of a person when there is no evidence submitted to Australia relating to the person's guilt—the no evidence extradition model. Do you have a particular view about that? Do you see that we have had sufficient safeguards in our legislation to date? Are you aware of any problem with the act continuing to not require a foreign country to request extradition of a person from Australia to supply any evidence relating to that person's guilt?
3. What are your views of the arrangement with foreign countries where they request the extradition in terms of supplying evidence about the person's guilt, the so-called no evidence extradition model? What are your views on the 'no evidence required' extradition approach?

The ALA submits the following answers on the above:

1. The USA is a signatory to the *Convention Against Torture, Cruel, Inhuman and Degrading Punishment*. The USA signed the Convention on 18 April 1988 and ratification occurred on 21 October 1994.¹ Water boarding is considered torture².

It appears that the USA was able at this stage to ‘get away with’ the water boarding. There have been suggestions about the criminal responsibility of those involved, and the potential of prosecution for war crimes³. However, this is a fairly radical solution and has not been implemented.

¹ United Nations Treaty Collection, *Convention Against Torture, Cruel, Inhuman and Degrading Punishment*. Accessed 17 August 2011 at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en

² For further information, see International Rehabilitation Council for Torture Victims, ‘Former member of UN Committee Against Torture: “Yes, water boarding is torture”’, 12 February 2008. Accessed 17 August 2011 at <http://www.irct.org/news-and-media/irct-news/show-news.aspx?M=NewsV2&PID=13767&NewsID=1236>

³ See Scott Shane, ‘Book Cites Secret Red Cross Report of C.I.A Torture of Qaeda captives’ *New York Times*, July 11, 2008. Accessed 17 August 2011 at <http://www.nytimes.com/2008/07/11/washington/11detain.html>

2. In order for an extradition to occur, the Australian govt need to be satisfied that there is at least a *prima facie* case exists against an accused person, and secondly, it is an offence that has equivalence in Australia. *Prima facie* case means that the material provided by the other country has to be of such a nature and robustness so that it can be easily ascertained by Australian authorities that indeed there do appear to be on the face of it, elements of the offence with which the person is charged – and evidence of these elements. In summary, we do not support a no evidence extradition model.

Normally, under Australian law, and under the Vienna Convention that governs extradition, you have to show two things; 1 – that there is a *prima facie* case and 2 –it is an offence that has equivalence in Australian law. Ultimately, some of the changes within the current amendments e.g. for political offence, will strengthen the current laws. We are not aware of any problems with the act continuing to not require a foreign country to request extradition of a person from Australia to supply any evidence relating to that person's guilt.

3. The substance of this answer is as above in question 2.

The ALA thanks the Committee for permission to answer these questions on notice.

Yours sincerely,



Emily Price

Legal and Policy Officer

Australian Lawyers Alliance