

## **Submission: Optional Protocol to the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment – National Interest Analysis**

Australia was a founding member in 1948 of the United Nations Commission of Human Rights (CHR). Foreign Minister, Dr H.V. Evatt, also President of the UN General Assembly, played a crucial role in ensuring that human rights provisions were included in the Charter. *“The adoption of the Declaration is a step forward in a great evolutionary process ... the first occasion on which the organised community of nations has made a declaration of human rights and fundamental freedoms.”*<sup>i</sup>

Australia ratified the UN Convention Against Torture (CAT) in 1993. The Australian Federation of University Women (AFUW) views the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) as a further step in the ongoing process to secure and defend human rights.<sup>ii</sup>

Human Rights abuses continue, with new faces being added to the list of abusers, as the revelations from Abu Ghraib and Guantanamo Bay reveal. The practice of extra rendition, an addition to the process of torture and abuse, provides for the outsourcing to a second state where the abuse is carried out. Mamdouh Abib, an Australian citizen detained in Pakistan October 2001, was interrogated by US agents and sent to Egypt where he was tortured for 6 months. He was then sent to Guantanamo Bay held for 3 years, only to be released without charge and without redress.<sup>iii</sup> It is in the interest of Australia and its citizens to support international laws that strengthen and provide preventive measures against crimes of impunity.

### **Political reasons for Australia to accede to OPCAT:**

Amnesty International reported in 2002 that torture was still occurring in 111 countries. Australia's accession to OPCAT would send a clear message that the Australian Government abhors torture and other cruel, inhuman or degrading treatment or punishments and that it will use its influence in the UN to prevent such occurrences anywhere in the world. Additionally the Government would demonstrate its commitment to the Australian people that the Commonwealth, State and Territories Governments will continue to exercise their powers to imprison and detain persons without resort to torture.<sup>iv</sup>

### **UN Subcommittee for the Prevention of Torture**

OPCAT came into force 22<sup>nd</sup> June 2006. Figures available from the Office of the UN High Commissioner for Human Rights (16.06.08) indicate that 61 states have signed OPCAT, and 35 of those states have ratified the Convention. To date Sweden, Benin, Mexico and Paraguay have been visited by the OPCAT Subcommittee established to carry out the functions laid down in the Protocol.<sup>v</sup>

It appears that the OPCAT Subcommittee is capable of supervising and ensuring effective implementation through its regular onsite visits, recommendations and follow up procedures, relating to State Parties, especially as Subcommittee procedures are reinforced by the obligation that each State Party at a domestic level shall designate one or several visiting bodies, referred to as the national preventive mechanism (NPM) to ensure the implementation of OPCAT.<sup>vi</sup>

AFUW has some reservations about the composition of the Subcommittee, which calls for consideration to be given to balanced gender representation. Consideration for balanced gender representation does not meet UN Security Council Resolution 1325, which calls for women's equal participation in all peace making and peace-keeping policy and implementation processes. Systemic violence against women and girls has become a deliberate procedure in many conflict

zones where and girls are detained. State agents, and – it has been revealed – some UN peacekeepers have been abusers of women and girls, the most vulnerable detainees. We believe that OPCAT offers an educative, preventive approach to address shameful human rights abuses. We would expect that any Australian preventive mechanism would fulfil its gender equity obligations in line with Resolution 1325 rather than with the weaker provisions cited above.

### **Obligations imposed by the Optional Protocol**

The Optional Protocol is a lengthy, detailed document. Its essentials are established in the Preamble, which states “further measures are necessary to achieve the purposed of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatments or Punishment”.<sup>vii</sup> Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of Torture as identified in the Conventions, the Preamble reminds signatories that “the effective prevention of torture ... requires education and a combination of various legislative, administrative, judicial and other measures,...based on regular visits places of detention”.<sup>viii</sup>

The experience of the International Committee of the Red Cross (ICRC) has revealed that repeated visits to places of detention are an effective means of identifying and documenting issue and problems. Visits in themselves can play an essential role in preventing abuse.<sup>ix</sup>

### **What then, if anything, will need to be done to implement the Optional Protocol?**

Article 3 requires that each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies to be referred as the national preventive mechanism (NPM). Article 4 requires that each State Party shall allow visits to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given or by a public authority.

It would be necessary for the Australian Government to determine the number of members and the composition of the (NPM) responsible for the administration of the Protocol. This would not prove difficult. The Government has access to many men and women with experience and expertise in the field of human rights. The inclusion of a representative from HREOC, which currently has no jurisdiction to ensure the protection and promotion of rights under the Convention Against Torture, would strengthen the NPM.<sup>x</sup> Part III of the document offers advice and training, if necessary, towards the establishment of the NPM.

In order to be effective and fulfil obligations in good faith there must be sufficient financial and human resources for the existence of internal control mechanisms, and for education and training programs for civilian and military personnel involved in law enforcement, interrogation and treatment of detainees. The experience of those in immigration detention in Australia shows the consequences of failure to meet these standards.

Close monitoring and evaluation of detention centre programs would limit the potential for the many disturbing incidents that have become part of the history of asylum seekers detention centres in Australia. HREOC reported (February 2007) 12 findings in breach of both articles 7 & 10 of the ICCPR and article 37(a) of CRC. Among the findings was the shameful case of child asylum seeker Shaynan Badraie. In the words of HREOC “The child has witnessed events to which I am certain no Australian would wish their own children to be exposed. DIMA failed to take appropriate action to protect the child's mental and physical health, which deteriorated by reason of the traumatic events he witnessed”.<sup>xi</sup> Shaynan was not the only child held in detention centres, but his was the case brought to official notice by his father's action.

The public has over time been made aware of serious human rights abuses arising from the asylum seekers detention centres. A Joint Standing committee on Foreign Affairs, Defence and Trade 2001

visit to immigration detention centres made 20 recommendations regarding the centres, among the Recommendation 18: “that DIMA undertake, as a matter of urgency, to review the Immigrations Detention Standards, and include the revised document in it is contractual negotiations with Australian Correctional Management Pty. Ltd. Detention Services (ACM)”<sup>xii</sup>.

Central to the report was shortage of staff in general, and in particular staff with appropriate training. Immigration Department Standards (IDS) address personal attributes and competence requirements to be met by contractors, and individual care needs be met in a culturally appropriate way, to provide safe and secure detention, personal dignity, social interaction, and religious and recreational facilities. Errors related to DIMA procedures continue to emerge. How, when and where have recommendations been implemented?

To reiterate, in order to be effective and fulfil obligations in good faith, there must be sufficient financial and human resources for the existence of internal control mechanisms, education and training programs for civilian and military personnel involved in law enforcement, interrogation and treatment of detainees. Clearly these obligations apply to all persons detained by the Commonwealth, its Territories and States. We refer to many recommendations relating to Aboriginal deaths in custody, which continue unabated. While we make no suggestion that detained Aborigines are subjected to systematic torture, there is evidence of their experiencing violent and degrading treatment. The prospect of the possible use of torture becomes most alarming in relation to those detained for suspected terrorist offences. Australia must not follow the example of the United States of America in countenancing practices such as waterboarding.

The March 2004 Parliamentary Committee re OPCAT, chaired by Dr Andrew Southcote MP resulted in 7 votes for and 8 against acceding to the Protocol. Not an overwhelming vote for those opposed. Support for OPCAT came from an impressive array of organizations concerned to see Australia honour its commitments to justice: Law Institute of Victoria; Law Society of New South Wales; The Refugee Council of Australia; Amnesty International Australia; HREOC; Australian Lawyers for Human Rights; National Council of Churches in Australia; Australian Catholic Commission for Justice and Development and Peace; Forum of Australian Service for Survivors of Torture and Trauma.

Australia should demonstrate its commitment to the ongoing process of protection of human rights and cooperation with UN agencies begun in 1948 by the then Foreign Minister. Australia should not allow its reputation to suffer by joining those countries with poor human rights records who have not supported the Protocol.

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i Human Rights Manual Australia Department of Foreign Affairs and Trade 1993 p.1

ii Human Rights Manual DFAT 1993 p.7

iii <http://www.hrw.org/reports/2006/egypt050/htm>

iv Law Institute of Victoria, 13 February 2003, letter to the Hon Alexander Downer, MP, Minister for Foreign Affairs re OPCAT

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- v Office of the High Commissioner for Human Rights October 2000  
[www.unhchr.ch/html/menu/2/6/cat/treaties/opcat.htm](http://www.unhchr.ch/html/menu/2/6/cat/treaties/opcat.htm)
- vi OHCHR [www.unhchr.ch/html/menu/2/6/cat/treaties/opcat.htm](http://www.unhchr.ch/html/menu/2/6/cat/treaties/opcat.htm)
- vii OHCHR [www.unhchr.ch/html/menu/2/6/cat/treaties/opcat.htm](http://www.unhchr.ch/html/menu/2/6/cat/treaties/opcat.htm)
- viii OHCHR [www.unhchr.ch/html/menu/2/6/cat/treaties/opcat.htm](http://www.unhchr.ch/html/menu/2/6/cat/treaties/opcat.htm)
- ix ICRC Statement to UN General Assembly New York, 17<sup>th</sup> October 2006  
[www.ocre.org/web/eng/siteeng0.nsf/html/united\\_nations\\_statement\\_171006](http://www.ocre.org/web/eng/siteeng0.nsf/html/united_nations_statement_171006)
- x [Www.hreoc.gov.au/legal.submission.2007/aust.compliance\\_with\\_the\\_convention\\_against\\_torture](http://www.hreoc.gov.au/legal/submission.2007/aust.compliance_with_the_convention_against_torture)
- xi [Www.hreoc.gov.au/legl.submissions/2007/aust\\_compliance\\_with\\_the\\_convention\\_against\\_torture](http://www.hreoc.gov.au/legl/submissions/2007/aust_compliance_with_the_convention_against_torture)
- xii [Www.aph.gov.au/house/committee/jfadt/idevisits/IDCrecs,htm](http://www.aph.gov.au/house/committee/jfadt/idevisits/IDCrecs.htm)