
The Parliament of the Commonwealth of Australia

Report 58

**Optional Protocol to the Convention against Torture and Other
Cruel, Inhuman or Degrading Treatment or Punishment**

March 2004
Canberra

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ISBN 0 642 78458 2



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Foreword

Australia abhors torture and other cruel, inhuman and degrading treatment or punishment. Within Australia there are a range of protections to proscribe and prevent torture including Commonwealth, State and Territory legislation as well as the Human Rights and Equal Opportunity Commission (HREOC), ombudsmen and our system of parliamentary democracy. The Convention against Torture (the Convention) entered into force for Australia on 7 September 1989.

The issue for the Committee was to consider whether Australia should sign the Optional Protocol to the Convention. The Optional Protocol will principally involve the establishment of a Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Subcommittee on Prevention) and independent national preventative mechanisms. In making its recommendation, a majority of the Committee found the following arguments persuasive.

Firstly, the issue of whether to sign the Optional Protocol needs to be examined in the context of the Australian Government's approach to the UN treaty committee system. Australia remains concerned that the UN committees are not focussing on the most pressing of human rights violations. The subcommittee, when established, will be able to conduct visits to State Party facilities, regardless of whether there are substantive concerns regarding allegations of torture. This is incompatible with the approach of Australia which is only to allow committee visits when there is a compelling reason to do so and to focus resources in the areas of greatest need.

Secondly, there is no suggestion that the independent national preventative mechanisms are inadequate in Australia. Commonwealth, State and Territory Governments all conduct education and training programs and have mechanisms to prevent torture. Although the Convention is not scheduled under the HREOC

Act, there are a range of other human rights instruments which are and which proscribe and prevent torture.

Thirdly, there are also some procedural and substantive concerns with regard to the Optional Protocol. The procedural concerns are that the Optional Protocol was developed without widespread consensus and was not considered in detail by the Working Group which was established to consider the draft text. The substantive concerns relate to the need for UN treaty bodies to operate effectively with committees focussing on the areas of greatest human rights violations. As it stands the Optional Protocol will allow visits to any Member State, regardless of whether there are concerns regarding allegations of torture.

Several of the submissions which supported Australia signing the Optional Protocol argued that it would send a message or set an example on human rights. This is not a compelling reason by itself. Australia is already regarded as a leader in human rights standards. The issue for the Committee was to consider whether we should sign the Optional Protocol despite our concerns about the functioning of the UN treaty committee system.

A majority of the Committee has decided that there is no immediate need for Australia to sign and ratify the Optional Protocol at this time. If, over time, the Subcommittee on Prevention demonstrates that it has focussed its resources on the worst human rights violations in the world, then the Australian decision could be revisited. However while Australia continues to work for reform of the UN treaty committee system, Australia should not sign the Optional Protocol.

I would like to thank the Committee Secretariat for their work in the conduct of this inquiry and the Inquiry Secretary, Jennifer Cochran. I would also like to thank all members of the Committee for their consideration of this reference from the Senate.

Dr Andrew Southcott MP
Chair



Membership of the Committee

Chair Dr Andrew Southcott MP

Deputy Chair Mr Kim Wilkie MP

Members Hon Dick Adams MP

Mr Kerry Bartlett MP

Mr Steven Ciobo MP

Mr Martyn Evans MP

Mr Greg Hunt MP

Mr Peter King MP

Hon Bruce Scott MP

Senator Andrew Bartlett

Senator Linda Kirk

Senator Gavin Marshall

Senator Brett Mason

Senator Santo Santoro

Senator Ursula Stephens

Senator Tsebin Tchen

Committee Secretariat

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Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions presented or deemed to be presented to the Parliament
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the Committee by
 - (i) either House of the Parliament, or
 - (ii) a Minister; and
- c) such other matters as may be referred to the Committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of abbreviations

AGs	Attorney-General's Department
DFAT	Department of Foreign Affairs and Trade
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
ECPT	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
FASSTT	The Forum of Australian Services for Survivors of Torture and Trauma
HREOC	Human Rights and Equal Opportunity Commission
ICCPR	International Covenant on Civil and Political Rights
UN	United Nations



Recommendation

Issues arising from the Committee's inquiry

Recommendation 1

The Committee recommends against the Commonwealth Government taking binding treaty action with respect to the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* at this time.

