



Submission to the

**Joint Standing Committee on Treaties inquiry into the Optional Protocol to
the Convention Against Torture and Other Cruel, Inhuman or Degrading
Treatment or Punishment**

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Submitted by

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About Amnesty International

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the *Universal Declaration of Human Rights* (UDHR) and other international instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights. Amnesty International is the world's largest independent human rights organisation, comprising more than 3 million supporters in more than 150 countries and has over 173,700 supporters in Australia. Amnesty International is impartial and independent of any government, political persuasion or religious belief. It does not receive funding from governments or corporations.

United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

Amnesty International endorses the *United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) and welcomes the Australian Government's stated commitment to ratification. This is a positive step which will greatly enhance efforts to safeguard the rights of persons deprived of their liberty.

Currently 62 nations have ratified OPCAT and a further 22 countries are signatories. Amnesty International urges Australia to ratify the Optional Protocol in order to provide more comprehensive human rights protection in Australia. The organisation encourages the Australian Government to urgently take the necessary measures to support ratification without any delay in implementation.

National Preventive Mechanism

OPCAT is the first international instrument that stipulates criteria and safeguards for effective preventive visits by national bodies to ensure compliance with international standards at the local level.¹

Central to the Optional Protocol is the role of the National Preventive Mechanism (NPM), which independently and autonomously audits places where people are deprived of their liberty through unannounced visits.

These visiting mechanisms serve to prevent torture and other ill-treatment and improve detention conditions by enabling experts to examine conditions and procedures of detention and make concrete recommendations for immediate improvements. Clearly such constructive dialogue between NPMs and the relevant authorities is of critical importance during the transitional phase after ratification. This logical approach was articulated by the Vice President of the European Committee for the Prevention of Torture who explained:

*"the newly established NPMs in member states... [are] crucial for the success of its preventive work [as] all of these bodies while operating on different levels want to achieve the same goal."*²

¹ Association for the Prevention of Torture. 'What is OPCAT?' Accessible via:
<http://www.ap.t.ch/index.php?option=com_k2&view=item&layout=item&id=672&Itemid=251&lang=en>

This rationale is explained in Article 17³ which outlines that member states should maintain, designate or establish one or several independent NPMs at the latest one year after the ratification.

Article 24

Article 24 of OPCAT permits the postponement of an NPM being implemented for up to three years, with the possibility of a two year extension. It is understood that the Australian Government intends to delay implementation of a NPM under Art 24 in order to manage the necessary administrative and legislative changes as well as undertake training and decide liaison and cooperation arrangements.

It has been well acknowledged that Australia's inspection systems do not fully meet the Optional Protocol requirements. It is therefore all the more imperative that implementation of an NPM occur immediately to ensure proper scrutiny of places of detention within Australia.

The Australian Government has declared that 'torture is wholly inconsistent with [its] fundamental responsibility to protect the rights and dignity of all individuals' and that ratification is a strong expression of a nation's commitment to its human rights obligations.⁴ However, this ratification risks being largely symbolic without expeditious and effective implementation.

With the substantive existing bodies already in existence, arrangements can be put in place whilst modifications occur rather than causing significant delays at the expense of human rights. This is what occurred when New Zealand ratified OPCAT in 2007 and is an example from a similar socio-cultural context of how implementation may occur. In fact, OPCAT is intentionally flexible on the structure of an NPM so the most effective system can be established which is appropriate for a state's particular political or geographical requirements.

The complete establishment of agencies and their jurisdiction takes years to materialise however, this is no reason to delay the adoption of transitional measures of implementation. In addition NPMs may submit proposals and observations concerning existing and draft legislation, aiding to shape domestic safeguards.

Potential human rights abuses

An NPM provides a practical means to work nationally towards OPCAT's goal by facilitating national and international dialogue to prevent torture and other cruel, inhuman and degrading treatment. This is crucial during a transitional phase to ensure the effective ratification and operation of OPCAT. The introduction of independent monitoring not only provides a deterrent effect but allows experts to examine firsthand the conditions and treatment of detainees. Importantly, detainees would also be exposed to some form of contact with the outside world.

² Renate Kicker quoted in International Conference on Prevention of Torture in Prague 2008. Accessible via: <http://www.bris.ac.uk/law/research/centres-themes/opcat/opcatdocs/pressreleaseprague.pdf>

³ OPCAT

⁴ Attorney-General Nicola Roxon quoted in Joint Media Release: "Gillard Government moves to ratify OPCAT". 28 February 2012. Accessed via: http://foreignminister.gov.au/releases/2012/kr_mr_120228.html

Prisons

Australia's Universal Periodic Review in 2011 raised concerns regarding human rights abuses in Australia's prison system.⁵ Issues were identified surrounding the lack of proportionality in sentencing as well as prison conditions such as overcrowding, inadequate health services, and lack of access to education.

In its Review of the Youth Justice System in 2011, the ACT Human Rights Commission noted improvement was needed to prevent abuses in using force and restraints; behaviour management; searches; segregation; communication; discrimination; oversight and health.⁶

Further, the Western Australia Equal Opportunity Commission stated that harsher penalties, the withdrawal of automatic parole, and mandatory sentencing have seen a rapidly increasing prison population despite decreases in the rate of serious crime. For example, state laws regarding traffic offences particularly affect Aboriginal people in remote communities who drive without a licence. This causes an overrepresentation in prisons of Indigenous peoples, the mentally ill and those with intellectual disabilities.

Ratification of OPCAT and most importantly, the introduction of an NPM would ensure adequate and independent investigation of both adult and juvenile prisons and would facilitate reform particularly in regards to physical and mental health services, including drug and alcohol rehabilitation, and harm minimisation programs.

Immigration Detention Centres

The Australian Government's position on mandatory detention was reaffirmed with the opening of five new detention centres in 2011. There have been ongoing concerns about Australia's immigration detention system, which have increased in recent years due to the length of time people have spent in remote detention centres, the increase in incidents of self-harm and suicides, as well as riots, protests and hunger strikes. The number of individuals facing indefinite arbitrary detention, such as those subject to adverse ASIO assessments, have also increased.

Calls for greater investigation have followed the opening of a number of very remote centres in recent years including: the Curtin Immigration Detention Centre (WA), the detention of families in the remote mining town of Leonora (WA), the Scherger Immigration Detention Centre (Qld); at the air force base at Weipa in far North Queensland; Wickham Point (NT), Christmas Island, and the soon to be opened centre in Northom (WA).

While a number of organisations currently monitor the centres they are either constrained due to financial limitations given the high cost of visiting such remote centres or their mandate ensuring their concerns are not made public.

⁵ UPR Recommendation 71

⁶ ACT Human Rights Commission, *The ACT Youth Justice System 2011* (July 2011). Accessible via: <http://www.hrc.act.gov.au/content.php/content.view/id/251>

Research has shown that existing internal accountability mechanisms are mostly not OPCAT-compliant;⁷ reporting internally and without autonomy. Such concerns were reiterated in the National Impact Assessment⁸ that found oversight 'between different types of detention, and between jurisdictions' as well as 'gaps in monitoring'.

A specific, appropriately funded body, to ensure independent monitoring of the detention conditions in which asylum seekers are kept, particularly in remote locations around Australia, is clearly required to prevent further human rights abuses. Mandatory, indefinite detention and poor conditions put detainees at risk of mental illness and self-harm.

As a party to OPCAT and with an established NPM, Australia will have a national system of visits to all onshore and offshore detention centres, facilitating both transparency and accountability for the conditions and treatment of detainees. The NPM will provide the necessary model for dialogue and review between detaining authorities and inspecting bodies.

Conclusion

Amnesty International urges the Australian Government put in place the necessary processes, including a National Preventative Mechanism and ratifies OPCAT without further delay. Careful consideration is needed in any decision-making process in respect of OPCAT to avoid a delay under Article 24 in the establishment of a National Preventive Mechanism in order to avoid further abuses of human rights. Independent monitoring and regular unannounced visits to places of detention by autonomous bodies are an important part of an overall strategy to prevent torture and other ill-treatment, and improve conditions of detention.

⁷ Harding, R., and Morgan, N., *Implementing the Optional Protocol to the Convention against Torture: Options for Australia*. Australian Human Rights Commission publication, 2008, *passim*.

⁸ *National Impact Assessment and Consultation on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2012*, Para 9