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Joint Standing Committee on Treaties
By email: jsct@aph.gov.au

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Dear Joint Standing Committee,

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

Thank you for the opportunity to make this submission.

The need for ratification

I support ratification of the Optional Protocol, which will enable Australia to better fulfil its obligations under the 1984 Convention against Torture and to prevent and remedy instances of torture or cruel, inhuman or degrading treatment which may occur in Australian detention facilities.

The deprivation of liberty experienced by detainees, their submission to the exclusive control of the state, and the limited links of detainees to the outside world, create a heightened risk of torture or cruel, inhuman or degrading treatment. Australia should adopt the Optional Protocol because the complementary regime of national and international supervision mechanisms under the Protocol, and the consequent increase in transparency, will help to prevent torture and ill-treatment in the places where it occurs most frequently and invisibly.

The Protocol is not only targeted at States where abuses in custody are flagrant, but aims to enhance supervision and oversight of detention in all States. Independent, expert, external supervision can assist every State in identifying systemic problems in detention, preventing abuse, and improving detention practices. External controls act as a deterrent, allow for interaction with the outside world (that engenders normalcy into an abnormal existence) and leads to constructive recommendations that can be implemented by the authorities.

The inspection mechanism is a non-threatening, constructive, dialogic process which does not undermine Australian sovereignty, but is a positive expression of it. Adopting the Protocol would be a signal that Australia is committed to the prevention of torture, and would augment the Torture Convention's remedial focus.

The need for political commitment and cultural change

I note that various domestic inspection or supervision mechanisms already exist but, in some areas of detention, there have been repeated failures by government to adequately remedy the defects identified by those mechanisms.

This is particularly the case in respect of immigration detention facilities, where the Australian Human Rights Commission and the Commonwealth Ombudsman have often identified serious problems in the humane treatment of detainees but their recommendations have been substantially ignored or rejected by government.

In these circumstances, unless there is a significant cultural shift in attitude and policy within government in certain sensitive areas of detention practice, the addition of international supervision through the Optional Protocol may be ineffective in improving human rights in detention.

Non-binding supervision and accountability mechanisms only work if there is a serious political commitment to them and a genuine receptiveness to change by government. Otherwise, international supervision will end up repeating the same criticisms made by domestic bodies but not change the human rights situation on the ground.

The nature of the National Preventive Mechanism

The National Interest Analysis indicates that the form of the NPM is still of a work in progress. I draw the Committee's attention to the general support expressed by Australian experts for a mixed model (of kind proposed by Australia) in consultations held by the Australian Human Rights Commission and the Asia Pacific Forum of National Human Rights Institutions in Sydney in November 2009: see www.humanrights.gov.au/human_rights/opcat/opcat_seminar2009.html#Heading213.

Yours sincerely

Ben Saul