



Public Interest Law Clearing House

By email: jsct@aph.gov.au

Our Ref: **H12/224**

Committee Secretary
Joint Standing Committee on Treaties
PO Box 6021
Parliament House
Canberra ACT 2600

30 March 2012

Dear Secretary

Submission to the Joint Standing Committee on Treaties regarding Australia's ratification of the Optional Protocol to the Convention to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Public Interest Law Clearing House New South Wales (PILCH) strongly supports the ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

PILCH is a community legal centre dedicated to referral and advocacy. PILCH operates as a clearing house which refers legal matters of public importance to lawyers able to provide pro bono advice or assistance. All requests for pro bono assistance are assessed against PILCH's public interest assessment criteria. To satisfy these criteria, the matter must raise matters of broad public concern, particularly impact on vulnerable, disadvantaged or marginalised groups, or the individual seeking assistance cannot reasonably be expected to afford to pay for legal services.

Currently, PILCH is nationally co-ordinating the Offshore Asylum Seekers Project (OASP) which is a joint initiative of PILCH VIC and PILCH NSW, CASE for Refugees (WA). OASP is a nation-wide project providing legal advice and representation to asylum seekers who are currently detained in immigration detention centres, and who may have a right to judicial review of a decision by the Department of Immigration and Citizenship (DIAC) regarding their refugee status.

Asylum seekers who are currently housed in immigration detention generally have little to no capacity to reach out independently to the legal profession, and no means to retain private legal representation. Asylum seekers face cultural, linguistic, financial and geographical barriers to accessing justice.

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We note that the focus of OPCAT is on prevention of cruel, inhuman or degrading treatment or punishment through independent inspection and other forms of monitoring by the United Nations Subcommittee on Prevention of Torture (SPT) and the National Preventative Mechanism (NPM). In this way, OPCAT will assist Australian governments to protect the basic rights of people who are detained and prevent conduct or environments that might lead to cruel, inhuman or degrading treatment or punishment.

Australia has ratified the United Nations Convention Against Torture (UNCAT). However, it is OPCAT that mandates preventive mechanisms that cannot be achieved under UNCAT. OPCAT empowers independent inspectorates acting as part of the NPM to achieve this goal.

We consider that it is in the interests of the broader community to protect the rights of people who are held in detention and to monitor the conditions within immigration detention.

Through our co-ordination of the OASP Project, PILCH has had contact with a large number of asylum seekers who are in immigration detention. PILCH is concerned about the length of time being spent in immigration detention by asylum seekers. In our experience, many asylum seekers are spending periods in excess of two years in immigration detention. Extensive periods spent in detention without an end date can have serious impacts on the mental health of asylum seekers. This may in some instances amount to cruel, inhuman and degrading treatment. It has also been our experience that asylum seekers are frequently moved between immigration detention facilities, which makes it very difficult for them to seek external assistance of a legal or medical nature.

We are aware of a number of asylum seekers who are being detained in prison, despite no criminal charges being laid (including one instance, the asylum seeker was held in prison solitary confinement for an extensive period of time with no one else in the prison that spoke his language). This forced isolation may amount to cruel, inhuman or degrading treatment.

Our position is based on the serious and well-documented concerns with conditions of detention, including prisons, mental health facilities and immigration detention. There is strong evidence that external scrutiny of places of detention can deter and, where necessary, help to redress torture and other forms of ill treatment.

Independent inspections are also cost effective. The UK Chief Inspector of Prison's Office, one of the UK NPMs under OPCAT, runs at something around 0.4% of the cost of running the various activities that it inspects. Importantly, inspections and monitoring creates costs savings by improving conditions for those held in detention, leading to less litigation, and fewer complaints, injuries and hopefully fewer deaths in custody.

We urge Joint Standing Committee on Treaties (JSCOT) to recommend to the Commonwealth Government that Australia ratify OPCAT.

Yours sincerely

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