



The Uniting Church in Australia  
Synod of Victoria and Tasmania  
Justice and International Mission Unit

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Submission No: .....6.....

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BY:.....

The Secretary  
Joint Standing Committee on Treaties  
R1 - 109  
Parliament House  
Canberra, ACT, 2600

Dear Secretary,

On behalf of the Justice and International Mission Unit of the Synod of Victoria and Tasmania, I write to support Australia becoming a party to the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (General Assembly resolution A/RES/57/199).

#### Torture and other Cruel, Inhuman or Degrading Treatment

Torture is among the most heinous of all human rights violations. It is a crime which can never be justified and which must be vigorously opposed wherever it occurs, and whomever the perpetrators or victims.

The utmost vigilance and transparency are required when dealing with torture and ill-treatment, with scrupulous adherence to all necessary methods of prevention<sup>1</sup> and full use of international law. The *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* offers new and improved mechanisms for monitoring and preventing any kind of torture or cruel, inhuman or degrading treatment or punishment.

#### The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Australia is among the 134 States Parties to the *UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT). The Government believes "Australia has good reason to be proud of its human rights record and its compliance with this Convention."<sup>2</sup>

It is commendable that Australia also made declarations under Articles 21 and 22 of the Convention in January 1993, recognising the competence of the UN Committee Against Torture to receive and consider communications from other State Parties and individuals relating to the Convention.

#### The Optional Protocol

We believe that Australia becoming a State Party to the *Optional Protocol to the CAT* is in the national interest and would bolster Australia's international reputation as a country that takes human rights seriously, with a robust and independent system of criminal justice. As the current Attorney-General, the Hon. Philip Ruddock, stated on the 55<sup>th</sup> anniversary of the adoption of the *UN Universal Declaration of Human Rights* on 10 December 2003, "human rights can never be taken for granted and we need to continually reinforce their value to society."

<sup>1</sup> Such as those outlined by Amnesty International in its 12-point programme for the prevention of torture:

*Torture in the Eighties* (London: Amnesty International Publications 1984) and also in the Convention itself.

<sup>2</sup> Attorney-General's Department press release, 'Observations by the UN Committee Against Torture,' 22 November 2000.

Australia was represented on the UN Working Group of the Optional Protocol for eight of the ten negotiating sessions. We note that the key reason given by the Australian Government in opposing the Optional Protocol was that it has a policy of only agreeing to visits by UN Treaty Committees where there is a compelling reason to do so, while the Optional Protocol allows for unrestricted visits.<sup>3</sup> It is our view that the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (Subcommittee on Prevention) will be most effective when it is able to operate through unrestricted visits. It is unclear why the Australian Government has reason to universally oppose unrestricted visits by UN human rights treaty committees, when such visits should be welcomed as opportunities to enhance compliance with the human rights treaties that Australia has committed itself to uphold. Such a policy would seem to give comfort to other countries with poorer human rights records that would seek to avoid the scrutiny of UN human rights treaty committees.

Australia's ratification of the Protocol would also be in the international interest, as it would set a crucially important example to our neighbours near and far, where ill-treatment of detainees is a far greater concern than it is here. How can we expect weaker and less affluent States to adhere to international standards on torture if Australia refuses to adopt this Protocol?

There is already international consensus on the merits of this Protocol and its provisions. It was adopted by 127 votes in the UN General Assembly on 18 December 2002 (with only four nations dissenting<sup>4</sup>). We note that Australia abstained in the voting in the Third Committee of the UN General Assembly on 21 October 2001 and had voted against the Optional Protocol in the UN Economic and Social Council on 24 July 2002. As of 21 November 2003 the Optional Protocol had been signed by 22 countries, including the UK and Aotearoa/New Zealand, with Albania and Malta now being States Parties to the Protocol. The Protocol needs 20 states parties for it to enter into force.<sup>5</sup> Each new ratification builds support for the Protocol and its provisions and underlines universal opposition to torture. The Norwegian Foreign Minister, Jan Petersen, has called upon other States to sign the Optional Protocol as a matter of urgency.<sup>6</sup> Australia has nothing to fear but much to gain. It is worth noting that only by ratifying the Protocol can Australia gain representation on the Subcommittee on Prevention (unless another State Party chooses to nominate an Australian).

#### Compliance with the Convention and Protocol

We can see no reason to delay Australia becoming a State Party to the Optional Protocol. The Government is confident it is in compliance with the CAT. Responding to the concluding observations made by the UN Committee Against Torture on Australia's second and third periodic reports under CAT, the Attorney-General's Department stated on 22 November 2000 that, "There is no suggestion in the conclusions expressed by the Committee that Australia is in any way in breach of the Convention."

By the creation of national and international bodies for the prevention of torture, the provisions of the Optional Protocol provide further mechanisms to assist the Government to monitor its detention facilities and ensure compliance with CAT. The Subcommittee on Prevention of Torture and Other Cruel, inhuman or Degrading Treatment or Punishment of the Committee against Torture (the Subcommittee on Prevention) represents an independent mechanism to review detention in

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<sup>3</sup> Senate Legal and Constitutional Legislation Committee, answer to Question 7 by the Attorney General's Department on 26 May 2003.

<sup>4</sup> International Rehabilitation Council for Torture Victims (Copenhagen, 2003). *The Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (available on-line at: [www.irct.org/usr/irct/home.nsf/unid/BKEN-5MDCBS](http://www.irct.org/usr/irct/home.nsf/unid/BKEN-5MDCBS))

<sup>5</sup> Optional Protocol to the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* Article 28(1)

<sup>6</sup> International Rehabilitation Council for Torture Victims (Copenhagen, 2003). *The Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (available on-line at: [www.irct.org/usr/irct/home.nsf/unid/BKEN-5MDCBS](http://www.irct.org/usr/irct/home.nsf/unid/BKEN-5MDCBS))

Australia and to review national measures and bodies to prevent cruel, inhuman and degrading treatment and punishment.

Such scrutiny should be welcomed as a form of continuous improvement to detention and imprisonment in Australia. It would be naïve to pretend that conditions of detention and imprisonment in Australia are always above reproach and could not benefit from additional independent review and expert advice.

The Government is proud of Australia's human rights record and should have no objection to entering into greater international co-operation to monitor and uphold those rights.

We note that domestic measures in place to ensure compliance with the *Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment* include:

- The judiciary;
- The Human Rights and Equal Opportunity Commission;
- The Federal Ombudsman;
- State and Territory Ombudsmen and Parliamentary Commissioners;
- *Ad hoc* Royal Commissions; and
- Official Prison Visitors and Inspectors.

It is worth noting that the recommendations of the Subcommittee on Prevention created under the Protocol are not binding. States are (merely) required to "examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures."<sup>7</sup>

#### Financial Implications

For an affluent nation such as Australia, the financial costs of adherence to the Optional Protocol are few and are far outweighed by the benefits.

The cost of maintaining the Subcommittee on Prevention is borne by the UN. A Special Fund set up to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party will be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organisations and other private and public entities.

#### How a refusal to ratify would reflect on Australia

An unwillingness to sign the Optional Protocol will be taken by some as an unwillingness by the Australian Government to have independent review of detention and imprisonment in Australia. It could be perceived by some as a reluctance to co-operate with partner nations in the eradication and prevention of a crime universally condemned.

Australia becoming party to the Optional Protocol will assist in making the Optional Protocol an international norm and assist in pressuring other countries to become State Parties.

#### The Uniting Church in Australia support for Human Rights

The Uniting Church in Australia has been an active supporter of human rights throughout its history. The Gospel calls on Christians to love others as they love themselves; human rights standards provide a minimum guide as to what love of others means. Many human rights have their origins in the Christian faith and many Christians have been involved in developing and defending human rights as an expression of their faith. In its *Statement to the Nation* in June 1977 the

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<sup>7</sup> Article 12(4), also Article 22

Inaugural Assembly of the Uniting Church in Australia affirmed “our eagerness to uphold basic Christian values and principles, such as the importance of every human being . . . and personal dignity, and a concern for the welfare of the whole human race.” The Inaugural Assembly pledged that the Uniting Church would “seek the correction of injustices wherever they occur.”

In 2000 the delegates of the Uniting Church National Assembly that meets every three years passed a resolution “calling on the Australian government to establish a review of criminal justice systems within Australia including ...the extent to which current systems fulfil or fail to fulfil the United Nations Minimum Rules for the Treatment of Prisoners (1955) and United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990).”

The Synod of Victoria has long had a concern for the welfare and well-being of people in detention and prison. In 1978 the annual meeting of the delegates of the Synod of Victoria passed a resolution expressing “horror” at the living conditions of men in the Remand section of Pentridge Prison in Melbourne. In 1988 the meeting resolved that “prisons must be humane and managed justly” and declared “that the Church’s role in relation to prisons includes . . . advocacy for prison reform.” In 1998 the state delegates to Synod of Victoria passed a resolution recognising the UN Universal Declaration of Human Rights. The resolution called “on the Australian and State/Territory governments to express their commitment to human rights by taking up fully and energetically their responsibility to protect the human rights of all people by ensuring that their respective human rights agencies are adequately funded, accessible and independent.”

The Uniting Church is active in providing chaplains to prisons and other places of detention and advocating for improvements in conditions for those in detention where such conditions do not uphold the basic dignity of each person.

Documents in which the Uniting Church in Australia has expressed concern for the well-being and treatment of people in detention include:

- “*Prison the Last Resort – A Christian Response to Australian Prisons*”, produced in 1988 by the Uniting Church in Australia Assembly Social Responsibility and Justice Commission in collaboration with the Anglican General Synod Social Responsibilities Commission, the Australian Catholic Social Justice Council and the Australian Council of Churches Commission on Church and Society.
- “*I was in Prison...*”, produced in 1988 by the Division of Social Justice of the Synod of Victoria and updated and reprinted in 1989.
- Submission by Victorian Uniting Church chaplains to the Victorian review of suicide and self-harm in prisons in 1998.
- Submission by the Justice and World Mission Unit, Synod of Victoria to the Independent Investigation into the Management and Operation of Victoria’s Private Prisons in 2000.

Yours sincerely,

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