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Joint Standing Committee on Treaties
Department of House of Representatives
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SUBMISSION NO. 18

TT on 26 August 2008

Dear Sir

**Submission on the Optional Protocol to the Convention on the
Elimination of All Forms of Discrimination Against Women**

The New South Wales Council for Civil Liberties (NSWCCL) is committed to protecting and promoting civil liberties and human rights in Australia.

The NSWCCL is grateful for the opportunity to make a submission to the Joint Standing Committee on Treaties on whether Australia should become a party to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women.

The NSWCCL strongly recommends that Australia become a party to this Protocol. The main reasons behind the NSWCCL's support are provided in this submission.

Summary of grounds:

- 1. Australia's reputation as a country concerned with human rights issues.**
- 2. Criticism by an independent international committee would help to improve domestic policy.**
- 3. To ensure confidence in those women whose complaints are not substantiated that the decision was brought about by an independent, external authority.**
- 4. Becoming a party to the Protocol would be in the best interests of over 51% of the population.**

NSWCCL also makes comment on:

- 5. Responding to adverse views and recommendations.**

The NSWCCL would be happy to elaborate on any matters that may need further discussion.

1. Australia's reputation as country concerned with human rights issues.

It is desirable for Australia to regain its reputation as a country whose concern for human rights is not just a matter of international diplomacy but that Australia is a country which is committed to putting that concern into practice within its own borders. Australia has a responsibility to defend human rights both at home and abroad. Australia must not seem hypocritical when urging other nations to improve their human rights positions. The NSWCCCL believes that were Australia to become a party to this Optional Protocol, it would reaffirm our commitment to the furthering of human rights not just in relation to the protection of women but also our commitment to human rights in general.

While once heralded as a model member of the United Nations in encouraging and promoting human rights, Australia's reputation as a human rights champion has come under fire in recent years due to international criticism, particularly in relation to our treatment of asylum seekers and Indigenous Australians. The Howard Government in particular thumbed its nose at the international community by failing to implement its commitment to Human Rights instruments, thus tarnishing Australia's image in the eyes of the rest of the world.

The NSWCCCL believes that the decision before the Australian Government today provides a "litmus test of the current government's intentions and good faith in human rights matters."¹ Becoming a party to this Optional Protocol is an opportunity to make up some of that lost ground and undo some of the damage that has been caused under the former government. It is an opportunity for the new government to establish itself as one devoted to the protection of all human rights. To become a party to the Optional Protocol would be to express Australia's commitment to ensuring that people everywhere enjoy agreed minimum standards of rights.

Re-establishing Australia's reputation as a human rights champion would also give us greater credence when urging other nations to improve their human rights situations. How can Australia criticise another nation's failure to protect human rights when it itself has come under so much criticism from international bodies? Before we place judgment on the failures of other nations, we must first repair Australia's global image.

The Rudd government has an opportunity to distinguish itself from the former government by committing itself to the protection of human rights and thus restoring Australia's international reputation.

¹ Elizabeth Evatt, "Relaxed & dumbing down: Australia's reputation in human rights"

2. Criticism by an independent international committee would help to improve domestic policy.

The NSWCCCL believes that as with one of the principal arguments for democracy, the presence of criticism helps to improve policy, especially by drawing attention to mistakes or to relevant knowledge. External, independent and disinterested knowledge is of particular value to the improvement of domestic policies.

Becoming a party to the Optional Protocol would catalyse changes in national law and practices by motivating the Government to ensure that the Convention is implemented at the national level and national remedies are effective in order to avoid being called to account at the international level. The Optional Protocol would offer women the possibilities of obtaining justice in individual cases where national remedies have been exhausted and would achieve a broader impact by encouraging governments to take the necessary action at the national level in order to avoid international criticism.

The Protocol would also assist in the development of progressive interpretations of discrimination standards that can inform national courts and lawmakers, in addition to other international human rights bodies. Case law created under such a procedure can be used to influence the development of national law and human rights law under other treaties. Existing international procedures for promoting implementation of CEDAW, consisting of reporting by States Parties and the adoption of general recommendations by the Committee interpreting CEDAW's provisions, were "inadequate for this purpose and for spelling out the legal accountability of states in specific factual circumstances."²

The Protocol would provide detailed guidance to governments that are seeking to meet their obligations under the Convention. While its recommendations are non-binding, the Committee is able to request the State party concerned to take specific measures to remedy violations of CEDAW. This includes the amendment of legislation, stopping discriminatory practices and implementing affirmative action measures. The courts and lawmakers would be encouraged to follow these recommendations in order to avoid international criticism.

² Donna Sullivan, WHRnet

3. To ensure confidence in those women whose complaints are not substantiated that the decision was brought about by an independent, external authority.

The NSWCCCL believes that giving women and girls an external, independent authority to adjudicate on their complaints helps to ensure that where the complaints are not justified the complainant is persuaded that the rejection is not brought about by people biased against their interests.

Under the current position women are only able to seek redress through domestic avenues. This is an issue particularly when the complaint involves discrimination by a state party. The complainant may feel that the decisions are merely biased reflections of the system in which they operate. Women who claim that their rights under CEDAW have been violated enter the complaints process already feeling let down by authority. They are unlikely to have confidence in the decisions reached by higher authorities which operate within the same legal and social environment.

Under the Optional Protocol women are able to submit communications to the Committee once domestic remedies have been exhausted. This provides them with access to an unbiased, independent authority and if they do not succeed in their complaint they are able to accept the decision as one not influenced by the system which may have aggrieved them in the first place. Having a complaint heard by a body that is completely separate and distinct from domestic pressures restores greater confidence in the complainants that the decision is based fully on the merits of the case and is not at all influenced by possible biased agendas of the judicial or legislative system or of society itself.

4. Becoming a party to the Protocol would be in the best interests of over 51% of the population.

The reasons so far have been concerned with more general ideas of human rights and the role of international law in developing domestic policies. It is important to note that the Optional Protocol being considered today is one aimed specifically at the rights of women and the need for special protection of those rights. Despite representing such a large proportion of the population, the voice of women has long been ignored. Throughout history and today women have been oppressed, exploited, undervalued and demoralised around the world and within Australia's borders. While ratifying CEDAW into Australia's domestic law through the Sex Discrimination Act³ was a great step towards recognising the importance of protecting women's rights in Australia, becoming a party to the Optional Protocol would further Australia's acknowledgment of women's rights.

As a matter of democracy, the representative system of government in Australia requires parliament to be the voice of its constituents. Women account for 51% of the population that the Government is representing. In order to speak on behalf of its people, the Government must listen to the voice of women. The NSWCCCL believes that becoming a party to the Optional Protocol would be to speak up not only on behalf of 51% of Australia's population but also members of the other 49% who desire equality between the sexes.

A procedure that brings the violation of the rights of women under CEDAW before the world will put the rights of women on a similar footing to the enjoyment of civil and political rights; the protection of the right to freedom from racial discrimination; and sanctions for violations to the right to freedom from torture and other cruel, inhuman or degrading forms of treatment or punishment. The Optional Protocol to CEDAW is the first gender specific international complaints procedure. As well as putting CEDAW on a par with human rights treaties, which have complaint procedures, it enhances existing mechanisms by specifically incorporating practices and procedures that have been developed under other complaints procedures.

CEDAW was ratified by Australia some 25 years ago and public awareness of the rights of women has dwindled with the passing of time. Becoming a party to the Optional Protocol would regenerate public awareness of human rights standards prohibiting discrimination against women. The practical recommendations of the Committee to the States would ensure that the Convention would become an active part of domestic legal, political and social discourse. The Optional Protocol requires States to make the Optional Protocol and its procedures as widely known as possible. Communications and inquiries under the Optional Protocol will receive publicity, which will increase public awareness of CEDAW and the Optional Protocol and will build awareness among women of their rights as claimants.

³ Sex Discrimination Act (Cth) 1984

5. Responding to Adverse Views and Recommendations

Simply ratifying the Optional Protocol will not necessarily improve the lives of Australian women. To secure the rights of Australian women under the Optional Protocol, Parliament needs to legislate to ensure that the adverse views and recommendations of the CEDAW Committee are addressed adequately and appropriately by the government, the parliament and the courts.

Australia's response to adverse views and recommendations from UN treaty-based committees has been less than satisfactory in the past. For example, many of the official government replies to adverse views to the UN Human Rights Committee simply dismiss the Committee's views and then restate Australia's (anti-human rights) view.

It does not have to be this way. The first adverse finding of the UN Human Rights Committee led to the decriminalisation of homosexuality in Tasmania. If successive governments had followed this positive example and seriously engaged with the views of the UN Committee on, for example, the issue of mandatory immigration detention, then perhaps many of the excesses of that policy would have been avoided. Perhaps the mental health issues of detainees would have been addressed sooner and perhaps the many people like Cornelia Rau and Vivien Solon would never have seen the inside of an IDC.

Under Article 7 of the Optional Protocol, the CEDAW Committee can transmit its views and recommendations concerning a formal communication made by a complainant under Article 2. If Australia ratifies the Optional Protocol, then it should also implement a statutory mechanism to ensure that adverse findings are addressed. Such a mechanism can range from HREOC tabling a full report on the issues raised, through to implementing a judicial process to assess and award adequate compensation.

Having HREOC, or the federal Sex Discrimination Commissioner, table a report in parliament only requires a simple change to the HREOC Act and adequate funding to resource such research. Of course, if Australia minimises the number of adverse findings by adhering to its international obligations under CEDAW, then the budgetary impact would be minimal.

More concretely, granting legal recognition to adverse findings of the CEDAW Committee will demonstrate that Australia takes its human rights obligations seriously. The courts have expertise in assessing damages and awarding compensation, so it is also appropriate that individuals whose human rights have been violated should be adequately and appropriately compensated by (perhaps) the Federal Court of Australia. Again, the financial impact of this mechanism would be reduced if Australia respected the rights of women and/or provided a domestic remedy for women to address discrimination. It should be recalled that an individual must exhaust all domestic remedies before communicating with the CEDAW Committee.

NSWCCL strongly recommends that ratification of OP-CEDAW be accompanied by federal legislation to ensure that adverse views and recommendations of the CEDAW Committee are addressed adequately and appropriately. This will help to protect and secure the rights of Australian women upon ratification of the Optional Protocol.

Conclusion

While the NSWCCL recognises that Australia's ratification of CEDAW some 25 years ago was a significant indication of its commitment to the protection of women's rights, we feel that the time has come for Australia to recommit to its obligations under the convention by becoming a party to the Optional Protocol.

This is an opportunity for the current government to demonstrate its devotion to the protection of human rights in general and women's rights in particular and to regain some of the ground lost under the previous government. Restoring Australia's reputation as a human rights defender would give our Government greater credence when criticising other nations' human rights failures and would eliminate any suggestions of hypocrisy. Being subject to international criticism would also have positive impacts on the development and application of domestic policy. Domestic policies will be fine-tuned in order to avoid such criticism, thus enhancing the effectiveness of our domestic law. The Optional Protocol provides women with access to an independent and unbiased source of authority, thus ensuring their faith and confidence in the decisions reached. Finally, becoming a party to the Protocol would be in the best interests of more than 51% of the population and would give a voice to those who have so often been ignored.

Thank you once again for the opportunity to make this submission.

Yours faithfully,
NSW Council for Civil Liberties

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