



Justice Action Submission to the Joint Standing Committee on Treaties: Ratification of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Introduction

This submission to the Joint Standing Committee on Treaties contains the arguments that Justice Action believes are indicative of why the Commonwealth of Australia should ratify the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This submission also contains Justice Action's thoughts on the best way to ratify the treaty, to ensure that the ratification leads to real reform of the detainee system.

Why the Optional Protocol should be ratified

The fundamental reason why Australia should ratify the Optional Protocol is that it will improve transparency of the detainee system in Australia. By firstly allowing the International Subcommittee on Prevention to inspect places of detention, and secondly by establishing National Preventative Mechanisms, there will be unprecedented levels of oversight over detention centres in Australia. This combination of international and domestic oversight will, in its best form, do a greater job of identifying potential and actual issues and cases of cruel, inhuman and degrading treatment and deprivations of liberty, than existing monitoring services. This substantial increase of transparency into the detention centres of Australia will mean that detainee mistreatment that could previously be ignored or covered up, will now be much easier to monitor and detect.

As article 20 of the Protocol describes, parties to the Protocol are granted access to all information concerning the number of persons deprived of their liberty in places of detention, access to all information referring to the treatment of those persons as well as their conditions of detention, and the opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary. To this end, the Australian government, and in extreme cases the Australian people, can be made aware of any issues in the system. Currently, only Western Australia has implemented a similar framework to a National Preventative Mechanism, and we believe that until all Australian detention facilities are under similar oversight, there is a fundamental lack of necessary transparency. Such examples of abuse in Justice Action's experience are regrettably too frequent to be dismissed as one off occurrences, ranging from excessive time locked up in cells, to unacceptable delays in parole programs, mixing unsuitable detainee populations, and other similar problems.

We too often receive missives from detainees indicating alleged cases of abuse, and unfortunately, our organisation and other NGOs like us, simply lack the resources or organisational capacity to investigate every claim to the extent that is warranted. If there exists anything close to the levels of abuse that detainees have told us about, then there is a serious problem on a national scale, worthy of immediate action. Keep in mind that this is only from the sample of domestic prisons and mental health institutions for Australian citizens, without consideration of the allegedly horrific conditions in detention centres for asylum seekers.

The consequence of greater transparency of places of detention in Australia is that it encourages greater accountability. This works in two ways. Firstly, when abuses do occur, they will be more likely to be detected, and in turn rectified and the perpetrators punished by the Australian Government. As such, there is a tighter feedback loop than what existed previously. Secondly due to the threat of being exposed, there is a natural deterrence effect that will occur. Out of fear of being discovered and reprimanded, detention officials will ensure that the detainees under their supervision are treated in accordance with the Convention against Torture. As such, there should hopefully not even be a need for a feedback loop, because the threat of discovery means there should be no abuses to be identified. As such, the best-case scenario is that the existence of National Preventative Mechanisms will result in the incidence of abuse cases to lower significantly. Even if not all abuse is eliminated, the creation of National Preventative Mechanisms will render it more difficult to conceal such instances of abuse and hence make it inherently more dangerous for detention officials to abuse their power in the first place.

Other than the inherent good that comes with less detainee abuse, remembering that prisoners are people too with fundamental human rights and dignity, there is also a significant practical benefit. With prisoners being aware of the greater transparency in the system and possessing knowledge of their rights, instead of suffering under current circumstances of abuse in the system, their rehabilitation and integration into the wider community will be improved. As such, society as a whole benefits, not only the detainees.

How the Optional Protocol should be ratified

Justice Action supports the mixed unit model for the National Preventative Mechanisms due to Australia's federal nature. More specifically, we believe there should be several different National Preventative Mechanisms on a state level, overseen by a Commonwealth National Preventative Mechanism, which checks the others, and investigates Commonwealth detention centres.

Furthermore, Justice Action believes that any system of National Preventative Mechanisms must include detainee consultation as an integral part of the process. Considering this is ultimately for the detainees benefit, having them anywhere less than the centre of the oversight process is asking for failure. As expressed in the *Implementing the Optional Protocol to the Convention against Torture in Australia* seminar, hosted by the Australian Human Rights Commission and the Asia Pacific Forum of National Human Rights Institutions, 25 November 2009, a question was asked as to whether the New Zealand Commission had involved detainees in the OPCAT process.

It was found that the Commission has not systematically provided information to detainees about OPCAT, and it was concluded that it would be a good idea to more systemically inform detainees. In line with what Justice Action expressed during this seminar, we continue to believe that prisoners and other detainees should be engaged as part of the OPCAT process. We maintain that OPCAT will not lead to positive change without direct involvement of those it seeks to protect.

As such, Justice Action proposes:

- Implementing the prisoner representative structure of the Inmate Development Committees (IDCs), which allows cost-free continual monitoring, gives community training, presents collective concerns and avoids victimisation.
- Using existing technology including the video camera monitoring in the high security cells as a communication device back to the National Preventative Mechanism as well as to families and communities. Internet access to the National Preventative Mechanism through recycled computers in cells does not cost money and makes the process real.
- Strengthening the NGO and ex-prisoner community to be independent of government funding and coordinating information to assist the National Preventative Mechanism.

Conclusion

There is a clear imperative for action. Ratifying the treaty to improve the situation in the Australian detention system makes sense on a principled level in improving accountability and transparency in a system that sorely needs it. Having said that, an expedient ratification without thinking of the actual effect of prisoners would be disastrous. Any ratification must include detainee consultation at its heart, as failure to do so renders the entire effort meaningless.

Yours sincerely,

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Justice Action

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