



Submission to the Attorney General's Department

**Optional Protocol to the Convention against Torture and
Other Cruel, Inhuman or Degrading Treatment or
Punishment – National Interest Analysis**

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an agency of the
National Assembly
Uniting Church in Australia

Contact

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INTRODUCTION

UnitingJustice Australia, the justice agency of the National Assembly of the Uniting Church in Australia, welcomes this opportunity, on behalf of the Uniting Church in Australia, to make a submission to the National Interest Analysis on the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

This submission is based largely on the submission to the Joint Standing Committee on Treaties, 15 January 2004, prepared by Dr Mark Zirnsak for the Justice and International Mission (JIM) Unit, Uniting Church in Australia Synod of Victoria and Tasmania. UnitingJustice is grateful for the JIM Unit's support of this submission.

The Uniting Church in Australia strongly supports Australia's accession to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

THE UNITING CHURCH IN AUSTRALIA'S SUPPORT FOR HUMAN RIGHTS

On the occasion of its inaugural National Assembly in 1977, the Uniting Church in Australia issued a *Statement to the Nation*. This statement contains the Church's commitment to human rights:

We affirm our eagerness to uphold basic Christian values and principles, such as the importance of every human being, the need for integrity in public life, the proclamation of truth and justice, the rights for each citizen to participate in decision-making in the community, religious liberty and personal dignity, and a concern for the welfare of the whole human race.¹

The Uniting Church's commitment to human rights is most fully expressed in the 2006 statement, *Dignity in Humanity: Recognising Christ in Every Person*.² This statement commits the Uniting Church to respect and uphold human rights, and to critically evaluate Government policy in light of the international human rights instruments and Australia's human rights commitments. The statement specifically addresses the role of the United Nations (UN) in promoting peaceful interaction between all human beings and expressing a common international standard of the fundamental rights and needs of human beings.

In addition, in July 2006 the Assembly Standing Committee resolved to request that the Australian Government 'ensure that torture and other such treatment does not occur within detention centres and prisons in Australia'.³

¹ Inaugural Assembly, Uniting Church in Australia (1977), *Statement to the Nation*, available on the UnitingJustice website at <http://nat.uca.org.au/unitingjustice/resourcearchive/assemblyresolutions/index.html>

² Eleventh Assembly, Uniting Church in Australia (2006), *Dignity in Humanity: Recognising Christ in Every Person*, Resolution 06.20.01, available on the UnitingJustice Australia website at <http://nat.uca.org.au/unitingjustice/resourcearchive/assemblyresolutions/index.html>

³ Eleventh Standing Committee, Uniting Church in Australia (2006), *Implementation of Dignity in Humanity*, Resolution 06.75.01, available on the UnitingJustice Australia website at <http://nat.uca.org.au/unitingjustice/resourcearchive/assemblyresolutions/index.html>

The Uniting Church has made such statements because we believe that all people are created in the image of God and every person, as a bearer of God's image, is inherently worthwhile and deserving of dignity and respect. Human beings, as a reflection of the God who is a triune God, one in three persons, are also inherently relational, finding life and sustenance in relationship and community. Being called into community with the whole of humankind as we are, we believe that when one person is diminished, we are all diminished. We are particularly motivated in our concern for those in prison and detention centres by the biblical call to visit those who are imprisoned.

In living out this faith, Uniting Church agencies, groups and members across Australia are involved on the ground in support of those in prison and detention. Uniting Church members have a long history of involvement in regular visitation programs and the provision of pastoral and spiritual care in both prisons and immigration detention centres. Uniting Church chaplains have been serving in prison and detention facilities around Australia since the Church's inception and many state-based agencies provide specific services, for example, UnitingCare West in Western Australia, runs *Outreach Services*, a support program for men in prison and upon their release⁴.

It is out of these beliefs, commitments and experiences that we offer this submission.

OPCAT AND DETENTION AND IMPRISONMENT IN AUSTRALIA

Torture is among the most heinous of all human rights violations. It can never be justified and must be vigorously opposed wherever it occurs, whomever the perpetrators and victims. The utmost vigilance and transparency is required to ensure adherence to all necessary methods of prevention and the full use of international law. In recent years, the Uniting Church in Australia has commented several times on the human rights abuses taking place in Australia's detention facilities, and many of our chaplains have experienced these abuses first hand.

We believe that Australia becoming a State Party to the OPCAT 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.

The Optional Protocol offers an improved mechanism for monitoring and preventing any kind of torture or cruel, inhuman or degrading treatment or punishment in detention and prison facilities. This process assists State Parties in monitoring their facilities and supports the continuous improvement in facilities by State Parties. It is worth noting that the recommendations of the Subcommittee for the Prevention of Torture are not binding – States are required to “examine the recommendations of the Subcommittee and enter into dialogue with it on possible implementation measures.”⁵

The dual system of national and international monitoring will ensure the greater implementation of international standards at the local level. The national body will have the benefit of training and assistance from the international Subcommittee on

⁴ For more information see the UnitingCare West website http://www.unitingcarewest.org.au/dsp_content.cfm?cat_id=36

⁵ Article 12 (4)

Prevention, and States Parties have some flexibility to designate a national body of their choosing.⁶

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 previous Australian Government in opposing the Optional Protocol was that it had 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.⁷ It is unclear why the Australian Government had 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. It is our view that the Subcommittee will be most effective when it is able to operate through unrestricted visits.

Regular visits to detention and prison facilities can have an important deterrent effect on authorities who otherwise might believe they will never be held accountable for their actions. Furthermore, such visits enable independent experts to examine firsthand the treatment of detainees and prisoners, enabling them to make realistic and practical recommendations and enter into constructive dialogue with authorities.⁸

This system of visitation and reporting that is created by the Optional Protocol can be seen as a preventative, rather than a reactive mechanism. The regular monitoring of detention and prison facilities contrasts with most existing international human rights mechanisms, which monitor the situation after allegations of abuse. OPCAT, then, creates an environment of collaboration, rather than condemnation of State Parties.⁹

The Uniting Church acknowledges that there are several mechanisms already in existence which monitor conditions and practices in detention centres and prison facilities, including HREOC's annual inspections of immigration detention centres, and the Office of the Inspector of Custodial Services in Western Australia. Many of these programs work well in producing independent review of prison and detention facilities, however it is worth noting, for example, that the Victorian Federation of Community Legal Centres (in their submission to the Victorian Attorney-General's Independent Review of the Equal Opportunity Act 1995), has voiced its concerns on the lack of transparency and independence around the response of Corrections Victoria to issues raised by the Federation and the Victorian Council of Social Service about discrimination against women in the Victorian prison system.¹⁰

The addition of national and international independent monitoring systems under the OPCAT would only enhance the mechanisms already in place for observing prisons and detention centres in Australia and may assist in creating, nationally, some greater consistency in these processes.

⁶ Association for the Prevention of Torture, (2005), *OPCAT: A Manual for Prevention*, pp. 28-9

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

⁸ Association for the Prevention of Torture, *op. cit.*, p. 27

⁹ *ibid.*, pp. 27-8

¹⁰ Federation of Community Legal Centres (Vic) Inc (2008), *Submission to the Victorian Attorney-General's Independent Review of the Equal Opportunity Act 1995 (Vic)*, available:

<http://www.communitylaw.org.au/fedclc/resources/EqualOpportunityActReviewSubmissionJan2008.pdf>, accessed: 27 June 2008, p. 12

AUSTRALIA AND THE INTERNATIONAL HUMAN RIGHTS SYSTEM

Accession to the OPCAT will enhance Australia's international reputation as a country that takes human rights seriously. The new Australian Government has recently promoted its commitment to the international human rights system¹¹ and accession to the Optional Protocol would continue this trend, as well as enabling Australian representation on the UN Subcommittee for the Prevention of Torture. Australia's accession would also set an example for neighbouring countries and support the Australian Government's work to strengthen human rights in our region.

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

FINANCIAL IMPLICATIONS

The costs of maintaining the Subcommittee on Prevention is borne by the UN. A Special Fund has been set up to finance the implementation of the recommendations made by the Subcommittee after a visit to a State Party. This fund is financed through voluntary contributions made by governments, intergovernmental and non-governmental organisations and other private and public entities.

For an affluent nation such as Australia, the cost of a substantial contribution to this fund is entirely in keeping with its commitment to the international human rights system. This cost would be drastically outweighed by the benefits for Australia from accession to the Optional Protocol.

CONCLUSION

The Uniting Church in Australia strongly recommends that the Australian Government accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The benefits of Australia's accession, in terms of the boost to Australia's reputation internationally in the area of human rights and the possibility for continued improvement in detention and prison facilities in Australia, would far outweigh any costs that are incurred through accession.

¹¹ Examples of this include Australia's accession to the Optional Protocol to the United Nations Convention on the Elimination of all Forms of Discrimination Against Women and the tabling of National Interest Analysis proposing Australia ratify the United Nations Convention on the Rights of Persons with Disabilities.