

Australia unlikely to sign Optional Protocol to the Convention Against Torture

The Australian Parliament's Joint Standing Committee on Treaties, chaired by Dr Andrew Southcott MP, has recommended against ratification of the Optional Protocol to the Convention against Torture (OPCAT). This is a setback struggle to institutionalise protection of civil rights in Australia, and also plays into the hands of those nations seeking to minimise scrutiny of the conditions under which they hold prisoners and detainees.

The Government has yet to respond to the committee's report, but it has stated that it is opposed to ratification of the Optional Protocol. On the other hand, ratification of the Optional Protocol was supported by the Law Society of New South Wales, the Refugee Council of Australia, Amnesty International Australia, the Human Rights and Equal Opportunity Commission, Australian Lawyers for Human Rights, the National Council of Churches in Australia, the Catholic Commission for Justice, Development and Peace as well as the Forum of Australian Services for Survivors of Torture and Trauma.

The committee's report is concerned that visits to places of detention could be made "regardless of whether there were any substantive concerns on allegations of torture".

The Committee believes that there is no immediate need for Australia to ratify the Optional Protocol. Australia is already a party to, and complies with, the substantive human rights instrument - the

Convention against Torture, and as it is a leader in human rights, there is no need for the system of inspections and preventative mechanisms, which the Optional Protocol puts in place. It also believes that UN treaty bodies should be focussed on "serious human rights violations" and questions the need for further UN commitment and resources being put into further monitoring by UN body.

The decision to recommend against ratification of the Optional Protocol was not unanimous, and in a dissenting report committee members recommended ratification, stating that Australia has nothing to fear from the Optional Protocol and that it should set an example to other nations in ratifying the treaty.

FASSTT believes that Australia could make a significant contribution to stopping and preventing torture and ill-treatment, by ratifying the OPCAT. An extract from FASSTT's submission to the Joint Standing Committee on Treaties follows below:

FASSTT is a coalition of eight agencies – one in each state and territory - that respond to the needs of survivors of torture and trauma who have come to Australia from overseas. Member agencies seek to combat the impact of torture on the individual, the family and the community through health assessment and referral, information provision, counseling and advocacy, training of other service providers, research and service innovation. The agen-

cies have been delivering these services for between eight and 16 years and their work is considered to be expert nationally and internationally. FASSTT agencies are currently the principal contractors to the Department of Immigration and Multicultural and Indigenous Affairs to provide services to refugees in the initial period of their settlement and the only agencies funded to provide health care to people released from immigration detention on health grounds.

During the last decade, Australia has received more than 100,000 people through its humanitarian program. Research suggests that a majority of refugees coming to Australia have physical and mental health problems related directly to torture experiences or associated refugee related trauma. Thousands have been clients of member agencies of FASSTT.

FASSTT commends successive Australian governments that have assisted survivors of torture and trauma through the humanitarian program and the provision of assistance to those who have settled in this country. The humanitarian program and the services for refugees are a concrete manifestation of Australia's abhorrence of the practice of torture and its willingness to contribute to the international community's efforts to assist people whose right to be free of torture have been violated. We believe that consistent with these core values, Australia could also make a significant contribution to stopping and preventing torture and ill-treatment by ratifying the

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In the course of our work, members of FASSTT have learned much from survivors of torture and trauma about diverse forms of torture and ill treatment and about circumstances which contribute to the widespread occurrence and persistence of these human rights violations. People who are deprived of their liberty are most at risk of being subjected to torture and other cruel, inhuman or degrading treatment or punishment because their well being is utterly dependent on the officials detaining them and their plight is hidden from the outside world.

Torture and other cruel, inhuman or degrading treatment or punishments are commonly thought of as arising from deliberate acts which are officially approved or condoned. While there are indeed states and institutions in which physical and mental harm is intentionally inflicted at the instigation of officials or with their knowledge, people deprived of their liberty in other states and institutions are also frequently harmed as a result of neglect or ignorance by officials.

Many people who are detained in prisons, psychiatric institutions, detention facilities for asylum seekers and other institutions are particularly at risk because of factors such as their youth or because they have experienced traumatic events.

FASSTT has no doubt that independent scrutiny of places of detention – which the Optional Protocol is concerned to strengthen – is a critical component of measures essential to stop and prevent torture and deliberate or inadvertent cruel, inhuman or degrading treatment or punishment.

The Optional Protocol constitutes an innovative mechanism to assist states throughout the world to take concrete steps to prevent these violations occurring.

We are mindful of the weaknesses of the Optional Protocol, for example, that it will not apply to countries with appalling human rights records which decline to ratify it. The Protocol will however contribute to enhancing safeguards against torture and ill-treatment in every country that does ratify it. Australia has systems of inspection of various types of institutions in which people deprived of liberty are detained. The activities of these inspection systems would be complemented, not duplicated, by the work of the panel of international, multi-disciplinary experts established to implement the Optional Protocol. That is the view taken by the UK Government, which ratified the Optional Protocol although its places of detention are subject to scrutiny by domestic bodies and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Other European countries including Austria, Denmark, Finland, Italy, Norway and Sweden have signed the Optional Protocol, indicating that they also consider the additional inspection regime to be an important initiative for improved protection of human rights.

In the year in which Australia has the honour of chairing the United Nations Human Rights Commission, ratification of the Optional Protocol would provide a strong demonstration of the country's commitment to strengthening the international human rights machinery. It would enhance our authority in human rights discussions that take place bilaterally and in multilateral forums such as the Commonwealth. We could represent an influential example in the Asia-Pacific region where, at the

time of writing, only New Zealand has signed the Optional Protocol.

The functioning of the Subcommittee and secretariat established under the Optional Treaty will be funded from the regular budget of the UN, which will assist developing states willing to ratify the treaty but who would not otherwise have the resources to obtain detailed advice from international experts about their detention systems. FASSTT understands that the cost of establishing the Subcommittee and its work over a two year period has been estimated as approximately \$US two million dollars, which is less than 0.1% of the UN regular budget.

If increasing numbers of countries signal their determination to combat torture by ratifying the Protocol, even when they consider their current domestic mechanisms to be adequate, this will strengthen international and internal pressure on governments which do want to avoid exposure of their institutions. Australia's refusal to ratify the Optional Protocol would certainly provide a useful precedent for other governments to cite in support of their refusal to ratify.

The Optional Protocol does not impose any legal obligations on Australia which are inconsistent with the nation's commitment under other international instruments, to take effective action to stop and prevent torture and ill-treatment. Nor does it impose any undue financial obligations on Australia with respect to either national or international inspections by experts.

FASSTT is therefore persuaded that there are strong domestic and international reasons for Australia to ratify the Optional Protocol. If the Committee desires, we would be pleased to attend a hearing to elaborate the basis of our view. ■