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Joint statement of concern regarding suspension of UN Subcommittee on Torture visit to Australia following lack of co-operation in New South Wales and Queensland



October 24, 2022

We express profound concern that the United Nations Subcommittee on Prevention of Torture (SPT) has been forced to take the drastic measure of suspending its visit to Australia due to obstruction encountered while attempting to carrying out its mandate during its visit to Australia under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

We strongly condemn decisions to refuse to allow the SPT to access New South Wales detention facilities and Queensland inpatient units and to provide the SPT with requested information and documentation.

This obstruction is a clear breach by Australia of its obligations under OPCAT. States parties have an obligation to both receive the SPT in their territory and allow it to exercise its mandate in full, including by allowing unfettered access to places of detention.

OPCAT is designed to protect the fundamental human rights of people detained in places including, but not limited to, prisons, juvenile detention centres, immigration detention centres, hospitals, mental health facilities, aged care facilities and facilities for people with disability.

The ability to carry out unannounced visits to detention facilities, conduct private interviews with people deprived of their liberty and review documentation is an essential element of the framework established under OPCAT.

We therefore condemn in the strongest possible terms decisions that necessarily serve to obstruct or impede the preventive mandate of the SPT which is focused on a proactive approach to preventing the torture and ill treatment of vulnerable adults and children.

Governments that are committed to the protection and promotion of international human rights standards in places of detention have nothing to fear from the granting of SPT access to all places of detention.

Such access facilitates the delivery of confidential expert recommendations to authorities that serve to strengthen protections against torture in their jurisdictions – an outcome that governments in a developed modern democracy such as Australia should both encourage and welcome.

Given that OPCAT applies to all federal states without limitations or exceptions, it is concerning that four years after Australia ratified OPCAT so little progress has been made to ensure consistent implementation of OPCAT obligations across all states and territories.

We are deeply concerned that the approach taken in New South Wales and Queensland is a harbinger for future refusals to cooperate with regular preventive visits to places of detention by the independent National Preventive Mechanisms (NPMs) Australia is obliged to establish pursuant to implementing OPCAT.

Recalling that the right to be free from torture is a non-derogable norm of international law, we call the New South Wales and Queensland governments to affirm their commitment to the rules-based international legal system, reconsider their decisions to block access to places of detention and to instead co-operate fully with the SPT.

We further call on all jurisdictions across Australia to consider the recommendations of the Australian Human Rights Commission's Road Map to OPCAT Compliance (https://humanrights.gov.au/sites/default/files/opcat_road_map_0.pdf) and, where they are yet to legislate, commit to the urgent introduction of overarching legislation to translate Australia's OPCAT obligations into domestic law

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