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REFERENCE: cc/jj/fjg/follow-up/CAT

6 May 2010

Excellency,

In my capacity as Rapporteur for Follow-up on Conclusions and Recommendations of the United Nations Committee against Torture (CAT), I refer to the examination of the third periodic report of Australia (CAT/C/67/Add.7) on 29 and 30 April 2008. The Committee adopted its Concluding Observations (CAT/C/AUS/CO/3), in which it requested further comments by the Government of Australia in relation to the specific concerns listed in paragraphs 9, 10, 11 and 25.

On behalf of the Committee, allow me to thank you for your response of 29 May 2009 (CAT/C/AUS/CO/3/Add.1) providing comments by the Your Excellency's Government on those paragraphs. I have reviewed it with care and the additional information provided assists the Committee in its ongoing analysis of the issues identified for follow-up in the paragraphs above. As Rapporteur on Follow-up, I would be grateful for clarification on the following matters, where sufficient information is not yet provided to complete an analysis of the progress made regarding implementation of aspects of the Convention. Your response by 4 August 2010 would be appreciated.

The Committee welcomes the information provided regarding the intended efforts to add to the State party's criminal legislation outlawing torture by introducing legislation to enact a specific federal offense against torture into Commonwealth law. We would be grateful to receive updated information on whether such legislation was introduced, as planned. If so, please provide the committee with information on the content and language of the bill, including punishments, if any, for torture and other cruel, inhuman or degrading treatment or punishment. If not, please clarify the timetable currently anticipated.

H.E. Ms. Caroline Millar
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The Committee also commends the Government of Australia for the initiation of the National Human Rights Consultation, mentioned in your response, and would welcome receiving information on the outcomes of this process. Specifically, what recommendations has the Consultation Committee made and how will their implementation be ensured?

With regard to the Committee's concerns in paragraph 10(a) of the Concluding Observations on the permissible length of detention under the Australian Security Intelligence Organization, we thank you for the substantial information provided. We are pleased to receive confirmation that although measures remain in place that allow for questioning warrants to be issued, in practice, as of mid-2009, "no questioning warrants that authorize detention have been issued to date." We would also appreciate clarification as to the permissible limitations in place with regard to an individual's access to a lawyer of their choosing, as mentioned in your response. How does the State party determine whether there is "a risk that a person involved in a terrorism offence may be alerted of the investigation?" What mechanisms in place oversee the allowance and imposition of such limitations? In how many cases have such limitations have been placed on individuals in detention to date, and, if this data is available, please disaggregate it by age, gender, nationality, location, reason for detention, and reason for limitations and details on the limitations themselves. When individuals are not permitted to choose their own lawyer, please clarify how their legal representation is selected.

The Committee is pleased to learn that the Government of Australia conducts regular reviews and monitoring of counter-terrorism legislation to ensure compliance with human rights norms. Since the 2005 review of the Parliamentary joint Committee on Intelligence and Security cited above, please clarify whether other reviews have taken place, and if so, please update the Committee on their outcomes.

The Committee notes with interest the safeguards in place to ensure that preventative detention and control orders are imposed in a manner consistent with the State party's human rights obligations. We would be grateful for clarification regarding when and how senior officers make the assessment as to whether initial preventative detention orders and prohibited contact orders are not arbitrary, and what measures are in place to ensure that the assessments of when they should be imposed are fair and in compliance with international standards. The Committee would also appreciate updated information on the number of preventative detention orders that have been issued, if any, as well as the number of control orders issued since the submission of your response to the Committee.

The Committee welcomes the information provided regarding the efforts made in the States and Territories to separate remand prisoners from convicted prisoners, including the opening of several new facilities and adoption of new State legislation on this matter. In view of the circumstances outlined in the follow-up reply concerning the practical factors that sometimes permit accommodating sentenced and unsentenced inmates in the same correctional facility, and the stated difficulty of clearly identifying those who should be separated, have new measures been considered to ensure separation?

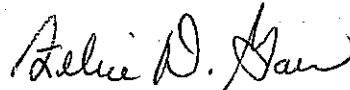
We thank you for the information provided with regard to the issue of immigration detention. While your response affirms that detention in Immigration Detention Centres is "only to be used as a last resort and for the shortest practicable time," your reply acknowledges past failures in resolving the status of stateless people in a timely manner. The Committee would be grateful to receive further clarification as to the development of visa options that could allow "unlawful non-citizens" to resolve their status without being placed in immigration detention. Please also provide the Committee with detailed statistical information on the number of people currently held in immigration-related detention, disaggregated by age, gender, nationality, form

of detention, and status of their cases. In this regard, please update us on the current status of Christmas Island.

The Committee appreciated learning of the efforts made at every level to ensure that children are not detained in Immigration Detention Centres, wherever practicable, but rather are detained through Community Detention arrangements. We would be grateful to receive clarification as to the grounds on which a child may be accommodated in a low security facility within the immigration detention framework, as mentioned in your response. Please also provide the Committee with information on the number of children that have been detained, for any amount of time since 2008, in non-Community Detention arrangements within the immigration detention framework, disaggregated by age, gender, nationality, and length of detention.

The Committee looks forward to pursuing the constructive dialogue it has started with the authorities of Australia on the implementation of the Convention, and in this context, to receiving clarification to our follow-up questions.

Accept, Excellency, the assurances of my highest considerations.



Felice D. Gaer

Rapporteur for Follow-up on Concluding Observations
Committee against Torture