

**Australia's Breach of its Obligations under the
International Covenant on Civil and Political Rights to
Protect the Rights of Women**

Respectfully submitted to the
United Nations Human Rights Committee
on the occasion of its consideration of the
Fifth Periodic Report of Australia
pursuant to Article 40 of the
International Covenant on Civil and Political Rights
Hearings of the United Nations Human Rights Committee
New York City, United States of America
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Prepared and submitted by the International Human Rights Law Society of Indiana University School of Law at Indianapolis, Indiana with the endorsement of the Program in International Human Rights of Indiana University School of Law at Indianapolis, Indiana.

Principal Authors, Editors and Researchers:

Ms. Megan Alvarez (J.D. Candidate, Indiana University School of Law at Indianapolis)
Mr. Adam Dolce (J.D. Candidate, Indiana University School of Law at Indianapolis)
Mr. Mark Hawkins (J.D. Candidate, Indiana University School of Law at Indianapolis)
Mr. Bobby Lam (J.D. Candidate, Indiana University School of Law at Indianapolis)
Ms. Amber Malcolm (J.D. Candidate, Indiana University School of Law at Indianapolis)
Ms. Kalli McBride (J.D./M.A. Candidate, Indiana University School of Law at Indianapolis)
Ms. Jennifer D. Myers (J.D. Candidate, Indiana University School of Law at Indianapolis)
Mr. David Rothenberg (J.D. Indiana University School of Law at Indianapolis)
Mr. Jhon Sanchez (LL.B., MFA, LL.M. & J.D.)
Ms. Kavinadee Suppapongtevasakul (LL.B., LL.M. Candidate, Indiana University School of Law at Indianapolis)

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Background of the International Human Rights Law Society, the Program in International Human Rights Law and this “Shadow Report” to the United Nations Human Rights Committee

The International Human Rights Law Society (IHRLS) is a student organization at Indiana University School of Law at Indianapolis that was formed to promote global justice and basic fundamental freedoms. Each year the IHRLS sponsors speakers, events and, through its cooperation with the Program in International Human Rights Law, presents shadow reports to the United Nations Human Rights Committee.

The Program in International Human Rights Law (PIHRL), Indiana University School of Law at Indianapolis, was established in 1997 to further the teaching and study of international human rights law, to promote scholarship in international human rights law, to assist human rights governmental, inter-governmental, and non-governmental organizations on international human rights law projects, and to facilitate the placement of students as law interns at international human rights organizations domestically and overseas.

IHRLS welcomes Australia’s Fifth Periodic Report to the United Nations Human Rights Committee. In this report, Australia asserts that it has provided adequate legislative, judicial, administrative, and other mechanisms that fulfill its obligations under the International Covenant on Civil and Political Rights (ICCPR). This shadow report reveals that Australia has not complied fully with the ICCPR mandate to protect the rights of women.

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Principal Authors, Editors and Researchers:

Ms. Megan Alvarez (J.D. Candidate, Indiana University School of Law at Indianapolis)
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Ms. Jennifer D. Myers (J.D. Candidate, Indiana University School of Law at Indianapolis)
Mr. Jhon Sanchez (LL.B., MFA, LL.M. & J.D.)
Ms. Kavinvadee Suppamongtevasakul (LL.B., LL.M. Candidate, Indiana University School of Law at Indianapolis)

Endorsement:

Program in International Human Rights Law of Indiana University School of Law at Indianapolis
George E. Edwards, Director (Founding), Program in International Human Rights Law *and*
Carl M. Gray Professor of Law; *and*
Faculty Director (Founding), Master of Laws (LL.M.) Track in International Human Rights Law; *and*
Executive Chair, Graduate Law Programs

Indianapolis, IN 46202-5194, U.S.A.
Internet: <http://www.indylaw.indiana.edu/humanrights>

Additional assistance was provided by:

Mr. Perfecto G. Caparas, AB, LL.B., LL.M. Human Rights (The University of Hong Kong), LL.M. American Law
(Indiana University School of Law at Indianapolis)
Mr. David Rothenberg (J.D. Indiana University School of Law at Indianapolis)

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Executive Summary

This Shadow Report informs on Australia's obligations under the International Covenant on Civil and Political Rights (ICCPR) to provide women with the same rights as men, examines Australia's failure to comply with the ICCPR, and offers recommendations to overcome those failures.

A. Relevant Legal Issues – Why Women are Protected under the ICCPR

As an ICCPR party, Australia is obligated under Articles 2 and 3 to respect and ensure the equal enjoyment of the rights contained in the ICCPR without making distinctions as to sex. Australia has failed to ensure that women in Australia have the right to be free from slavery, servitude or forced labor protected under Article 8, the right to life, and freedom from cruel, inhuman, or degrading treatment protected under Articles 6 and 7, and the right to humane treatment protected under Article 10.

B. Australia Has Violated Specific Rights of Women in Australia

The Committee is required to evaluate Australia's laws, policies, and practices relating to women. This report informs the Committee, Australia, and other interested parties, that the laws, policies, and practices of Australia perpetuate a gap in the rights of women versus men in the country and constitute discrimination against women. The following paragraphs of this Executive Summary highlight specific rights which have been violated that will be described further in this report.

I. Australia Denies Women the Right to be Free of Slavery, Servitude, or Forced Labor

Australia violates the rights of women under ICCPR, Article 8 by failing to prevent exploitation of women through trafficking, leading to slavery. Though anti-trafficking and anti-slavery laws exist, women continue to be trafficked into Australia, including by exploiting the immigration process.

II. Australia Deprives Women the Right to Life and Denies Them Freedom from Cruel, Inhuman, or Degrading Treatment

Australia violates ICCPR, Articles 6 and 7 by failing to ensure women in Australia are not subjected to female genital mutilation (FGM). There has been an increased risk of FGM being performed within Australia due to increased migration from countries where FGM is practiced. There is also an increasing fear that girls are taken overseas to have the procedure done. Although there is legislation prohibiting FGM in all of the states and territories, these laws are not thoroughly enforced. To the contrary, the custom of FGM continues to be practiced in Australia.

III. Australia Discriminates and Deprives Women the Right to be Treated with Humanity

Australia violates women's rights under Article 10 by failing to ensure that incarcerated women have livable conditions and the opportunity for education and other rehabilitation programs. Australia discriminates against incarcerated women in violation of Article 2 by not affording them the same opportunities for education and rehabilitation as incarcerated men. Prisons are overcrowded and provide poor living conditions. Oversight of some Australian prisons, for example in Victoria, is lacking due to the conflicts of interest of the Office of Correctional Services, which, incidentally, oversees the prisons.

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Proposed Recommendations to the United Nations Human Rights Committee Re Australia's Obligations Under the International Covenant on Civil and Political Rights to Protect the Rights of Women in Australia

We respectfully request that the United Nations Human Rights Committee adopt the following recommendations and urge Australia to comply fully with the ICCPR and to afford fully all rights hereunder to women in Australia:

Australia Denies Women the Right to be Free from Slavery, Servitude, and Forced Labor

Recommendation # 1 of 11: The Human Rights Committee recommends that Australia take further measures to prevent the trafficking of women as sex slaves.

By Inadequately Preventing Female Genital Mutilation (FGM), Australia Jeopardizes Women's Right to Life, and Freedom from Cruel, Inhuman, or Degrading Treatment

Recommendation # 2 of 11: The Human Rights Committee recommends that Australia increase efforts to conscientize the Australian public to prevent stigmatization of women subjected to FGM, and members of vulnerable groups.

Recommendation # 3 of 11: The Human Rights Committee recommends that Australia introduce the prohibition of FGM in the Federal Criminal Code, as per the United Nations Committee Against Torture's Concluding Recommendations (40th Session, 2008).

Recommendation # 4 of 11: The Human Rights Committee recommends that Australia investigate and detect the occurrence of FGM in the country to determine more accurate and recent information on the number of women and children who are being subjected to this practice within Australia, and the number of those taken out of the country to have FGM performed on them.

Recommendation # 5 of 11: The Human Rights Committee recommends long-term feedback collection from education program participants, especially those from vulnerable groups, to determine the most effective and progressive ways to eradicate this practice in Australia, and that after aforementioned data is collected, Australia should conduct a comparative study amongst the States and Territories and publish the results.

Australia Discriminates and Deprives Incarcerated Women the Right to be Treated with Humanity

Recommendation # 6 of 11: *The Human Rights Committee recommends that Australia seek to eliminate overcrowding in prisons by strengthening non-custodial alternatives and measures, including diversionary and probationary programs designed specifically for the female prison population. Such strengthening may include additional appropriations be given to this end.*

Recommendation # 7 of 11: *The Human Rights Committee recommends that Australia eliminate discrimination against its female prisoners and treat female prisoners as a prison population separate from the male population.*

Recommendation # 8 of 11: *The Human Rights Committee recommends that Australia further develop a preventive intervention strategy to curb and prevent suicides, taking into account the dignity and best interests of women prisoners.*

Recommendation # 9 of 11: *The Human Rights Committee recommends that Australia strengthen and develop prisoner assessment interviews, intakes, and inductions in order to better facilitate the humane treatment of women in prisons.*

Recommendation # 10 of 11: *The Human Rights Committee recommends that Australia strengthen educational and job programs, which would facilitate women's rehabilitation and return to their lives in the community.*

Recommendation # 11 of 11: *The Human Rights Committee recommends that Australia adapt mechanisms, systems, and procedures to facilitate children's visits to their incarcerated mothers.*

Australia Breached Its Obligations under the International Covenant on Civil and Political Rights to Protect the Rights of Women in Australia

I. INTRODUCTION

1. The International Covenant on Civil and Political Rights¹ is Relevant and Binding on Australia.

1.1 ICCPR Requirements. The ICCPR is the principal treaty setting out fundamental civil and political rights for all people, including women. The ICCPR provides for numerous individual rights, including:

1.1.1 The right to be free from slavery, servitude, and forced labor;²

1.1.2 The right to be free from cruel, inhuman, or degrading treatment;³

1.1.3 The right to life;⁴ and

1.1.4 The right to be treated with humanity and with respect for the inherent dignity of the human person.⁵

2. The ICCPR Imposes Obligations on the Australian Government under Articles 2 and 26 to Not Engage in Discrimination and to Protect the Rights of Women in Australia.

2.1 Article 2, paragraph 1 of the ICCPR requires Australia to guarantee all rights protected under the ICCPR to all individuals in its territory, including women, without distinction of any kind. Article 2(1) provides:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁶

2.2 ICCPR, Article 26 provides:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.⁷

¹ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, U.N. Doc. A/6316 (1966) [hereinafter ICCPR].

² *Id.* at Part III, Art. 8.

³ *Id.* at Part III, Art. 7.

⁴ *Id.* at Part III, Art. 6(1).

⁵ *Id.* at Part III, Art. 10.

⁶ *Id.* at Part III, Art. 2(1).

⁷ *Id.* at Part III, Art. 26.

3. The Human Rights Committee Requires States to Protect Women from Discrimination and Uphold Their Rights Under the ICCPR.

In 2002, the Human Rights Committee decided *Müller and Engelhard v. Namibia*, in which Müller and Engelhard alleged that Namibia had violated ICCPR, Article 26. They claimed as their basis a law that made it an offense for a husband to assume his wife's surname without first receiving authorization from a government official, while it was not an offense and no authorization was required for the wife to assume her husband's surname. The Committee held that Namibia had violated Article 26. The Committee noted that although it is a longstanding tradition for women in Namibia to assume their husband's surname, the argument of a longstanding tradition cannot be maintained as a general justification for different treatment of men and women.⁸

4. Australia Violates the ICCPR by Failing to Protect Women in Australia.

4.1 Australia has failed to fulfill its obligations under the ICCPR because discrimination continues to exist and full civil and political rights guaranteed under the ICCPR have been denied, including those in the following areas, discussed *infra*:

- i. Australia Denies Women the Right to be Free from Slavery, Servitude and Forced Labor (*infra*, paras 5-6)**
- ii. Australia Fails to Prevent Female Genital Mutilation (FGM) and Thus Violates Women's Right to Life, and Freedom from Cruel, Inhuman, or Degrading Treatment (*infra*, paras 7-8)**
- iii. Australia, in Various Parts of the Country, Deprives Incarcerated Women the Right to be Treated with Humanity (*infra*, paras 9-10)**

II. AUSTRALIA DENIES WOMEN THE RIGHT TO BE FREE FROM SLAVERY, SERVITUDE AND FORCED LABOR.

5. Australia Fails to Prevent Slavery, Servitude, and Forced Labor of Women Working as Prostitutes.

5.1 ICCPR, Article 8 provides in relevant part:

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
- 3(a). No one shall be required to perform forced or compulsory labor[.]⁹

5.2 ICCPR Requires Australia to Prevent and Punish Violations of Article 8 by Private Actors. The Human Rights Committee has stated that parties to the ICCPR

⁸ U.N. Hum. Rts. Comm., *Müller and Engelhard v. Namibia*, Commc'n No. 919/2000, ¶ 6.8, CCPR/C/74/D/919/2000 (March 26, 2002).

⁹ ICCPR at Part III, Art. 8 (1966).

must prevent and punish violations of the ICCPR by private actors.¹⁰ Trafficking for the purposes of prostitution is a violation of Article 8.¹¹ Where there are inconsistencies between the ICCPR and domestic law, domestic law must be changed to meet the standards imposed by the ICCPR.¹²

5.3 Australia Violates Article 8 by Failing to Prevent Trafficking Leading to Slavery and Servitude. Though Australia has taken some preventative and corrective measures, Australia continues to violate Article 8 by failing to prevent trafficking leading to slavery and servitude of women in Australia.

5.3.1 Human Trafficking Leading to Slavery and Servitude Persists in Australia. Though there are no reliable statistics on the quantities of women trafficked into Australia and held in debt bondage, slavery or forced servitude,¹³ the problem persists. In October 2008, Australian Human Rights Commissioner Elizabeth Broderick stated that:

In *The Queen v Tang* the High Court told us slavery is still a reality in 21st century Australia.¹⁴

Jennifer Burn of the Anti-Slavery Project at the University of Technology Sydney (UTS) recently noted that:

In Australia, we don't know precisely how many people are trafficked into the country each year. What we do know is that trafficking and slavery are human rights abuses that are happening here. Since 2004, 107 people have been through the government's Victim Support Program for trafficked persons. Out of these, 106 were women.¹⁵

¹⁰ U.N. Hum. Rts. Comm., *General Comment 31 Nature of the Legal Obligation Imposed on State Parties to the Covenant*, ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004).

¹¹ U.N. Hum. Rts. Comm., *Concluding Observations of the Human Rights Committee: Czech Republic*, ¶ 13, U.N. Doc. CCPR/CO/72/CZE (Aug. 27, 2001).

¹² U.N. Hum. Rts. Comm., *supra* note 10.

¹³ See, e.g., Paula Kruger, *Groups urge action to stop sex trafficking*, a radio interview with Eleanor Hall and Jennifer Burn on ABC Local Radio (March 7, 2008), available at <http://www.abc.net.au/worldtoday/content/2008/s2183209.htm> (noting that anecdotal evidence exists).

¹⁴ Australian Human Rights Commission, *Slavery in 21st Century Australia - A Human Rights Challenge: Speech by the Sex Discrimination Commissioner and Commissioner Responsible for Age Discrimination Elizabeth Broderick of the Australian Human Rights Commission*, 16 October 2008, available at http://www.hreoc.gov.au/about/media/speeches/sex_discrim/2008/20081014_slavery.html (discussing slavery in Australia and the history of anti-slavery governmental actions in a presentation sub-titled "Modern Day Slavery in Australia: The Queen v Tang"). Further evidence of the existence of slavery in Australia can be found in the 3 March 2009 release of *Guidelines for NGOs working with trafficked people (2009)*, available at http://www.humanrights.gov.au/sex_discrimination/publication/traffic_NGO/index.html (a publication of the working group of the National Roundtable on People Trafficking to assist Non-Government Organisations working with trafficked people).

¹⁵ Jennifer Burn, *Tackling trafficking*, available at <http://www.newsroom.uts.edu.au/news/detail.cfm?ItemId=12155>. Jennifer Burn is Director of the University of Technology Sydney Anti-Slavery Project and Senior Lecturer in the Faculty of Law at UTS.

- 5.3.2 The Conditions for Trafficked and Debt-Bonded Women in Australia are Deplorable.** According to recent trafficking reports, at least 1,000 women were in debt-bonded prostitution in Australia in 2005, and many of them, from countries such as Thailand and Burma, were raped, beaten, and starved.¹⁶ Some of the women travel to Australia knowing they will work as prostitutes, but not knowing the repugnant conditions they will face.¹⁷ Though laws exist to prohibit slavery, and there have been some prosecutions, the laws are not fully enforced.¹⁸
- 5.3.3 Anti-Slavery Law in Australia is Not Enough.** Slavery was outlawed in the Criminal Code in the Slavery and Sexual Servitude Act of 1999.¹⁹ In 2003, the federal government committed \$20 million over four years to combat trafficking for sexual exploitation.²⁰ In June 2005, the federal parliament passed legislation outlawing human trafficking. It delivers a 12 years sentence for trading adults and 20 years for trading children. Though the Australian Government provides various medical, legal and other social support (including a Bridging F Visa program) for victims of trafficking willing and able to help in criminal investigations and prosecutions, no support is available to those unable to aid further investigations and prosecutions.²¹
- 5.3.4 High Court of Australia Ruling on Slavery Has Not Solved Slavery Problem.** In August 2008, the Australian High Court reaffirmed in the case of *The Queen v. Tang* that slavery is illegal.²² In that case, a brothel owner, Tang, was convicted and sentenced to ten years in prison for possessing and using five women under the Australian criminal code for slavery.²³ All five women were of Thai origin and came to Australia to work as prostitutes.²⁴ These women were recruited in Thailand, brought to Australia through visas, at which point the brothel owner purchased each woman for \$20,000 (AUS), and the women became under contract to repay the brothel owner between \$42,000 to \$45,000 (AUS) at a rate of \$50 (AUS) for each customer the women saw.²⁵ Once in Australia, the women's passports were taken, they

¹⁶ Lara Fergus, *Trafficking in women for sexual exploitation*, 5 June 2005, available at <http://www.aifs.gov.au/acssa/pubs/briefing/b5.html>. This paper was released by the Australian Centre for the Study of Sexual Assault (ACSSA).

¹⁷ For discussion on conditions and circumstances surrounding women trafficked into Australia for prostitution, see generally, Fergus, *supra* note 16. See also Kruger, *supra* note 13; Kathleen Maltzahn, Founding Director of Project Respect, *Paying for Servitude: Trafficking in Women for Prostitution*, Women's Electoral Lobby Pamela Denoon Lecture, 2004, available at <http://projectrespect.org.au/files/payingservitude.pdf>.

¹⁸ See discussion *infra* at 5.3.3 and 5.3.4.

¹⁹ Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999 No. 104, 1999 (Austl.)

²⁰ See Fergus, *supra* note 16.

²¹ Fiona David, *Trafficking of Women for Sexual Purposes*, 95 AUSTL. INST. OF CRIMINOLOGY 16, 63 (2008), available at <http://www.aic.gov.au/publications/rpp/95/>.

²² *The Queen v. Tang* (2008) 249 ALR 200.

²³ *Id.* at ¶ 6.

²⁴ *Id.*

²⁵ *Id.* at ¶ 6-10. Melbourne lawyer Hui Zhou, who works with Project Respect, notes that traffickers routinely recruit overseas women by promising them wealth if they work as prostitutes in Australia, and when they arrive, traffickers tell the women they owe \$40,000-\$45,000 (AUD) they must work off. For every man they see, they work off \$50 (AUD) of debt which means they must engaging in sexual activity with 800-900 men before they are debt free. When the women

were kept under constant supervision and were effectively kept under controlled environment while still under contract for the debt.²⁶ The Court, reviewing the 1962 International Convention to Suppress the Slave Trade and Slavery for which the Australian criminal code on slavery was based, upheld the conviction of this type of debt-bondage under the slavery criminal code.²⁷

5.3.5 Australia Violates Article 8 by Failing to Sufficiently Prevent Trafficking Leading to Slavery and Servitude – UN Committee Against Torture Findings. The ICCPR requires states to prevent trafficking for the purpose of prostitution.²⁸ Even though Australia has outlawed trafficking and ratified treaties regarding trafficking,²⁹ and even though the High Court recently reaffirmed the prohibition of slavery, Australia has failed to substantially prosecute and punish those that exploit women trafficked into prostitution.³⁰

The United Nations Committee Against Torture recognized Australia's efforts to combat human trafficking, but noted the "low level of prosecutions" and remains concerned over the "lack of measures" undertaken by Australia and its territories.³¹

6. Australia Must Ensure That Women, Particularly Trafficked Women, are Not Subject to Slavery, Servitude, or Forced Labor.

6.1 Australia must comply with the ICCPR by preventing trafficking leading to slavery, servitude and forced labor. We respectfully suggest the following recommendation:

Recommendation # 1 of 11: The Human Rights Committee recommends that Australia take further measures to prevent the trafficking of women as sex slaves.

are not working, they sleep three to four women in one bedroom in a barred home and are subjected to constant supervision wherever they go. (*Slavery in the 21st Century*, a radio debate presented by Damien Carrick on the ABC National Radio (May 3, 2008), available at <http://www.abc.net.au/rn/lawreport/stories/2008/2241462.htm>.)

²⁶ The Queen v. Tang (2008) 249 ALR 200 at ¶ 16.

²⁷ *Id.* at ¶¶ 19-35, 57.

²⁸ See U.N. Hum. Rts. Comm., *Concluding Observations of the Human Rights Committee: Slovakia*, ¶ 10, U.N. Doc. CCPR/CO/78/SVK (Aug. 22, 2003), available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.78.SVK.En?Op=endocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.78.SVK.En?Op=endocument) (recommending that Slovakia take measures to prevent trafficking for purpose of prostitution).

²⁹ For example: Australia has signed and ratified the United Nations Convention against Transnational Organized Crime; the optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and the Protocol against the Smuggling of Migrants by Land, Sea and Air.

³⁰ U.N. Comm. Against Torture, *Consideration of Reports Submitted by State Parties Under Article 19 Of the Convention: Concluding Observations of the Committee Against Torture: Australia*, ¶ 32, CAT/C/AUS/CO/3 (2008) (explaining Australia has a low level of prosecution of persons involved in trafficking). The United States Trafficking in Persons Report of 2007 states Australia is primarily a destination country for trafficked victims originating from East Asia and Eastern Europe. See U.S. DEP'T OF STATE, *Trafficking in Persons Report: Country Narratives --- Australia*, RELEASED BY THE OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS (June 12, 2007), available at <http://www.state.gov/g/tip/rls/tiprpt/2007/82805.htm>. These figures do not take into account those who have already worked in Australia as trafficked workers. Additionally, Australia's legalization of prostitution and brothels subject the above figure to critique, as a higher number is more likely when taken in context of these positions.

³¹ U.N. Comm. against Torture, *supra* note 30.

III. AUSTRALIA FAILS TO PREVENT FEMALE GENITAL MUTILATION (FGM) AND THUS VIOLATES WOMEN'S RIGHT TO LIFE, AND FREEDOM FROM CRUEL, INHUMAN OR DEGRADING TREATMENT

7. Australia Fails to Ensure That Women in Australia are Not Subjected to Female Genital Mutilation (FGM)³² in Violation of ICCPR, Articles 3, 6 and 7.

7.1 The ICCPR provides as follows in Articles 3, 6 and 7:

ICCPR, Article 3 provides:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.³³

ICCPR, Article 6 provides:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.³⁴

ICCPR, Article 7 provides:

No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.³⁵

7.2 The Human Rights Committee Has Ruled That FGM Violates ICCPR Articles 6 and 7. The Human Rights Committee has ruled that FGM is contrary to human dignity, the right to life, and the protection against cruel, inhuman and degrading treatment. The Committee noted that FGM is prohibited by the government and private parties.

7.2.1 Violation of Articles 6 and 7 (Human Dignity, Life, and Cruel, Inhuman and Degrading Treatment). The Committee has noted that FGM "is contrary to human dignity and violates various human rights, including the right to life (article 6) and the right to protection against cruel, inhuman and degrading treatment (article 7)";³⁶ as such, the practice of FGM is an act prohibited under these two Articles.

³² FGM refers to all procedures involving "partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons." See *Eliminating Female Genital Mutilation: An Interagency Statement*, WORLD HEALTH ORG. (2008), available at http://www.unifem.org/resources/item_detail.php?ProductID=110, at 4. (This Interagency Statement reflects the opinion of ten United Nations bodies, as described *infra* at note 39.)

³³ ICCPR at Part II, Art. 3.

³⁴ ICCPR at Part III, Art. 6(1).

³⁵ *Id.* at Art. 7.

³⁶ U.N. Hum. Rts. Comm., *Concluding Observations of the Human Rights Committee: Lesotho*, ¶ 12, U.N. Doc. CCPR/C/79/Add.106 (April 8, 1999), available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.106.E](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.106.E)

7.2.2 FGM Denies Women Enjoyment of Rights. The Human Rights Committee has also said that FGM is not compatible with “[women’s] dignity as human beings and continue[s] to hamper their equal enjoyment of rights embodied in the Covenant.”³⁷

7.2.3 FGM Prohibited for Government and Private Parties. The Human Rights Committee stated, in reference to Article 7, that “[i]t is the duty of the State party to afford everyone protection ... against the acts prohibited by Article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.”³⁸

7.3 Ten Major United Nations Bodies Find That FGM Discriminates Against Women, and is a Violation of ICCPR Articles 6 and 7. The World Health Organization released an inter-agency statement, joined by ten United Nations bodies, stating that FGM (a) “reflects deep-rooted inequality between the sexes, and constitutes an extreme form of discrimination against women”;³⁹ (b) violates the right to be free from torture and cruel, inhuman or degrading treatment; and (c) when FGM results in death, violates the right to life.⁴⁰ The statement calls for “all States, international and national organizations, civil society and communities to uphold the rights of girls and women”⁴¹ and for “those bodies and communities to *develop, strengthen, and support* specific and concrete actions directed towards ending female genital mutilation.”⁴²

7.4 The United Nations Committee Against Torture Expressed Concern About FGM in Australia at its 40th Session (2008). The UN Committee Against Torture’s *List of Issues* for the third periodic report of Australia in May 2008 requested the government to provide information on “the number of cases of female genital

n?Opendocument; See U.N. Hum. Rts. Comm., *Concluding Observations of the Human Rights Committee: Senegal*, ¶ 12, U.N. Doc. CCPR/C/79/Add.82 (Nov. 19, 1997), available at

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.82.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.82.En?Opendocument) (discussing how FGM is a violation of Articles 6 and 7 of the ICCPR).

³⁷ U.N. Hum. Rts. Comm., *Concluding Observations of the Human Rights Committee: Senegal*, ¶ 12, U.N. Doc. CCPR/C/79/Add.82 (Nov. 19, 1997).

³⁸ U.N. Hum. Rts. Comm., *General Comment No. 20, Article 7, (Forty-fourth Session, 1992)*, ¶ 2, U.N. Doc. HRI/GEN/1/Rev. 1 at 38 (1994), available at

<http://www.unhcr.ch/tbs/doc.nsf/0/6924291970754969c12563ed004c8ae5?Opendocument>.

³⁹ *Eliminating Female Genital Mutilation*, supra note 32, at 1. This interagency statement was released in 2008 on behalf of: (1) the Office of the UN High Commissioner for Human Rights (OHCHR); (2) UN Population Fund (UNFPA); (3) Joint UN Programme on HIV/AIDS (UNAIDS); (4) UN High Commissioner for Refugees (UNHCR); (5) UN Development Programme (UNDP); (6) UN Children’s Fund (UNICEF); (7) UN Economic Commission for Africa (UNECA); (8) UN Development Fund for Women (UNIFEM); (9) UN Educational, Scientific and Cultural Organization (UNESCO); and (10) the World Health Organization (WHO) to reaffirm their “commitment to the elimination of [FGM] within a generation,” noting “a global imperative to strengthen work for the elimination of [FGM], which is essential for the achievement of many of the Millennium Development Goals” (*Eliminating Female Genital Mutilation*, at 2).

⁴⁰ *Id.*

⁴¹ *Eliminating Female Genital Mutilation*, supra note 32, at 2.

⁴² *Id.* (emphasis added)

... mutilation that have been reported and prosecuted.”⁴³ Although FGM was mentioned in the *List of Issues*, the topic of FGM was not mentioned in any of the NGO Shadow Reports that were submitted to the Committee Against Torture on Australia’s 3rd periodic torture report.⁴⁴

The Committee Against Torture’s Concluding Observations noted Australia’s efforts to criminalize FGM in the Australian territories, but the Committee expressed concern that Australia did not investigate and prosecute FGM and that Federal criminal law did not include FGM.⁴⁵

7.5 The Issue of FGM in Australia Has Not Been Raised in the Human Rights Committee Process for the Current Session (95th Session, 2009). Although FGM in Australia was an issue of concern for the Committee Against Torture in 2008, it does not appear in Australia’s State Report to the Human Rights Committee.⁴⁶ FGM does not appear in the Human Rights Committee’s *List of Issues*.⁴⁷ FGM does not appear in any NGO submission⁴⁸ (as of March 12, 2009) for the current session. FGM as a human rights violation in Australia is ignored.

7.6 The Royal Australian College of Obstetricians and Gynaecologists (RACOG) Has Demonstrated That the FGM Procedure, Complications, and Consequences Show How FGM Constitutes Cruel, Inhuman and Degrading Treatment and Violates Women’s Right to Life. The Royal Australian College of Obstetricians and Gynaecologists (RACOG) has shown that harmful health problems may arise from FGM.

⁴³ U.N. Comm. Against Torture, *List of issues to be considered during the examination of the third periodic report of Australia (CAT/C/67/Add.7)*, ¶ 38, CAT/C/AUS/Q/4 (2007), available at <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CAT/C/AUS/Q/4&Lang=E>.

⁴⁴ The Committee Against Torture shadow reports appear on the Committee’s website regarding Australia’s 3rd periodic torture report of 2008: New South Wales Council for Civil Liberties; National Association of Community Legal Centres; Human Rights and Equal Opportunity Commission; Human Rights Law Resource Centre Ltd; and Amnesty International. None of these reports mentioned FGM. Submissions available at <http://www2.ohchr.org/english/bodies/cat/cats40.htm>. (last visited 12 March 2009)

⁴⁵ U.N. Comm. Against Torture, *Consideration of Reports Submitted by State Parties Under Article 19 Of the Convention: Concluding Observations of the Committee Against Torture: Australia*, ¶ 33, CAT/C/AUS/CO/3 (2008), available at <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CAT/C/AUS/CO/3&Lang=E>. The Committee:

remain[ed] concerned over the absence of a Federal provision and the overall lack of investigations and prosecutions ... [and stated that Australia should] ... ensure the prohibition of [FGM] is introduced into the Federal Criminal Code ... [and] also increase prevention measures and detection and investigation efforts, as well as, prosecutions as appropriate.

⁴⁶ See U.N. Hum. Rts. Comm., *Consideration of reports submitted by States parties under Article 40 of the Covenant: Fifth periodic reports of States parties: Australia*, CCPR/C/AUS/5 (2008), available at <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CCPR/C/AUS/5&Lang=E>.

⁴⁷ See U.N. Hum. Rts. Comm., *List of issues to be taken up in connection with the consideration of the fifth periodic report of Australia (CCPR/C/AUS/5)*, CCPR/C/AUS/Q/5 (2008), available at http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.AU.S.Q.5_en.doc.

⁴⁸ As of March 12, 2009, shadow reports on Australia are posted for the following groups on the Human Rights Committee website for Australia: Amnesty International, Conscience and Peace Tax International, International Campaign to Abolish Nuclear Weapons, National Association of Community Legal Centres, New South Wales Council for Civil Liberties, and the Law Council of Australia. Submissions available at <http://www2.ohchr.org/english/bodies/hrc/hrcs95.htm>.

7.6.1 FGM Causes Physical Health Problems. According to RACOG, women who undergo FGM may experience urinary obstruction, vulval scarring and pain, pelvic and urinary tract infection, obstructed menstrual and urinary flow, urinary and faecal fistulae, obstructed miscarriage and childbirth, vaginal and perineal damage at childbirth, all of which may ultimately result in death.⁴⁹

7.6.2 FGM Causes Mental Health Problems. RACOG finds that in many instances, women who undergo FGM find it to be a traumatic experience, and many women “experience disturbances in eating, sleeping, mood and cognition which may be manifested in sleeplessness, nightmares, appetite or weight loss, post-traumatic stress, panic attacks, mood instability and difficulties in concentrating.”⁵⁰

7.6.3 FGM Causes Sexual Problems. FGM causes sexual difficulties including non-consummation, and painful intercourse.⁵¹

7.7 The Australian Government Has Recognized That FGM is a Violation and Has Undertaken Initiatives to Combat FGM. Australia has recognized that FGM is contrary to human rights and human dignity.

7.7.1 Australia’s Legislative Response to FGM. All mainland territories have legislation which either expressly criminalizes FGM or approaches the issue through existing criminal codes and child protection legislation.⁵²

7.7.2 Australia’s Educational Campaigns on FGM. Australia has undertaken educational campaigns with respect to FGM.⁵³ These campaigns have included FGM Public Forums,⁵⁴ education programs targeting young Muslim women, attempts to work with men from African countries and to educate them on FGM legislation,⁵⁵ and men and women only seminars on FGM.⁵⁶

⁴⁹ See *Female Genital Mutilation: Information for Australian Health Professionals*, THE ROYAL AUSTRALIAN COLLEGE OF OBSTETRICIANS AND GYNAECOLOGISTS (1997), at 31-34.

⁵⁰ *Id.* at 36.

⁵¹ See *Id.* at 31, 34.

⁵² See Ian Patrick, *Responding To Female Genital Mutilation: The Australian Experience In Context*, AUSTRALIAN JOURNAL OF SOCIAL ISSUES (February 2001), available at http://findarticles.com/p/articles/mi_hb3359/is_1_36/ai_n28836379/pg_2?tag=artBody;col1.

⁵³ *Id.* at 53.

⁵⁴ S. E. CENTRE AGAINST SEXUAL ASSAULT, FGM PUBLIC FORUM EVENT (2009). (Information about this event was received by the Shadow Report authors by e-mail from Dr Virginia Dods, Australia’s Senior Policy Adviser of the Office of the Child Safety Commissioner. (E-mail of January 14, 2009.) This event was sponsored by AASW Lyra Taylor Fund to discuss the issue of FGM after a “decade of silence.”

⁵⁵ Rene Weal, *Female Circumcision 3*, 2008 (unpublished report; received by Shadow Report authors via e-mail correspondence on January 7, 2009, from the SA FGM Program). The SA FGM Program was established in February of 1997 as a National, Territory and State program.

⁵⁶ NSW Education Program on Female Genital Mutilation, *NSW Education Program on FGM: New Castle Outreach Report* (Dec. 12, 2007) (internal report; received by Shadow Report authors via e-mail correspondence on January 7, 2009, from Linda V N George, Community Education and Development Officer of the NSW Education Program on

7.7.3 FGM is Still Practiced Despite Legislative Bans and Educational Campaigns. Nevertheless, as shown below, FGM is still practiced in Australia, in violation of ICCPR Articles 3, 6 and 7.

7.8 Violations of Articles 3, 6 and 7. Australia violates the rights of women under Articles 3, 6 and 7 by failing to ensure that FGM is not being practiced in Australian territory and that women are not being subjected to refoulement in relation to FGM.

7.8.1 Australia Violates the ICCPR by Failing to Ensure That FGM is not Practiced in Australia. Despite legislative and educational initiatives, FGM is still performed in Australia within the aboriginal⁵⁷ and migrant communities. Since there have been increased immigrants from countries where FGM is practiced, there is a legitimate concern as to the risk of FGM being performed within Australia.⁵⁸ Though there seems to be no empirical evidence on the number of FGM operations within Australia,⁵⁹ RACOG has reported that medical officers in Australia have been approached to perform FGM.⁶⁰ It has also been reported that some infibulated immigrant women have requested re-infibulation⁶¹ of their vaginal opening upon giving birth.⁶² More recently, The Sunday Telegraph reported that health workers have expressed fears that Australian-born girls from migrant families are forced to undergo FGM, and that there is evidence showing they are taken overseas or to secret practices in Australia, which has been understood to involve qualified doctors, as well as “untrained, backyard operations,”⁶³ to have the procedure done.⁶⁴ However, even with legislation in place, during the 2008 Committee Against Torture proceedings, the Australian government stated that there had been no prosecutions or convictions for the offence of FGM.⁶⁵

FGM). The NSW Education Program is a state-wide health arm of the Sydney West Area Health Services; See NSW Education Program on Female Genital Mutilation, *The Men's 2nd Seminar on Women's Health Issues* (June 2008); (also received by Shadow Report authors via e-mail correspondence on January 7, 2009, with Linda V N George, Community Education and Development Officer of the NSW Education Program on FGM).

⁵⁷ See Office of the High Commissioner for Human Rights, *Fact Sheet No. 23, Harmful Traditional Practices Affecting the Health of Women and Children*, available at <http://www.ohchr.org/Documents/Publications/FactSheet23en.pdf> (stating that introcision, a form of FGM, is performed by the Pitta-Patta aborigines located in Australia).

⁵⁸ See Zara Spencer, *The Criminalisation Of Female Genital Mutilation In Queensland*, 9 MURDOCH U. ELECTRONIC J. L. 16 (2002), available at <http://www.austlii.edu.au/au/journals/MurUEJL/2002/16.html>.

⁵⁹ See *Id.* We were unable to locate any official statistics on the number of FGM operations within Australia.

⁶⁰ See Olayide O. Ogunsiiji, *Female Genital Mutilation: Origin, beliefs, prevalence and implications for health care workers caring for immigrant women in Australia*, 25 CONTEMP. NURSE 22, 26 (2007).

⁶¹ Infibulation, including re-infibulation is classified as a Type III form of FGM. This is defined as a “narrowing of the vaginal orifice with creation of a covering seal by cutting and appositioning the labia minora and/or the labia majora, with or without excision of the clitoris.” (*Eliminating Female Genital Mutilation*, *supra* note 32, at 4, 26).

⁶² See Ogunsiiji *supra*, at note 60.

⁶³ See *Girls Mutilated for “Tradition”*, THE SUNDAY TEL. (Nov. 5, 2006), available at <http://www.news.com.au/story/0,23599,20701170-2,00.html>.

⁶⁴ See *Id.*

⁶⁵ See *Consolidated Written Replies by the Government of Australia to the List of Issues to be taken up in connection with the consideration of the Fourth Periodic Report of Australia (CAT/C/67/Add.7)*, ¶¶ 922-937. CAT/C/AUS/Q/4/Add.1/Rev.1 (2008), available at

8. Australia Must Comply With the ICCPR by Enforcing Legislation That Outlaws FGM: Human Rights Committee Recommendations to Australia.

8.1 Australia must comply with the ICCPR by enforcing legislation that outlaws FGM. We respectfully suggest the following recommendations:

Recommendation # 2 of 11: The Human Rights Committee recommends that Australia increase efforts to conscientize the Australian public to prevent stigmatization of women subjected to FGM, and members of vulnerable groups.

Recommendation # 3 of 11: The Human Rights Committee recommends that Australia introduce the prohibition of FGM in the Federal Criminal Code, as per the United Nations Committee Against Torture's Concluding Recommendations (40th Session, 2008).

Recommendation # 4 of 11: The Human Rights Committee recommends that Australia investigate and detect the occurrence of FGM in the country to determine more accurate and recent information on the number of women and children who are being subjected to this practice within Australia, and the number of those taken out of the country to have FGM performed on them.

Recommendation # 5 of 11: The Human Rights Committee recommends long-term feedback collection from education program participants, especially those from vulnerable groups, to determine the most effective and progressive ways to eradicate this practice in Australia, and that after aforementioned data is collected, Australia should conduct a comparative study amongst the States and Territories and publish the results.

IV. AUSTRALIA, IN VARIOUS PARTS OF THE COUNTRY, DISCRIMINATES AND DEPRIVES INCARCERATED WOMEN THE RIGHT TO BE TREATED WITH HUMANITY

9. Australia Discriminates in its Duty to Maintain Humane Conditions in Women's Prisons in Violation of ICCPR, Articles 10 and 2.

9.1 ICCPR, Article 10 provides:

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.⁶⁶

http://www2.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.AUS.Q.4.Add.1.Rev.1_en.doc (stating that there have been no prosecutions in New South Wales, Victoria, Queensland, Western Australia, Tasmania, the Northern Territory, and the Australian Capital Territory, although one complaint was made in Queensland with no charges laid after investigations).

⁶⁶ ICCPR at Part III, Art. 10.

9.2 ICCPR, Article 2 provides:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁶⁷

9.3 ICCPR, Article 10 Requires Australia to Meet the Standard Minimum Rules for Treatment of Prisoners. The Human Rights Committee has examined many claims of Article 10 violations and has stated that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; they must be treated in accordance with the Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules).⁶⁸ Under Article 2, the State must ensure the right protected in Article 10 without distinction on grounds such as sex.

9.4 Violations of Articles 10 and 2. Australia violates women's rights under Article 10 because it fails to meet the Standard Minimum Rules in female prisons. Australia also violates Article 2 because it discriminates against women in providing the rights protected under Article 10. These violations have occurred in various parts of the country.⁶⁹

9.4.1 Australia Violates the ICCPR by Permitting Overcrowding of Women's Prisons. The Standard Minimum Rules dictate that all accommodations for prisoners shall meet the requirement of minimum floor space.⁷⁰ Furthermore, section 63(3) of the Standard Minimum Rules states that "[i]t is desirable that the number of prisoners in closed institutions should not be so large that the individualization of treatment is hindered."⁷¹ Between 1998 and 2003, Victoria's prison population increased by eighty-four percent, which is nearly three times the growth that male prisons in the same area experienced during that time.⁷² Such overcrowding may juxtapose dangerous offenders with minor offenders, which may unjustly risk the safety of minor offenders by failing to

⁶⁷ ICCPR at Part II, Art. 2(1).

⁶⁸ U.N. Hum. Rts. Comm., *Fongum Gorgi-Dinka v. Cameroon*, Commc'n No. 1134/2002, ¶ 5.2, CCPR/C/83/D/1134/2002 (March 17, 2002).

⁶⁹ This shadow report cites examples from various areas of Australian in which the government has deprived women prisoners of their rights during different periods over the last several years. This report calls for all such violations to be eradicated, wherever in Australia they occur or occurred and whenever they occur or occurred. Though there may be evidence that some of these conditions may have been addressed by the government, the evidence suggests that Australia has still failed to satisfy its obligations under the ICCPR, including its obligations to provide a remedy for past violations. Herein, attempts are made clearly to indicate the report dates of specific factual allegations.

⁷⁰ Standard Minimum Rules for the Treatment of Prisoners, Aug. 30, 1955, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 at ¶ 63(3) (1977) [hereinafter "Standard Minimum Rules"].

⁷¹ *Id.*

⁷² Sarah Nicholson, *Women in Prison: Best Place for Them? (Factsheet 7)*, FED'N OF CMTY. LEGAL CTR. (2008), available at http://www.smartjustice.org.au/index.php?option=com_content&task=view&id=29&Itemid=43.

ensure that incarcerated women have adequate access to justice, livable conditions during incarceration, and the opportunity for education and other rehabilitation programs.⁷³ Overcrowding may also exacerbate the health problems of female prisoners.⁷⁴

9.4.2 Australia Violates the ICCPR by Failing to Provide Adequate Mental Health Care in Women’s Prisons. The Standard Minimum Rules, which must be met to comply with Article 10, state that “[t]he medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner’s rehabilitation.”⁷⁵ According to the Australian Ombudsman’s report for the Northern Territory, ninety percent of the incarcerated women in Australia are survivors of mental, physical, or emotional abuse.⁷⁶ Over half of female prisoners in New South Wales, Queensland, and Western Australia have been diagnosed with a mental health condition.⁷⁷ In Victoria, fifty-one percent of incarcerated women have suffered mental illness and eighty percent have suffered alcohol or drug dependency prior to incarceration.⁷⁸ However, in a 2006 report, the Australian Senate Select Committee on Mental Health determined: (1) mentally ill people are denied treatment and suffer harsher detention; and (2) the procedures for detecting mentally ill people are inadequate.⁷⁹ In 2004, according to the Ombudsman, prison officials put a woman in observation for her suicidal intentions.⁸⁰ After a short hospitalization period, they placed her in solitary confinement in the male section of the prison under bodily restraint.⁸¹ This placement was done even though the doctor expressed his disagreement with the procedure.⁸² Despite criticisms, Australia continues to apply isolation and self-restraint methods in cases of risked suicide. The Ombudsman of the Northern Territory states that “isolation of a person at risk of suicide or self-harm is known to be deleterious in most cases.”⁸³ The Ombudsman also reports that the current procedures and practices are “narrow, outdated, and place inappropriate reliance on isolation and restraint at the expense of providing a supportive environment for prisoners.”⁸⁴

9.4.3 Australia Violates Articles 10 and 2 by Failing to Provide Educational Programs for Incarcerated Women That are Equal to Those Provided for

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Standard Minimum Rules, at ¶ 22.

⁷⁶ OMBUDSMAN FOR THE N. TERRITORY, WOMEN IN PRISON FOR THE NORTHERN TERRITORY: REPORT OF THE INVESTIGATION INTO COMPLAINTS FROM WOMEN PRISONERS OF THE DARWIN CORRECTIONAL CENTRE 139-140 (2008), available at <http://www.sistersinside.com.au/media/NTWomen%20In%20Prison%20PDF.pdf>.

⁷⁷ *Id.*

⁷⁸ Nicholson, *supra* note 72.

⁷⁹ OMBUDSMAN FOR THE N. TERRITORY, *supra* note 76, at 163.

⁸⁰ *Id.* at 208-209.

⁸¹ *Id.* at 207-208.

⁸² *Id.* at 220.

⁸³ *Id.* at 221.

⁸⁴ *Id.* at 227.

Men. The Standard Minimum Rules state that “[p]rovisions shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible.”⁸⁵ According to Sisters Inside, in 2005 the situation of women was worse than that of men because there were fewer programs for education, work, and work training.⁸⁶ Only twenty-seven percent of the Queensland female prisoners were enrolled in educational programs.⁸⁷ Also, according to Sisters Inside, women’s opportunities depended on a system of security classification, which did not reflect women’s standards as security risks.⁸⁸ Sisters Inside also found that in Queensland, the Northern Territory, and Victoria the programs of education and employment were designed for male prisoners.⁸⁹ A report released by the Department of Corrective Services of Western Australia in 2005 noted that “[thirty-five] percent of the women surveyed [for the report] had not received a formal education to the completion of Year 10.”⁹⁰

9.4.4 Australia Violates Article 10 by Failing to Provide Meaningful Employment Opportunities in Women’s Prisons. The Standard Minimum Rules state that “[s]ufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.”⁹¹ Employment during incarceration has been limited for women prisoners in Australia.⁹² According to the Ombudsman of the Northern Territory, the government of Australia sometimes confuses employment with volunteer activities.⁹³ The Ombudsman’s report of the Northern Territory stated the job offerings for incarcerated women would not lead to any career prospects.⁹⁴

9.4.5 Australia Violates Article 10 by Providing Only Limited Contact of Incarcerated Mothers with Their Children. The Standard Minimum Rules for the Treatment of Prisoners states that “[s]pecial attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both.”⁹⁵ Australia National Standard provides that incarcerated women need to have contact with their

⁸⁵ Standard Minimum Rules, at ¶ 77(1).

⁸⁶ Kat Armstrong et al., *Submission to the Antidiscrimination Commissioner for an Inquiry into the Discrimination Experienced by Women Within the Criminal Justice System in New South Wales*, BEYOND BARS ALLIANCE N.S.W. 13 (2005), available at <http://www.sistersinside.com.au/media/NSWADCreport.pdf>.

⁸⁷ Tamara Walsh, *Incorrections II: Correcting Government*, at § 2.1 (Oct. 2005), available at <http://www.sistersinside.com.au/reports.htm>.

⁸⁸ Armstrong et al., *supra* note 86.

⁸⁹ SISTERS INSIDE, SISTERS INSIDE Q. REP., UNDERSTANDING THE QUEENSLAND WOMEN IN PRISON REPORT: A DETAILED ANALYSIS 37 (2006), available at <http://www.sistersinside.com.au/media/Understanding%20WomeninPrison.pdf>.

⁹⁰ Government of Western Australia, Department of Corrective Services, *The Profile of Women in Prison* (2005), available at http://www.correctiveservices.wa.gov.au/P/profile_women_prison.aspx, at 55.

⁹¹ Standard Minimum Rules, at ¶ 71(3).

⁹² SISTERS INSIDE, SISTERS INSIDE Q. REP., *supra* note 89, at 40.

⁹³ OMBUDSMAN FOR THE N. TERRITORY, *supra* note 76, at 85.

⁹⁴ *Id.* at 83. (The list of jobs include: laundry, room cleaner, pathways cleaner, rubbish, kitchen cleaner, etc.)

⁹⁵ Standard Minimum Rules, at ¶ 79.

children.⁹⁶ In 2005, Sisters Inside found that in Queensland, eight-five percent of the incarcerated women were mothers with dependent children,⁹⁷ while the in 2008 Ombudsman found the rate in Victoria and in the Northern Territory was seventy-five percent.⁹⁸ The contact of incarcerated mothers is limited in part due to the cost of phone calls and the transfer to prisons far away from their communities. According to the Ombudsman's report, in the Northern Territory, incarcerated mothers had no contact with their children because they were transferred outside their communities and the cost of phone calls was too high.⁹⁹ In Western Australia, over a third of incarcerated women with dependents reportedly had not received visits of dependants after incarceration.¹⁰⁰ Australia fails to provide adequate facilities for the children to visit their mothers. For example, the Ombudsman of the Northern Territory noted that facilities for visitation of children were far below national and international standards.¹⁰¹

9.4.5.1 Australia Further Violates Article 10 by Failing to Adopt Measures to Deal with Foreign Incarcerated Mothers. Sisters Inside relates the case below:

Mee's baby was born, a little girl, immediately after Mee was sentenced. The prison system gave permission to Mee to keep her baby with her in the prison. While she was glad to keep her baby the circumstances were very difficult for her because she could not communicate well with anyone and did not have any money to provide essentials for the baby. Mee was not eligible for Centrelink payments as she was not a citizen of Australia. Therefore the prison manager decided to give Mee \$40 a week to buy the baby's essentials. This was not nearly enough. To make the situation worse, the prison staff decided what Mee could buy for her baby. She was not allowed to feed her baby the food that was culturally appropriate. She was made to feed the baby western food.¹⁰²

9.5. Systematic Causation. Australia's violations are the result of a failure to enact a uniform national policy relating to prison conditions and to provide adequate oversight of prisons.

9.5.1 Inefficient State Efforts. In Australia, there is no uniform national legislation, such as a constitutional Bill of Rights, designed to protect the rights under Article 10. While some states have attempted to incorporate legislative

⁹⁶ OMBUDSMAN FOR THE N. TERRITORY, *supra* note 76, at 48.

⁹⁷ SISTERS INSIDE, *SISTERS INSIDE Q. REP.*, *supra* note 89, at 61.

⁹⁸ OMBUDSMAN FOR THE N. TERRITORY, *supra* note 76, at 53.

⁹⁹ *Id.*, at 54.

¹⁰⁰ Government of Western Australia, *supra* note 90, at 43.

¹⁰¹ OMBUDSMAN FOR THE N. TERRITORY, *supra* note 76, at 241.

¹⁰² Debby Kilroy, *The Silenced Few – NESB Women in Prison*, 2 (2003), available at <http://www.sistersinside.com.au/reports.htm>.

protection of human rights per the ICCPR, the legislation is not as inclusive as the ICCPR and results in many of the violations stated above.¹⁰³

9.5.2 Flawed Oversight of Australian Prison Watchdogs. The way in which Victoria oversees its prisons is relatively precarious, as it does not answer to a true external oversight committee. For example, The Herald Sun reported in December of 2007 that files which included allegations of officers trading cigarettes for sexual favors, prison staff trafficking drugs, and rape were found in a filing cabinet formerly owned by Victoria's Department of Justice at a second-hand furniture shop.¹⁰⁴ Andre Haermeyer, then Victoria's Corrections Minister, reported that he knew nothing of the allegations included in the files.¹⁰⁵ Moreover, files acquired under freedom of information laws by The Age, a Melbourne newspaper, show that Victoria's prison watchdog, the Office of Correctional Services Review, has completed more than 100 investigations of alleged prison misconduct since 2000, but none of those investigations were released as of 2008.¹⁰⁶ Even more, the Office of Correctional Services is part of Victoria's Department of Justice, which also manages Victorian prisons.¹⁰⁷ Such ineffective oversight, lack of transparency, failure of an internal system of checks and balances, and a seemingly deficient public accountability in the above characterization encumber the right to fairness that should be possessed by all Victorian female prisoners.

10. Australia Must Ensure That Incarcerated Women are Treated with Humanity.

10.1 Australian prisons fail to acknowledge the human dignity of incarcerated women by failing to meet the Standard Minimum Rules for the Treatment of Prisoners. We respectfully suggest the following recommendations:

Recommendation # 6 of 11: The Human Rights Committee recommends that Australia seek to eliminate overcrowding in prisons by strengthening non-custodial alternatives and measures, including diversionary and probationary programs designed specifically for the female prison population. Such strengthening may include additional appropriations be given to this end.

Recommendation # 7 of 11: The Human Rights Committee recommends that Australia eliminate discrimination against its female prisoners and treat female prisoners as a prison population separate from the male population.

¹⁰³ Access to Justice, *Practice Note 4*, U.N. DEV. PROGRAMME (September 3, 2004).

¹⁰⁴ *Female Jail Sex Claims Finally Revealed*, HERALD SUN (Dec. 11, 2007), available at <http://www.news.com.au/heraldsun/story/0,21985,22908585-5005961,00.html>.

¹⁰⁵ *Id.*

¹⁰⁶ Nick McKenzie, *Watchdog Slams Jails Oversight*, THE AGE, at 1 (May 16, 2008), available at <http://www.theage.com.au/national/investigations/watchdog-slams-jails-oversight-20080514-2e1g.html>.

¹⁰⁷ *Id.*

Recommendation # 8 of 11: The Human Rights Committee recommends that Australia further develop a preventive intervention strategy to curb and prevent suicides, taking into account the dignity and best interests of women prisoners.

Recommendation # 9 of 11: The Human Rights Committee recommends that Australia strengthen and develop prisoner assessment interviews, intakes, and inductions in order to better facilitate the humane treatment of women in prisons.

Recommendation # 10 of 11: The Human Rights Committee recommends that Australia strengthen educational and job programs, which would facilitate women's rehabilitation and return to their lives in the community.

Recommendation # 11 of 11: The Human Rights Committee recommends that Australia adapt mechanisms, systems, and procedures to facilitate children's visits to their incarcerated mothers.

Conclusion

As a party to the ICCPR, Australia must afford women in Australia a wide range of civil and political rights. Australia has breached the ICCPR by failing to uphold its obligations under Articles 2 and 26 to ensure women's rights under the Convention, and has also violated Articles 3, 6, 7, 8 and 10. Australia has violated the rights of women in three areas: (1) Trafficking leading to slavery, servitude and forced labor; (2) FGM; and (3) Incarceration conditions.

Australia violates women's right to be free from slavery, servitude, and forced labor protected under Article 8 by failing to prevent trafficking of women into prostitution, leading to slavery, servitude and forced labor. In addition, Australia violates women's right to life under Article 6 and right to be free from cruel, inhuman, or degrading treatment under Article 7 by failing to ensure that women are not subjected to FGM, which inflicts great pain on a woman and can be life threatening. Australia violates women's right to be treated with humanity protected under Article 10 by failing to ensure that incarcerated women have livable conditions during incarceration and the opportunity for education and other rehabilitation programs.

Australia must ensure that all, including women, enjoy all internationally recognized human rights, such as civil and political rights protected under the ICCPR. Yet, Australia perpetuates a system in which women in Australia suffer denial of their rights.

Thus, we respectfully request that the Human Rights Committee conclude that the Australian government violated its obligations under ICCPR, Articles 3, 6, 7, 8 and 10. We urge the Human Rights Committee to call on the government to adopt and amend its laws, policies, and practices to protect the civil and political rights of women in Australia. Such changes must be made before women in Australia can enjoy the human rights protections established under international law.
