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

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Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Visit to Australia undertaken from 16 to 23 October 2022: recommendations and observations addressed to the State party

Report of the Subcommittee*, **

* In accordance with article 16 (1) of the Optional Protocol, the present report was transmitted confidentially to the State party on 19 June 2023. On 19 December, the State party requested the Subcommittee to publish the report, in accordance with article 16 (2) of the Optional Protocol.

** The annexes to the present document are being circulated as received, in the language of submission only.

I. Introduction

1. In accordance with its mandate under articles 11 and 13 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment undertook its first visit to Australia in 2022. The visit, which started on 16 October and was foreseen to continue until 27 October 2022, was suspended by the Subcommittee on 23 October because of a lack of cooperation by the State party and was finally terminated on 17 February 2023. Australia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 8 August 1989 and ratified the Optional Protocol on 21 December 2017.

2. The Subcommittee members conducting the visit were: Aisha Shujune Muhammad (head of delegation), Marija Definis-Gojanovic, Jakub Julian Czepek and Nika Kvaratskhelia. The Subcommittee was assisted by two human rights officers and one security officer from the Office of the United Nations High Commissioner for Human Rights.

3. The principal objectives of the visit were:

(a) To visit places of deprivation of liberty in order to assist the State party in discharging effectively its obligations under the Optional Protocol to strengthen the protection of persons deprived of their liberty from the risk of torture and ill-treatment;

(b) To provide advice and technical assistance to the institutions nominated to comprise the national preventive mechanism[1] and to the State party with regard to its obligations under the Optional Protocol.

4. In October 2022, the Subcommittee sought to visit a broad range of places of deprivation of liberty in different parts of the country, including police stations and watch-houses, remand centres, prisons, immigration detention facilities, juvenile detention centres, closed psychiatric facilities and closed forensic facilities (see annex I). However, the Subcommittee was unable to fully implement its mandate, having been denied access to both closed psychiatric facilities and closed forensic facilities in the State of Queensland and to all places of detention, except for federal immigration detention centres, in the State of New South Wales (see annex II). Similarly, the Subcommittee experienced significant delays in accessing a number of places of detention, undermining its confidence in the integrity of its findings.

5. In addition to visiting places of deprivation of liberty, the Subcommittee held discussions with representatives of relevant government authorities, bodies nominated to comprise the national preventive mechanism, upon its formation, and civil society organizations, as well as with representatives of the United Nations and other international organizations in the country (see annex III). In addition, it met and interviewed persons deprived of their liberty, law enforcement and detention officers, medical personnel and others.

6. On 14 November 2022, the Subcommittee requested a series of assurances, to be provided by 31 January 2023, for it to be able to resume its visit. As those assurances were not provided, and the Subcommittee had no prospects of unfettered access to all places of detention in all jurisdictions, on 17 February 2023, it decided to terminate its visit.

7. In the present report, the Subcommittee sets out its observations, findings and recommendations relevant to the prevention of torture and ill-treatment of persons deprived of their liberty in places of detention that it visited before the suspension of its visit. Therefore, due to denied access, which led to the suspension of the visit, the report does not contain information on detention facilities in New South Wales or forensic facilities in Queensland.

8. The Subcommittee reserves the right to comment further on any place visited, whether or not it is mentioned in the present report, in its discussions with Australia arising from the report. The absence of any comment in the present report relating to a specific facility or

[1] See CAT/OP/12/5.

place of detention visited by the Subcommittee does not imply that it has a positive or a negative opinion of it.

9. **The Subcommittee recommends that the present report be made publicly available and be distributed to all relevant authorities, departments and institutions, including but not limited to those to which it specifically refers.**

10. The present report will remain confidential until such time as Australia decides to make it public in accordance with article 16 (2) of the Optional Protocol. The Subcommittee firmly believes that the publication of the present report would contribute positively to the prevention of torture and ill-treatment in Australia.

11. **The Subcommittee recommends that the State party request the publication of the present report in accordance with article 16 (2) of the Optional Protocol**.

12. The Subcommittee draws the State party's attention to the Special Fund established pursuant to article 26 of the Optional Protocol. Only recommendations contained in those Subcommittee visit reports that have been made public can form the basis of applications to the Fund, in accordance with its published criteria.

II. Facilitation of the visit and cooperation

13. The Subcommittee puts on record the fruitful collaboration and regular contact with authorities during the preparatory phase of the visit. However, it regrets that the list of places of deprivation of liberty provided included neither correct addresses nor statistics and information related to the number of detainees and their categories in each facility, and that it failed to include what the State party calls "secondary places" of deprivation of liberty. In some cases, the credentials provided by the State party did not fully accord with the terms of the Subcommittee's requests and the standards of access required by the Optional Protocol. It also regrets that government focal points were not designated in all parts of the country in order to facilitate its visit.

14. Throughout its visit, the Subcommittee observed a fundamental lack of understanding, among both federal and state authorities, of the Optional Protocol, the State party's obligations and the mandate and powers of the Subcommittee, including a misunderstanding of the Subcommittee's power to access all information concerning persons deprived of their liberty and all places of deprivation of liberty in an unrestricted manner, and to conduct private interviews with persons deprived of their liberty and others who may supply relevant information.

15. The Subcommittee regrets that it experienced a discourteous, and in some cases hostile, reception from a number of government authorities and officials in places of deprivation of liberty, not in keeping with the collaborative and assistance-based nature of its visit. The Subcommittee notes that such discourtesy and hostility may be indicative of the welcome that the national preventative mechanism may expect in carrying out its functions during future visits. Such behaviour also raises concerns (as it is assumed to be reflective) of how persons deprived of liberty are treated. Furthermore, during the Subcommittee's visit, it experienced persistent negative media coverage, including pernicious remarks from government officials in certain regions, amounting to what the Subcommittee would qualify as a smear campaign. Such remarks and media reports no doubt contributed in some cases to the hostility faced by the Subcommittee, as evidenced by the repetition of disparaging quotes from government officials by the administrators of some of the places of deprivation of liberty that it visited.

16. **The Subcommittee recommends that the State party take all necessary measures, including through the implementation of federal, territory-wide, Optional Protocol-specific legislation and the provision of sufficient financial and human resources, for the implementation of the Optional Protocol, the uniform implementation thereof and access by the Subcommittee to all places of detention in the State party without obstruction or hindrance.**

III. National preventive mechanism and implementation of the Optional Protocol

17. The Subcommittee acknowledges the plans of Australia to set up its national preventive mechanism and notes that it has opted for a multi-body configuration by nominating some pre-existing bodies to undertake the function. The Subcommittee is concerned, however, that almost five years after ratification of the Optional Protocol, the national preventive mechanism has not been designated and no action has been taken to introduce overarching legislation to ensure that the bodies of the mechanism enjoy full independence and have the requisite powers and mandate, privileges and immunities, and resources to make them compliant with the Optional Protocol. Such legislation should also ensure the harmonized functioning of bodies of the mechanism across the country, so that they are able to coordinate and cooperate effectively for better results.

18. The Subcommittee acknowledges that States parties with federal systems of government may face challenges in establishing a nation-wide prevention system, in particular when each jurisdiction has distinct control over its places of deprivation of liberty. While the choice of a national preventive mechanism and its configuration is at the full discretion of the State party, the objective criteria for doing so have been clearly set out in articles 17 to 23 of the Optional Protocol. The challenges presented by the federal system should not prevent the State party from fully abiding by its obligations under the Optional Protocol.[2]

19. The Subcommittee is concerned about the fragmentation of the mandate and the ability of bodies nominated by Australia in their emerging national preventive mechanism structure to adequately visit all places of deprivation of liberty. At the time of the visit, 11 different entities were tasked with fulfilling the functions of the national preventive mechanism in five different jurisdictions, and each of the entities was competent to visit a particular type of place of deprivation of liberty, each working as a separate mechanism. While a multi-body mechanism consists of multiple visiting bodies, a national preventive mechanism must have the power to cover all places of deprivation of liberty, in line with articles 4 and 17 of the Optional Protocol. For instance, while a body empowered to visit only psychiatric facilities in a given state does not, in itself, constitute a national preventive mechanism, when combined with other bodies that will together cover all places of deprivation of liberty in a given state and fulfil all of the requirements in the aforementioned articles, these bodies may collectively be referred to as a national preventive mechanism.[3] When a federal State party decides to have multiple bodies as its mechanism, one of them, or a new body, should be designated at the federal level to carry out the coordination function, including setting the strategic vision of the mechanism and its methodological approach, overseeing the presentation of its annual report to the parliament and ensuring the orderly transmission of information to the Subcommittee. Where several institutions collectively constitute the national preventive mechanism, one should be designated as the coordinator at the state level. In cases where one state does not have a mechanism, the federal coordinator must be afforded the competence to cover the places of deprivation of liberty in that particular state.

20. In that sense, the element of territoriality is an essential part of a torture prevention mechanism. This is of particular relevance in federal States, where a national preventive mechanism should have effective access to and coverage of all places of deprivation of liberty in the country, regardless of how the federated states are organized in their jurisdictions. Furthermore, if pre-existing bodies are designated as national preventive mechanisms, their mandates must be readjusted to take into account the provisions of the Optional Protocol and its spirit of prevention, as well as visits and investigations, the processing of complaints and other types of functions. Hence the importance of introducing new legislation in that regard.[4]

[2] CAT/OP/GBR/ROSP/1, paras. 24–29.
[3] Optional Protocol, art. 17.
[4] CAT/OP/MOZ/R.1, paras. 41–47.

21. **The Subcommittee recommends that the State party designate its national preventive mechanism and enact overarching legislation to establish it in a constitutional or legislative text[5] in which its mandate, powers, privileges, immunities, period of office of its staff and all other relevant details are clearly set out. Whenever existing bodies are designated as the mechanism, their by-laws must be amended to reflect the requirements of the Optional Protocol.**[6]

22. **Regardless of the configuration adopted, the State party should ensure that its national preventive mechanism has jurisdiction over the entirety of the territory of the State party and all places of deprivation of liberty therein, as envisaged by article 4 (2) of the Optional Protocol.**

23. In addition to the above, the visiting mandate of the national preventive mechanisms should encompass all places of deprivation of liberty under the jurisdiction or control of the State party without distinction, as reflected in article 4 of the Optional Protocol, and the persons held in them, including offshore facilities, irrespective of the length of detention. In this sense, the "primary" and "secondary" approach to places of detention introduced by the State party is inconsistent with the provisions of the Optional Protocol and the obligations of the State party under it. This approach contributes to the fragmentation mentioned above, depriving the mechanism of the purview as to what places of deprivation of liberty to prioritize based on the trends and issues it identifies. In Australia, Tasmania is currently the only state jurisdiction where the legislation has provided the Ombudsman with the power to visit all places of deprivation of liberty, incorporating the broad interpretation provided by the Subcommittee and aligning it in that sense with the provisions of the Optional Protocol.

24. **The State party should ensure that all places of deprivation of liberty under its jurisdiction or control, as defined by article 4 of the Optional Protocol, are covered by the mandate of the national preventive mechanism and guarantee a structure that allows the mechanism itself to prioritize what type of place of deprivation of liberty to visit, without its competence being a priori limited to a particular setting or institution. The selection of which place of deprivation of liberty to visit should be at the sole discretion of the mechanism.**

25. The Subcommittee is concerned that existing investigatory and oversight bodies may be designated to carry out national preventive mechanism functions. It stresses that national preventive mechanisms should complement rather than replace existing mechanisms. If existing mechanisms are appointed or nominated as visiting bodies as part of the national mechanism, the State party should guarantee, in order to fulfil the requirements of the Optional Protocol, that their mandates are separate and adapted by a legal instrument, and that a separate budget is allocated to them for their national preventive mechanism functions. At the time of the visit by the Subcommittee, the budget allocated to the existing visiting bodies was not adapted to incorporate their new national preventive mechanism functions, and their budgets were largely insufficient.

26. **The Subcommittee recommends that the reactive and proactive functions, and the staff attending to those, be kept separate in cases where existing bodies will take on national preventive mechanism functions. In this regard, the State party must allocate, as a matter of urgency, sufficient financial resources for the effective functioning of the mechanism, including for its staffing with persons from diverse backgrounds.**

IV. Normative framework

A. Age of criminal responsibility

27. While acknowledging recent reforms in some states and territories raising the age of criminal responsibility, the Subcommittee notes that the age of criminal responsibility in the

[5] CAT/OP/12/5, para. 7.
[6] CAT/OP/GBR/ROSP/1, para. 28.

State party ranges from 14 years to as low as 10 years. It is concerned that, in spite of the reforms, the legislation continues to fall short of internationally accepted standards.

28. **The Subcommittee recommends that a review of the criminal legislation applicable to minors, including legislation regarding the age of criminal responsibility to increase it to minimum 14,**[7] **be undertaken in order to bring it into line with international standards on juvenile justice.**

B. Legal regulation of restraint tools and spit hoods

29. The Subcommittee notes with concern the arbitrary use of restraints that it observed during its visit. It observed that, in many cases, the use of restraints was largely unregulated and insufficiently documented in registers and through the use of body cameras. The Subcommittee observed the use of handcuffs, belt tethers and shackles as a matter of routine, including on children, without individual determination as to the circumstances or the necessity and proportionality of the use of such tools and with little, if any, external oversight. The Subcommittee also observed the widespread use of padded observation cells, including as overflow rooms when other accommodation was unavailable.

30. **The Subcommittee recommends that the use of restraints be limited to circumstances where such use is absolutely necessary, and that such use should be proportionate, subject to strict regulation and for the shortest possible period, with continued monitoring of the person under restraint. In cases where de-escalation is not possible, medical and mental health care should be sought. All uses of restraints should be scrupulously recorded and reported to both internal and external oversight bodies, and the continued use of such methods monitored and reviewed over time. The use of restraints on children should be prohibited.**

31. While noting recent efforts at the state level to ban or restrict the use of spit hoods, including through modernization of the equipment used and the use of "spit guards", the Subcommittee regrets their continued use. The Subcommittee considers that the use of both spit hoods and spit guards constitutes a form of inhuman and degrading treatment, which in some cases may amount to torture.

32. **The Subcommittee recommends that the State party institute a complete ban on the use of spit hoods, spit guards and all similar equipment in all areas under its jurisdiction.**

C. Persons deprived of their liberty on remand

33. The Subcommittee noted the extraordinary number of persons deprived of their liberty on remand in the State party, constituting up to 70 per cent of prison populations in some locations visited, and contributing to the incarceration of almost 1 per cent of the population of the Northern Territory. Information received by the Subcommittee indicates that the particularly elevated numbers of persons detained on remand are due in part to the reversal of the presumption of bail for certain offences. The Subcommittee observed that the cost and conditions of bail may disproportionately affect Aboriginal and Torres Strait Islander peoples, as well as other marginalized and vulnerable groups.

34. **The Subcommittee recalls that detention in custody of persons awaiting trial should be the exception rather than the rule, in conformity with the presumption of innocence and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules). The Subcommittee recommends that the State party take measures, including legislative measures, to ensure that recourse to pretrial detention is always a measure of last resort.**

[7] See CRC/C/AUS/CO/5-6.

D. Migration

35. The Subcommittee expresses its concern over the the restrictive nature of legislation applicable to immigration detention, including the State party's policy of mandatory immigration detention under the Migration Act 1958 for persons unlawfully present on its territory. The Subcommittee wishes to highlight the substantial increase in the number of persons in immigration detention as a result of the 2014 amendment to section 501 of the Migration Act.

36. The Subcommittee notes that, in a number of cases, detainees who it met with were subject to visa cancellation, despite the fact that they had come to Australia as children and had lawfully resided in the State party for decades. The Subcommittee recalls the decision of the Human Rights Committee in *Stefan Lars Nystrom et al. v. Australia*, in which it found, inter alia, that the concept of "one's own country" under article 12 (4) of the International Covenant on Civil and Political Rights had a broader scope than simply relating to formal ties, and elements that should be taken into consideration included the nature of the ties connecting persons to a country, their language, the presence of their family within the country and the duration of their stay. The Committee also found that deportation as a result of visa cancellation may constitute an arbitrary interference with the family, contrary to articles 17 and 23 (1) of the Covenant.[8]

37. The Subcommittee received reports of indefinite detention in immigration centres for stateless individuals and for individuals who could not be returned to their home countries due to the principle of non-refoulement. While the Subcommittee acknowledges the compliance of Australia with this key tenet of the international protection regime, the Subcommittee stresses that compliance with this principle may not be relied upon to justify indefinite or prolonged periods of detention, which may amount to cruel, inhuman or degrading treatment in and of themselves.

38. **The Subcommittee recommends that the State party review the Migration Act 1958 with a view to amending the provisions thereof providing for mandatory immigration detention in favour of alternative non-custodial measures, with due regard to international human rights law, including the rights to freedom of movement and freedom from arbitrary or unlawful interference with the family. The Subcommittee also recommends that the State party take immediate measures to end the prolonged and indefinite detention of persons deprived of their liberty and ensure that stateless persons and persons at risk of irreparable harm in their countries of origin are not subjected to indefinite detention.**

39. The Subcommittee is concerned about the centralization of the decision-making process regarding the issuance and cancellation of visas in the executive power, removing from the judiciary the ability to make decisions on the conformity of migration policy implementation with the international obligations of Australia, including with regard to non-refoulement.

40. **The Subcommittee recommends that the State party provide a mechanism for judicial oversight and review of decisions of the Minister for Immigration, Citizenship and Multicultural Affairs relating to migration detention.**

V. Fundamental legal safeguards

A. Detention prior to charges

41. While noting that legislation applicable to the time between apprehension and charges differs across the State party's territory, the Subcommittee observed a number of worrying provisions and practices related to denial of legal safeguards.

[8] CCPR/C/102/D/1557/2007.

42. In at least one jurisdiction visited, no maximum period for detention without charge existed. In the Northern Territory, police may continue to hold a person without charge for a "reasonable period", which may be determined taking into account, inter alia, the time taken for investigators with knowledge of or responsibility for the investigation into the alleged offence to attend to interview the person, the time taken to arrange and conduct an identification parade and the time taken to interview available witnesses. The Subcommittee notes that, given geographical considerations, persons may be detained without charge for long periods while investigators travel substantial distances to interview them.

43. **The Subcommittee recommends that the State party provide all fundamental legal safeguards to detained persons from the moment that they are deprived of their liberty. The Subcommittee also recommends that maximum detention periods prior to charge be established at 48 hours in all states and territories, and that any extension of maximum detention periods be limited in time and subject to judicial review.**

B. Information on detainees' rights

44. A number of detainees interviewed in police stations by the Subcommittee had not been informed of their rights. Others were unable to repeat their rights when asked, indicating that, although such information had been provided to them, they might not have properly understood it. The Subcommittee highlights the procedure in some states and territories of the State party whereby the signature of detainees is included at the bottom of a document enumerating their rights. However, it is concerned that such a procedure may simply constitute a box-ticking exercise, without reasonable analysis as to whether the information provided to the detainees is sufficiently received and assimilated.

45. **The Subcommittee recommends that the State party ensure that all detained persons are fully informed of their rights as soon as they are deprived of their liberty and that information on rights is communicated orally and in writing in a clear and easily understandable way, for example through displaying posters in all places of detention, including in rooms and cells, and distributing factsheets that are comprehensive and intelligible to detainees, in their own languages.**

C. Access to a lawyer

46. During its visit, the Subcommittee saw that, in Darwin, access to a lawyer for persons deprived of their liberty was contingent upon a subjective determination by the detaining authority of the detainee's sobriety. In addition, while the Subcommittee notes that free legal aid is in principle available to persons deprived of their liberty in circumstances where they require it, it expresses concern over information received during interviews that detainees are sometimes advised to plead guilty by the legal representatives they are appointed without fully understanding the repercussions of such a plea, and that in some cases accused persons are not able to speak with their legal representatives until the scheduled court date.

47. T**he Subcommittee recommends that the State party take effective measures to guarantee that all persons deprived of their liberty are afforded, in law and in practice, from the time they are arrested, the right to have prompt access to an independent lawyer and, if necessary, to effective legal aid in accordance with international standards. Such legal aid should also ensure that persons deprived of their liberty are adequately informed of their rights, of the legal process itself and of the consequences of decisions that they may make throughout the process. Detainees' lack of knowledge of their rights, the legal process and the consequences of the decisions that they make places them in a situation of vulnerability and increases their risk of exposure to torture and ill-treatment.**

D. Access to medical care

48. The Subcommittee observed that persons deprived of their liberty often have insufficient access to medical assistance, and that there have been a number of deaths in

custody in the State party in recent years. The Subcommittee takes note of good practices observed in a number of police stations and watch-houses, such as the presence of a 24-hour nurse on site. However, it expresses its concern over information received that access to the on-site nurse is not always guaranteed, and access to a doctor may prove even harder. The Subcommittee observed that medical screenings upon reception by qualified health professionals were not administered as a matter of procedure, noting that, in some locations, access to health care was dependent on completion of a self-reporting form, which must be returned to the detaining authority.

49. **The Subcommittee recommends that the State party ensure that all persons arrested or transferred from other facilities are promptly examined free of charge, as a matter of procedure and in a confidential manner, by a medical specialist able to work independently without any officials present, in order to detect and record, inter alia, any signs of injuries sustained prior to the person's arrival. In line with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), as revised, medical specialists should be trained in how to detect and examine people who may have been subjected to torture or ill-treatment and in how to document such cases.**

E. Registers

50. While noting the electronic format of data storage in places of deprivation of liberty across Australia, the Subcommittee is concerned that the registers are dealt with in a box-ticking manner and are not easily usable for a third party, such as oversight mechanisms or the national preventive mechanism. As an example, files related to detainees, including footage from body cameras related to an incident involving them, can only be found in their own individual records and by searching their names. The Subcommittee was unable to find any separate registers, for instances related to use of force or restraints, solitary confinement or movement of detainees from one part of a facility to another, or even incidents, without referring to individual files of detainees. In one facility, the staff responsible for the central registers were unable to find footage of a specific incident reported to the delegation, despite assertions that the incident had been fully and duly documented.

51. **The State party should review and reform its system of record-keeping to ensure that records are comprehensive, accurate, precise, uniform and up to date at all times. A system should be introduced in order for a third party to follow the movements, location and well-being of a person in detention without the need to locate and examine numerous files, papers or slips. All detained persons should be immediately registered, and registers should be scrupulously maintained in compliance with international standards.**[9] **All transfers of detainees should be properly and immediately recorded. Registers should be regularly inspected, and disciplinary and other sanctions should be provided for breaches of the requirement to keep complete and timely registers.**

F. Complaint mechanisms

52. During its visit, the Subcommittee received no information to indicate that complaint mechanisms with regard to torture or other forms of cruel, inhuman or degrading treatment or punishment were available to persons in police custody. It underlines that, in the absence of clear and easily accessible information regarding access to complaint mechanisms, instances of torture or other forms of cruel, inhuman or degrading treatment or punishment may go unreported.

53. **The Subcommittee recommends that the State party ensure that complaint mechanisms are established with a mandate to review complaints relating to persons deprived of their liberty, that they operate in an accessible, independent and effective manner and that all persons deprived of their liberty are informed of such mechanisms.**

[9] Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 12.

VI. Persons deprived of their liberty

A. Overarching issues

1. Oversecuritization

54. A trend of oversecuritization was observed by the Subcommittee in all places of deprivation of liberty it visited. Along with unnecessary and arbitrary use of restraints by detaining authorities, the Subcommittee remarked on the excessive use of surveillance in all locations, including in cells, with toilet and shower facilities in full view. Furthermore, it noted that persons deprived of their liberty were at times placed in high-observation cells, in some instances with 24-hour lighting and padded walls, solely due to overcrowding. The Subcommittee observed that, in at least one juvenile detention centre, shower facilities were not provided with screens and faced into common areas in full view of other detainees and guards.

55. **Noting the need to balance the right to privacy with security and safety needs, the Subcommittee recommends that the State party remove all unnecessary equipment affecting the privacy of inmates, underscoring that overcrowding is not a valid basis for undermining the right to privacy of persons deprived of their liberty where no elevated security considerations exist. It also recommends, in particular in the case of children, and taking into account past reported instances of sexual abuse in juvenile detention facilities, that persons deprived of their liberty be permitted to tend to their personal hygiene in a private and unobserved manner.**

56. The Subcommittee observed that, in a number of locations visited, both cell and personal searches were carried out on a systematic basis, in both the morning and the evening. It also received reports during interviews of the use of punitive searches. Excessive and systematic searches of persons detained in solitary confinement or high-observation cells, in particular when maintained over time, can amount to inhuman treatment.

57. **The Subcommittee recommends that the State party cease systematic searches of persons deprived of their liberty and their cells, taking into account the psychological toll that this may have, in particular on those detained in regimes of low or no contact. The State party should instead opt for a search regime based on reasonable suspicion of possession of prohibited items. All searches should be recorded, along with the basis on which they were carried out, and subject to supervision and external oversight.**

58. The Subcommittee is concerned about the frequency of the use of strip-searches observed during its visit, including as a matter of procedure, for example when persons deprived of their liberty are placed in high-observation cells. The use of strip-searches, taking into account elements of regularity and invasiveness, may amount to degrading treatment. In at least one location, strip-searches continued to be used routinely, despite the availability of a full-body scanner.

59. **The Subcommittee recommends that the State party limit to exceptional cases the practice of strip-searching persons deprived of their liberty and ensure that, if such searches are carried out, they are accompanied at a minimum by a reasonable suspicion of wrongdoing, and that the criteria of necessity, reasonableness and proportionality are met. In exceptional cases where the removal of clothing is necessary, reasonable and proportionate, detained persons should not normally be required to remove all of their clothes at the same time, and should never be required to strip naked in front of other inmates or large groups of persons. The Subcommittee also recommends that the State party seek and implement alternative methods of addressing the same security considerations, including, for example, through the use of full-body scanners.**

60. The Subcommittee is concerned that a number of restrictions introduced during the coronavirus disease (COVID-19) pandemic, while initially instituted on substantiated grounds of public health, have remained in the form of repressive regimes of detention, in particular in relation to lockdowns and isolation. It notes that terminology such as “lockdowns” and “isolation” have become commonplace and acceptable as a result of the pandemic. However, while once justified, these regimes no longer remain so, despite their

continued application in detention settings. COVID-19 is used as a pretext by detaining authorities to address issues fundamentally caused by understaffing and to justify de facto regimes of solitary confinement. The Subcommittee observed that systems of isolation initially introduced in reaction to COVID-19 have resulted in the unacceptable segmentation of detention spaces, including the use of "alternative places of detention" for immigration purposes.

61. **The Subcommittee recommends that the State party repeal all measures introduced during the COVID-19 pandemic relating to lockdowns and isolation, except where absolutely justified on grounds of imminent public health risks. It also recommends that, where lockdowns and isolation become necessary and justified, the State party ensure that periods of isolation do not exceed those prescribed by international standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), and that psychological support for persons detained of their liberty be increased to respond to the adverse impact that such regimes of detention may have on mental health.**

62. Noting that a high percentage of persons interviewed were visibly experiencing mental health conditions or were on psychiatric medication, the Subcommittee expresses its concern over the effect that systematic and institutionalized oversecuritization may have on the mental health of persons deprived of their liberty, and the knock-on effects that this may have on recidivism.

63. **The Subcommittee recommends that the State party take steps to counter the effects that oversecuritization may have on the mental health of persons deprived of their liberty, including by addressing systematic and institutionalized oversecuritization in all places of deprivation of liberty and ensuring that adequate mental health, social, educational and vocational services are available to all those who request them.**

2. Labelling and revolving-door justice

64. The Subcommittee received information on high rates of recidivism, along with information regarding labelling, profiling and overpolicing of Indigenous and minority groups. The Subcommittee is concerned that social policies to address root causes of criminality are insufficiently addressed and that primary, secondary and tertiary approaches to crime prevention are largely absent from or ineffective in the State party's criminal justice policy. These challenges disproportionately affect Indigenous, minority and migrant communities and are magnified in rural and urban-poor communities, which may lack access to adequate social services and high-quality education and often experience fragility due to social issues such as alcoholism, damaged family units and intercommunity conflict.

65. The Subcommittee notes that, when people enter the criminal justice system, they begin a cycle whereby oversecuritized detention leads to degradations in mental health, which in turn leads to adverse behavioural manifestations, punishment for those manifestations, and further psychological deterioration with adverse behavioural effects. As a result of this cycle, persons deprived of their liberty may leave detention as, or more, likely to commit offences as when they entered, or may resort to self-harm to remove themselves from high-security or high-observation detention regimes.

66. In a number of locations visited, detainees on remand were unable to access support offered such as education and vocational training and alcohol and drug treatment. In other locations, materials necessary to take part in educational courses, such as required software, were withheld from detainees without adequate justification.

67. **The Subcommittee recommends that the State party take steps to tackle the root causes of criminality in communities and recidivism, including by incorporating primary, secondary and tertiary approaches to crime prevention into its criminal justice policy, and providing adequate mental health, social, educational, vocational and addiction support and materials, both inside and outside of places of deprivation of liberty. It also recommends that the State party ensure, through direction and monitoring, a departure from stereotyping, labelling and profiling minority and vulnerable populations.**

3. Use of force and restraint

68. The Subcommittee observed the use of electrical discharge weapons and chemical agents in detention settings, noting that, in many locations, chemical agents formed part of the staff's standard equipment. It received reports from staff about the use of such weapons on detainees while in their cells. In one instance, the Subcommittee was informed by prison staff about the use of a capsaicin-based chemical agent on a restrained detainee as a form of punishment. The use of chemical agents in such a manner amounts to cruel and inhuman treatment, and may amount to torture. Although in that instance the staff member involved was subsequently subject to administrative sanctions, no criminal sanctions were applied.

69. **The Subcommittee underscores the risk of death or irreparable harm associated with the use of both electrical discharge weapons and chemical agents, noting that the use of the latter in confined spaces may cause suffocation. It recommends that the use of electrical discharge weapons and chemical agents be banned in places of deprivation of liberty, in favour of effective de-escalation techniques.**

70. The Subcommittee observed the use of highly securitized transport, which in many cases lacked adequate space and ventilation, reached high temperatures inside and exposed detainees to bodily injuries during transport due to low roofs, exposed metal surfaces and bars and a lack of safety features, such as seatbelts. It also noted the use of restraints during transport, including on children, in particular when using commercial aircraft, which may amount to inhuman or degrading treatment.

71. **The Subcommittee recommends that the State party ensure that transportation of persons deprived of their liberty be undertaken in a safe way and in a manner that maintains the dignity of the persons in question. It also recommends that the State party immediately cease the use of restraints on children, including during transit.**

4. Conditions of detention

72. The Subcommittee expresses its concern over the poor conditions of detention observed in many places of deprivation of liberty, noting, for example, the presence of vermin in immigration centres. Conditions observed in juvenile detention centres were especially poor. In Banksia Hill Detention Centre, the Subcommittee observed cells with mattresses on the floor, and no running water, working showers or televisions. Children were left alone in their cells for up to 23 hours per day, amounting to de facto solitary confinement, with lighting in cells controlled from outside. While children were required to clean the common areas themselves, they were not provided with sufficient time outside of their cells to do so. In Don Dale Youth Detention Centre, children were housed in rooms covered in graffiti, with insalubrious bed sheets. A small, caged area of approximately 5 m^2 in an outdoor area was also observed by the Subcommittee to have graffiti inside, indicating that it may have been used to confine children. Children detained in management units as a result of behavioural issues were forbidden to leave their unit, where they also ate and had classes. In one such unit, both recreation rooms were observed to be locked and out of order. Children in that unit only had access to open air in a small, enclosed area where their showers were also housed. In both centres, the Subcommittee observed extremely small cells, lack of ventilation in cells, and putrid odours.

73. **The Subcommittee recommends that a review of juvenile detention facilities and criminal legislation related to minors be undertaken in order to bring them into line with international standards on juvenile justice, in particular articles 37 and 40 of the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, as well as Committee on the Rights of the Child general comment No. 24 (2019).**

74. **With reference to rule 45 of the Nelson Mandela Rules and rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the Subcommittee recommends that the State party ensure that persons under the age of 18 years are never subject to solitary confinement, as this constitutes a form of ill-treatment and in some cases may amount to torture.**

75. **The Subcommittee recommends that the highest possible standards of health and cleanliness are maintained in all places of deprivation of liberty, in keeping with respect for the dignity of the human being, and subject to frequent external inspections to ensure their conformity with public health legislation.**

76. Throughout its visit, the Subcommittee took note of reports detailing arbitrariness and overreactions by prison and detention centre staff, and the wide margin of discretion available to them to discipline detainees or grant requests. This margin of discretion extended from granting time outside of cells and access to activities and programmes to the provision of material goods and basic needs, including bedding, hygiene products and underwear. In certain cases, it was observed that basic needs could be withheld as punishment, while in others, detainees were reportedly required to make requests in demeaning ways.

77. **The Subcommittee recommends that the State party ensure that staff in all places of deprivation of liberty are adequately and periodically trained, and that comprehensive codes of conduct are developed and adhered to, including guidance on interactions between staff and detainees. It also recommends that all persons deprived of their liberty be informed of the goods, services and activities available to them, that clear guidelines on access thereto are provided to both detainees and staff, and that all basic necessities are provided as a matter of course.**

78. The Subcommittee received reports of reprisals against detainees for lodging complaints, including complaints related to staff behaviour and abuse of power. Risks of reprisals are exacerbated by the margin of discretion that staff have in lodging behavioural reports relating to detainees, which in turn may have negative impacts on future risk assessments and parole hearings.

79. **The Subcommittee urges the State party to protect persons deprived of their liberty from any reprisals and retaliations occasioned as a result of submitting complaints relating to conditions of detention. It recommends that the State party ensure that reports detailing the behaviour of detainees are substantiated, and that detainees are entitled to dispute reports that may have an effect on the conditions or duration of their detention, including through channels of external review and with adequate representation.**

80. The Subcommittee observed widespread practices that, regardless of the terminology used, amount to de facto solitary confinement. While in some locations visited, solitary confinement and discipline units were clearly identifiable, it noted a widespread trend in the use of varied nomenclature to refer to and justify places of isolation. Terminology most frequently observed by the Subcommittee included “high-observation” and “mental health” units. While the use of these types of accommodation is at times warranted, for example, in reaction to severe deterioration of mental health and risk of suicide, the Subcommittee considers it inappropriate to conflate the two regimes. The conditions of the high-observation regime, which includes additional searches and 24-hour monitoring, are imposed on detainees sent to such areas for behavioural reasons, given that in most locations visited, these facilities are one and the same. Furthermore, given that those placed in “high-observation” or “mental health” units are often subject to 24-hour reviews of their continued placement, no absolute time limits are placed on isolation for disciplinary purposes.

81. **The Subcommittee recommends that the reasons for and regime related to placement in solitary confinement, isolation, quarantine and other circumstances having the same effect are clearly delineated and distinguished, and that those placed in solitary confinement for behavioural reasons are not doubly punished through increased observation, searches and other incursions into their privacy. The Subcommittee also recommends that an absolute time limit of the use of solitary confinement be established at 15 days, in line with rule 44 of the Nelson Mandela Rules, and that the use of such a measure be recorded with all necessary details.**

82. The Subcommittee received information indicating that, in Darwin Correctional Centre, detainees had been kept in solitary confinement for months at a time in a small cell, without any contact with family or updates on current affairs, and with no television or books. Moreover, as a further disciplinary sanction, the cell fans had been removed, while temperatures inside rose above 34°C. In a number of locations, detainees subject to

disciplinary regimes were only entitled to one hour of fresh air a day, at times at the discretion of guards, in small, isolated areas enclosed with metal bars.

83. **The Subcommittee recommends that the State party ensure that solitary confinement is used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. Basic rights relating to light, ventilation, temperature, sanitation, access to open air and physical exercise, personal hygiene and adequate personal space must apply to all prisoners without exception. The Subcommittee urges the State party to ensure that all regimes of solitary confinement are compatible with international standards, including rules 13, 14, 23, 42, 43, 44 and 63 of the Nelson Mandela Rules.**

5. Access to health care

84. The Subcommittee noted the excellent material conditions that it observed in health-care facilities in many of the locations visited. However, it expresses its concern over the lack of continuity of care for detainees. Detainees are unable to use personal private insurance in prisons and detention centres, and the Subcommittee received frequent reports that psychiatric medication was often interrupted or replaced for unknown reasons. It also expresses its concern over reports that access to dental care is limited to those with longer sentences, along with information that such care, when received, is generally insufficient and overly invasive.

85. The Subcommittee received reports regarding excessive wait times for medical and psychological assistance and medication, along with reports of denial of necessary medical care. In one instance reported to the Subcommittee, a woman who had fallen in a detention facility was discharged from hospital diagnosed with a skull fracture, cerebral contusion and other injuries. However, she received no treatment or subsequent monitoring, in spite of recommendations by hospital medical personnel. The Subcommittee also noted the overmedication of detainees in many locations visited and the lack of available structures for detainees with serious mental health conditions. Where such structures do exist, they often have very limited capacities and are used only for those with extremely serious mental health conditions.

86. The Subcommittee is concerned about the contribution that material conditions have on the health of persons deprived of their liberty, noting that, in one specific case, a detainee was left paralysed following the failure of equipment contained inside his accommodation in an immigration centre. It noted worrisome reports detailing the use of handcuffs on patients while in hospital beds.

87. The Subcommittee regrets that none of the medical personnel interviewed had heard of the Istanbul Protocol.

88. **The Subcommittee recommends that, in all places of deprivation of liberty, the State party:**

(a) **Ensure that medical, psychological and dental care is guaranteed and accessible to all detained persons upon their request and within a reasonable time period, including adequate follow-up and specialist care, as necessary;**

(b) **Facilitate the provision of sufficient medical staff and medical supplies (pharmaceuticals and equipment) to all places of deprivation of liberty;**

(c) **Prohibit the use of handcuffs and other restraint tools on patients in hospital beds;**

(d) **Improve its training of medical personnel working in places of detention, in particular on the Istanbul Protocol and other international standards, as well as on the duty to detect and report torture and ill-treatment;**

(e) **Ensure that health professionals immediately report suspicions of torture and ill-treatment to the appropriate authorities so that an independent examination may be conducted, in accordance with the Istanbul Protocol;**

(f) **Establish adequate places of confinement for patients with psychiatric conditions and ensure that all detainees with such conditions who are being held in prisons, whether they were found to be not criminally responsible at the time of entry or whether they developed a psychiatric condition at a later stage, be transferred to such facilities as quickly as possible, regardless of race or ethnicity.**

6. Understaffing

89. The Subcommittee expresses its concern over the systematic understaffing observed in the penitentiary, juvenile detention and immigration detention systems across the State party's territory. The Subcommittee notes that, in some locations visited, levels of understaffing rose to 50 per cent, resulting in so-called "rolling lockdowns", with detainees confined to their cells for days at a time, irrespective of the security regime they were subject to and unaware of how long such lockdowns would last. As a result of understaffing, activities, education, work and other programmes were also cancelled. In Banksia Hill Detention Centre, children were observed to have been confined to their cells for up to 23 hours per day because of understaffing.

90. The Subcommittee is similarly concerned about the effects that understaffing may have on prison and detention centre staff, who may suffer elevated levels of stress or burnout as a result of the lack of human resources, and the effects that this may have on their treatment of detainees.

91. **The Subcommittee urges the State party to provide all the human and financial resources necessary to ensure that treatment of detainees corresponds to international standards, including those established in the Nelson Mandela Rules, the Convention on the Rights of the Child, the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, as well as Committee on the Rights of the Child general comment No. 24 (2019).**

B. Populations in situations of vulnerability

1. Women and girls

92. The Subcommittee observed the placement of women's sections within men's prisons, along with reports received regarding the housing of boys in girls' sections of juvenile detention centres. The Subcommittee notes the example of Darwin Correctional Centre, where areas used by women detainees are clearly visible from the windows of cells of male detainees, exposing them to pejorative and sexualized remarks from male detainees. The Subcommittee also notes the low number of women's prisons, meaning that women are often detained long distances from their families, with an adverse effect on their ability to maintain family ties.

93. **The Subcommittee recommends that the State party increase the number of women's detention centres, on an equitable geographical basis, to afford the best possible opportunity to women detainees to maintain their family ties, in line with rules 4 and 58 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). It also recommends that the State party avoid housing women detainees within men's prisons and, where such arrangement is necessary, ensure that the men's and women's sections are adequately separated.**

94. The Subcommittee noted the prevalence of male guards in women's prisons, in women's sections of immigration detention centres and in girls' sections of juvenile detention centres, and also noted information provided by staff indicating that male officers entered female living quarters without the presence of a female officer. It further noted that male guards could monitor uncensored closed-circuit television cameras in women's cells, and had been observed doing so, with hygiene facilities in full view. The Subcommittee further noted reports that women had limited access to feminine hygiene products and limits on the number of undergarments they were allowed to keep, and were denied medication for period pain.

95. **The Subcommittee recommends that the State party ensure that male staff members do not enter areas where women are detained unless accompanied by a female staff member, in line with rule 81 of the Nelson Mandela Rules. It also recommends that, where male officers are to play a role in the administration or monitoring of female detention areas, such role be limited to functions that preserve the dignity and right to privacy of female detainees.**

96. In almost all locations visited where women and girls were detained, the Subcommittee noted that women and girls had little access to activities and programmes, or none at all. In at least one location, it was noted that, instead of having access to vocational training and employment, as was available in the men's sections, women were provided with arts and crafts classes. In cases where women were able to access vocational training and employment, the available options were often in male-dominated fields, or in fields where women may struggle to find employment upon release as a result of their gender.

97. **The Subcommittee recommends that the State party take the measures necessary to ensure that women deprived of their liberty have access to work and to educational, exercise, sports and recreational activities on an equal footing with men, in accordance with rule 42 of the Bangkok Rules and rules 104 and 105 of the Nelson Mandela Rules.**

2. Children

98. The Subcommittee noted that the juvenile detention centres it visited closely resembled prisons, in both setting and regime. Indeed, Don Dale Youth Detention Centre was located in a defunct maximum-security prison. Interviews with staff highlighted the gradual shift in their functions from social workers to roles more akin to those of prison guards.

99. **The Subcommittee recommends that children deprived of their liberty be treated in such a way that takes into account their age and promotes their reintegration, in line with article 40 (1) of the Convention on the Rights of the Child. It underlines that the deprivation of the liberty of a child should be a disposition of last resort and for the minimum necessary period, and should be limited to exceptional cases. The Subcommittee recalls that the objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society, as set out in the Beijing Rules. The Subcommittee therefore recommends that specific training, with a focus on education and childhood development, be provided to staff in juvenile detention centres, in addition to training on the prevention of torture and ill-treatment.**

100. The Subcommittee noted in at least one location that children were afforded differing privileges according to their behaviour. It is concerned that the use of "basic-level" accommodation was observed to be a form of punishment, and that use of that terminology placed obstacles in the way of children availing of their right to appeal disciplinary actions and to know the duration of disciplinary sanctions applied. Moreover, placement in basic-level accommodation was also observed to adversely affect children's access to education and diet, as they received fewer and less varied food items.

101. **The Subcommittee recommends that the State party ensure that juveniles subject to disciplinary sanctions are informed of the alleged infraction in a manner appropriate to their full understanding, are given a proper opportunity to present their defence, including the right of appeal to a competent impartial authority, and are made aware of the type and duration of the sanction applied, in line with the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.**

102. The Subcommittee is concerned that children are placed in education groups according to their risk assessment, rather than according to their learning ability. It notes that, in one location, guards were observed to fill the functions of teachers, despite lacking specialized training, in particular in working with children with intellectual disabilities.

103. **The Subcommittee underscores the centrality and importance of education in juvenile justice systems. The Subcommittee recommends that the State party ensure that every child of compulsory school age receives education suited to their needs and abilities and designed to prepare them for return to society, in line with article 28 of the**

Convention on the Rights of the Child and Committee on the Rights of the Child general comment No. 24 (2019).

3. Indigenous Peoples

104. The Subcommittee noted the severe overrepresentation of Aboriginal and Torres Strait Islander peoples in prisons and in police watch-houses, with information received indicating that, despite comprising only 2 per cent of the population, Indigenous People comprise approximately 28 per cent of the adult prison population of Australia. The Subcommittee noted that, in at least one juvenile detention centre visited, the entire population was Indigenous. The Subcommittee also received frequent reports that overpolicing of Indigenous communities, profiling, discrimination and prejudice contributed to those disproportionate incarceration rates. The Subcommittee is concerned that policies to tackle criminality in Indigenous communities fail to take into account core contributing factors and lack a needs-based approach to crime prevention. In this regard, the Subcommittee highlights its observation that many Indigenous detainees interviewed had themselves been victims of physical or sexual violence.

105. **The Subcommittee recommends that the State party review its policies relating to Indigenous communities in the criminal justice system, including by paying due regard to the 2018 recommendations of the Australian Law Reform Commission's inquiry into the incarceration of Aboriginal and Torres Strait Islander peoples, and of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, and that it implement social and crime prevention schemes to reverse the overincarceration of members of Indigenous communities.**

106. Notwithstanding the observed overrepresentation of Indigenous groups in prisons and police watch-houses, the Subcommittee did not encounter any members of Indigenous communities in the mental health facilities it visited, despite high rates of mental health conditions and intellectual disabilities among the Indigenous inmates it met.

107. **The Subcommittee recommends that the State party increase outreach to Indigenous communities on mental health conditions and intellectual disabilities and provide adequate resources to allow for early diagnosis and treatment, including for those who have already entered the criminal justice system.**

108. The Subcommittee observed that the majority of prisons are located near urban centres, meaning that imprisoned members of Indigenous communities are often detained far from their families, communities and areas of cultural relevance. It is concerned that elevated incarceration rates of Indigenous groups have resulted in the mass relocation of Indigenous Peoples to urban areas, introducing new varieties of social harms into Indigenous communities. This has a detrimental effect on Indigenous communities overall, contributing to increased criminality and recidivism.

109. **The Subcommittee recommends that the State party increase its recourse to non-custodial measures for members of Indigenous communities, using incarceration as a last resort, and that it seek to implement the provisions contained in the Tokyo Rules.**

4. Migrants

110. The Subcommittee notes the oversecuritized and prison-like environment in which migrants subject to mandatory deprivation of liberty are detained, and is concerned that the overall regime of immigration detention is punitive, rather than solely administrative, as the applied nomenclature would suggest. For example, in some immigration detention facilities termed as "alternative places of detention", detainees were only allowed fresh air for one hour a day. The Subcommittee notes that justifications for the oversecuritized environments observed included the fact that most of those subject to visa cancellation faced that sanction as a result of previous criminal convictions. However, the Subcommittee notes that those subject to visa cancellation as a result of past criminal convictions find themselves in immigration detention facilities only after having completed their criminal sentences, thus being subjected to secondary and accessory forms of punishment that Australian citizens would not face. The Subcommittee is concerned that, during incarceration, migrants are

provided with no assistance in dealing with administrative migration procedures and are transferred directly to immigration detention centres upon completion of their sentences.

111. **The Subcommittee urges the State party to amend its policy of visa cancellation, resorting only to its use in the most severe cases justified by national security, public order, public health or morals or the rights and freedoms of others. It recommends that the State party ensure that regimes of immigration detention are in line with international standards.**

112. The Subcommittee considers that the State party's policy of mandatory immigration detention may have deleterious effects on the mental health of migrants and their eventual ability to assimilate into Australian society, noting that immigration detention centres are largely devoid of language and cultural education programmes, place migrants in situations of deprivation and mix asylum-seekers with other groups, including those with violent criminal histories. It notes that migrants detained in immigration detention facilities do not have sufficient access to State-provided free legal aid and highlights interviews that indicated that people remain in immigration detention even after having received judicial decisions in their favour. The Subcommittee highlights that lack of clarity on the duration of detention is likely to have adverse effects on migrants' physical and mental health, in particular for those who cannot be returned to their countries owing to risk of torture or irreparable harm and for stateless persons. The Subcommittee received frequent testimony during interviews that migrants were often transferred between facilities without prior notice or reason for their transfer. This is also a contributing factor in adverse health outcomes and has harmful effects on their ability to retain family ties.

113. **The Subcommittee recommends that the State party abolish its regime of mandatory immigration detention in favour of alternative, non-custodial and individualized arrangements, in line with the Tokyo Rules, taking into account the background, language, culture and family situation of migrants with irregular legal status. It also recommends that all persons subject to immigration detention receive all fundamental legal safeguards, including access to a lawyer and the right to challenge decisions relating to their detention and conditions thereof.**

VII. Next steps

114. **The Subcommittee requests that a reply to the present report be provided within six months of the date of its transmission to the Permanent Mission of Australia to the United Nations Office and other international organizations in Geneva. The reply should respond directly to all the recommendations and requests for further information made in the report, giving a full account of action that has already been taken or is planned (including timescales) in order to implement the recommendations. It should include details concerning the implementation of institution-specific recommendations and concerning general policy and practice.**[10]

115. **Article 15 of the Optional Protocol prohibits all forms of sanction or reprisal, from all sources, against anyone who has been, or who has sought to be, in contact with the Subcommittee. The Subcommittee reminds Australia of its obligation to ensure that no such sanctions or reprisals take place and requests that in its reply it provides detailed information concerning the steps it has taken to ensure that it has fulfilled that obligation.**[11]

116. **The Subcommittee recalls that prevention of torture and ill-treatment is a continuing and wide-ranging obligation.**[12] **It therefore requests that Australia inform it of any legislative, regulatory, policy or other relevant developments relating to the**

[10] The reply should also conform to the guidelines concerning documentation to be submitted to the United Nations human rights treaty bodies established by the General Assembly. See letters sent to permanent missions on 8 May 2014.

[11] See CAT/OP/6/Rev.1.

[12] See CAT/OP/12/6 and Committee against Torture, general comment No. 2 (2007).

treatment of persons deprived of their liberty and regarding the establishment and work of the national preventive mechanism.

117. **The Subcommittee considers both its visit and the present report to form part of an ongoing process of dialogue. The Subcommittee looks forward to assisting Australia in fulfilling its obligations under the Optional Protocol by providing further advice and technical assistance, in order to achieve the common goal of prevention of torture and ill-treatment in places of deprivation of liberty. The Subcommittee believes that the most efficient and effective way of developing the dialogue would be for it to meet with the national authorities responsible for the implementation of the Subcommittee's recommendations within six months of receiving the reply to the present report.**

118. **The Subcommittee recommends that, in accordance with article 12 (d) of the Optional Protocol, the national authorities of Australia enter into dialogue with the Subcommittee on the implementation of the Subcommittee's recommendations, within six months of the Subcommittee's receipt of the reply to the present report.**[13]

[13] Australia is encouraged to consider approaching the treaty body capacity-building programme of the Office of the United Nations High Commissioner for Human Rights (ohchr-registry@un.org), which may be able to facilitate the dialogue.

Annex I

List of places of deprivation of liberty visited by the Subcommittee

Prisons

- Alexander Maconochie Centre (Canberra)
- Risdon Prison Complex (Hobart)
- Darwin Correctional Centre (Darwin)
- Dame Phillis Frost Centre (DPFC) (Melbourne)
- Port Phillip Prison (PPP) (Melbourne)
- Brisbane Women's Correctional Centre (Brisbane)

Youth detention centres

- Ashley youth detention centre
- Don Dale Youth Detention Centre
- Banksia Hill Detention Centre

Police stations

- Queanbeyan Police Station (access denied to the cells)
- Hobart Police Station
- Palmerston Police Station
- Darwin Police Station
- Melbourne West Police

Hospitals and forensic units

- Joan Ridley Ward, Royal Darwin Hospital

Migrant detention centres and alternative places of detention (APODs)

- Melbourne Immigration Transit Accommodation
- Brisbane Immigration Transit Accommodation
- Villawood Immigration Detention Centre (Perth)
- APOD Melbourne
- APOD Darwin
- APOD Brisbane (Merriton Suites)

Annex II

List of places of deprivation of liberty access to which was denied to the Subcommittee*

- Queanbeyan Police Station (NSW)
- Thomas Embling Forensic facility (Melbourne)
- Princess Alexandra Hospital (Brisbane)
- Royal Brisbane and Women's Hospital (Brisbane)
- Forensic Disability Service (Brisbane)
- Mary Wade Correctional Centre (NSW)
- Metropolitan Remand & Reception Centre (NSW)

* During its visit, the Subcommittee was informed by the Federal authorities, of a blanket refusal by the New South Wales authorities to cooperate with the Subcommittee, and of denial of access to any place of Deprivation of Liberty in its territory.

Annex III

List of government officials and other interlocutors with whom the Subcommittee met online

Government officials

- The Australian Capital Territory (ACT)
- Senior Manager, Human Rights and Social Policy, Justice and Community Safety Directorate
- Senior Policy Officer, Human Rights and Social Policy, Justice and Community Safety Directorate
- A/g Executive Branch Manager, Bimberi Residential Services, Community Services Directorate
- Assistant Commissioner, Alexander Maconchie Centre, ACT Corrective Services
- The Northern Territory (NT)
- OAM, Deputy Commissioner, Northern Territory Correctional Services
- Principal Lawyer, Legal Policy, Northern Territory Department of Attorney-General and Justice
- Lawyer, Legal Policy, Northern Territory Department of Attorney-General and Justice
- APM, Assistant Commissioner People & Cultural Reform, NT Police, Fire & Emergency Services
- Assistant Director Strategic Policy, Office of the Commissioner and CEO, NT Police, Fire & Emergency Services
- Commander Professional Standards Command, NT Police, Fire & Emergency Services
- Director Risk Management and Internal Audit, NT Police, Fire & Emergency Services
- Queensland (QLD)
- Assistant Director-General, Strategic Policy and Legal Services, Department of Justice and Attorney-General
- Director, Strategic Policy, Department of Justice and Attorney-General
- Acting Senior Legal Officer, Strategic Policy, Department of Justice and Attorney-General
- Acting Assistant Commissioner, Central and Northern Region Command, Queensland Corrective Services
- Acting Assistant Commissioner, Strategic Futures Command, Queensland Corrective Services
- Acting Director, Legislation, Policy and Legislation Command, Queensland Corrective Services
- Deputy Director-General, Disability Accommodation and Respite Services & Forensic Disability Service, Department of Seniors, Disability Services and Aboriginal & Torres Strait Islander Partnerships
- Acting Director, Strategic Policy and Legislation, Department of Seniors, Disability Services and Aboriginal & Torres Strait Islander Partnerships
- Administrator, Forensic Disability Service, Department of Seniors, Disability Services and Aboriginal & Torres Strait Islander Partnerships

- Executive Director, Mental Health, Alcohol and Other Drugs Branch, Queensland Health
- Chief Psychiatrist, Mental Health, Alcohol and Other Drugs Branch, Queensland Health
- Director, Legislative Projects, Mental Health, Alcohol and Other Drugs Branch, Queensland Health
- Director, Office for Prisoner Health and Wellbeing, Queensland Health
- Senior Executive Director, Youth Detention Operations and Reform, Department of Children, Youth Justice and Multicultural Affairs
- Senior Executive Director, Portfolio Management and Youth Justice Policy, Strategy and Legislation, Department of Children, Youth Justice and Multicultural Affairs
- Assistant Chief Operating Officer, Department of Children, Youth Justice and Multicultural Affairs
- Acting Superintendent, State Custody and Property Group, Queensland Police Service
- Assistant Commissioner, Road Policing and Regional Support Command, Queensland Police Service
- South Australia (SA)
- Department for Correctional Services
- SA Health
- SA Department for Human Services
- SA Police
- Tasmania (TAS)
- Department of Justice
- Department for Education, Children and Youth People
- Department of Health
- Department of Police, Fire and Emergency Management
- Victoria (VIC)
- Executive Director, Department of Justice and Community Safety
- Director, Department of Justice and Community Safety
- Acting Manager, Department of Justice and Community Safety
- Senior Legal Policy Officer, Department of Justice and Community Safety
- Executive Director, Youth Justice Operations
- Deputy Secretary, Youth Justice
- Acting Director, Operations Support and COVID-19, Youth Justice
- Assistant Commissioner, Custodial Operations, Corrections Victoria
- Deputy Commissioner, Custodial Operations, Corrections Victoria
- Inspector, Victoria Police
- Manager, Security Operations, Court Services Victoria
- Director, Security and Emergency Management, Court Services Victoria
- Acting Executive Director, Statewide Disability and Housing Operations Group, Department of Families, Fairness and Housing
- Manager, Forensic Residential Services, Department of Families, Fairness and Housing

- Director, After Hours and Secure Care Services, Department of Families, Fairness and Housing
- Manager, Disability Justice and Complex Clients, Department of Families, Fairness and Housing
- Manager, Care Services, Department of Families, Fairness and Housing
- Chief Psychiatrist, Department of Health
- Manager, Legal and Policy, Department of Health
- Western Australia (WA)
- Director, Legislative Services, Department of Justice
- Assistant Director, Legislative Services, Department of Justice
- Director Youth Custodial Operations, Women and Young People, Corrective Services, Department of Justice
- Executive Manager, Deputy Commissioner's Office, Women and Young People, Corrective Services, Department of Justice
- Principal Policy Officer, Intergovernmental Relations and Strategic Program Support Directorate, Department of Health.
- Program Manager, Mental Health Unit, Department of Health.
- Acting Deputy Director General, Department of Communities, Western Australia
- Acting Executive Director, Department of Communities, Western Australia
- Chief Practitioner Specialist Child Protection Unit, Department of Communities, Western Australia
- Commonwealth officials (In person)
- Attorney-General's Department
- First Assistant Secretary, International and Human Rights Division
- Principal Legal Officer, Human Rights Unit
- Senior Legal Officer, Human Rights Unit
- Legal Officer, Human Rights Unit
- Legal Officer, Human Rights Unit
- Australian Border Force
- A/g Commander, National Detention Operations
- A/g Chief Superintendent, Detention – Governance, Strategy and Standards
- Australian Federal Police
- Investigations, ACT Policing
- Department of Defence
- Special Advisor – Legal, Directorate of Operations and International Law
- Department of Home Affairs
- Director, Multilaterals Section
- Assistant Director, Multilaterals Section
- Department of Health
- Assistant Secretary, Strengthening Providers Branch, Aged Care Group, Department of Health and Aged Care

- Assistant Director, New Aged Care Framework Development Section, Department of Health and Aged Care

Human Rights Commission

- President
- Chief Executive Officer
- Human Rights Commissioner
- National Children's Commissioner
- Disability Discrimination Commissioner
- Senior Policy Executive, Human Rights and Strategy
- Director, Race Discrimination Team
- Senior Lawyer – Legal Section
- Specialist Advisor, Immigration and OPCAT

Proposed Network of National Preventive Mechanism

- Western Australia

Australian Capital Territory (ACT)

Northern Territory (NT)

South Australia (SA)

Tasmania

Commonwealth

NGOs and academia

- Australia OPCAT Network
- Human Rights for All
- Change the Record
- Victoria University
- Justice Reform Initiative
- Aboriginal Legal Service of WA Ltd
- Kaldor Centre for International Refugee Law, UNSW Sydney
- Justice Reform Initiative
- Justice Reform Initiative
- University of Tasmania
- Jumbunna Institute
- Asylum Seeker Resource Centre
- The University of Sydney
- International commission of jurists Australia
- university of Tasmania
- Justice Reform Initiative
- Justice Reform Initiative

- Law Council of Australia
- Murdock University
- Aboriginal Legal Service of WA Limited
- Australian Child Rights Taskforce
- Human Rights Law Centre
- Amnesty International Australia
- Change the Record
- Australian Red Cross
- UTS Law Faculty
- Inclusion Australia
- University of Western Australia
- Victorian Foundation for Survivors of Torture
- Amnesty International Australia
- Amnesty International Australia
- Beyond Bricks & Bars – Flat Out
- University of Western Australia
- NAAJA
- Amnesty International Australia
- Youthlaw
- People With a Disability Australia
- VMIAC – Victorian Mental Ilness Awareness Council
- Refugee Advice & Casework Service (RACS)
- Victorian Mental Illness Awareness Council
- NAAJA
- Queensland Advocacy for Inclusion
- Save the Children
- Public Interest Advocacy Centre
- Justice reform initiative
- VACRO
- University of Technology Sydney
- University of Western Australia
- Women With Disabilities Australia (WWDA) Inc
- National Network of Incarcerated and Formerly Incarcerated Women and Girls
- Refugee Council of Australia
- NATSILS
- Route501 Advocacy and Support Ltd
- Curtin University
- Curtin University
- People With Disability Australia
- Beyond Bricks & Bars – Flat Out

- People with Disability Australia
- RMIT Centre for Innovative Justice
- UTS Law Faculty
- Curtin University
- University of Western Australia
- Justice Action
- University of Adelaide