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The Hon. Malcolm Turnbull, MP
Prime Minister of Australia
Parliament House
CANBERRA ACT 2600

21 August 2016

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Dear Prime Minister

When video footage of abuse of children at the Don Dale Youth Detention Centre in the Northern Territory was recently made public, you said you were “shocked” and “appalled”.

However, your government and governments that came before it have had the opportunity to do something very practical to prevent exactly this kind of abuse in detention facilities around the country – namely, to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

But for seven years now, Australian governments have failed to act. Since Australia became a signatory to OPCAT in May 2009, Australia has yet to ratify OPCAT and therefore has yet to implement its obligations. Eighty (80) other members of the United Nations have ratified OPCAT and become ‘State Parties’ to the agreement.

As you will be aware, the aim of OPCAT is to strengthen – through preventative measures including independent monitoring – the protection of persons deprived of their liberty. Had Australia ratified OPCAT and implemented a mechanism for independent monitoring of detention facilities, the abuse of children at Don Dale could have come to light much earlier, or even been prevented. This lost opportunity for protecting children is tragic and shameful.

The Coalition government has had ample time to do something about this. After Australia signed OPCAT in 2009, a National Interest Analysis was conducted and, in 2012, the bipartisan Joint Standing Committee on Treaties (JSCOT) recommended that the Australian government work in collaboration with the states and territories to ratify OPCAT as soon as possible.

In September 2014, Civil Liberties Australia and more than 60 other organisations wrote to the Attorney-General, Senator the Hon George Brandis QC, to urge the Australian government to ratify OPCAT without delay. We never received a reply from Senator Brandis.

In November 2015, soon after you became Prime Minister, I wrote to you to urge your government to ratify OPCAT. I received a reply from your Assistant Minister, Senator the Hon

James McGrath, in which he said the government was “actively considering whether it will ratify the OPCAT”. It is laughable – but tragic, as events have proved – that, seven years after Australia signs an international agreement, the best your Government can say is that it is “actively considering” ratifying it. Since 2009, the government has been “actively’ doing so.

At last year’s Universal Periodic Review (UPR) of Australia under the auspices of the United Nations Human Rights Council, several UN members recommended that Australia ratify OPCAT as soon as possible. In fact, this same recommendation had been made at Australia’s previous UPR five years earlier in 2011. How did Australia respond to this latest recommendation? In February 2016, Australia reported that it “is actively considering the ratification of the OPCAT”.

This is a shameful record of inaction year after year after year. Tragically, it coincides with a period in which Dylan Voller and other children were locked up and seemingly abused repeatedly in a Northern Territory juvenile detention facility, and other children were reportedly abused in a Queensland juvenile detention facility. The latest news is reports of possible abuse at a youth detention facility in Tasmania that, according to the Tasmanian Premier, is of "such gravity" that a formal government investigation is going to be held in addition to a police investigation."

Your Minister for Indigenous Affairs, Nigel Scullion, apologised last month saying, “I'm sorry I wasn't aware of the full circumstances” at Don Dale centre in the NT. If Australia had ratified OPCAT and implemented an independent monitoring mechanism, there would have been no excuse for such ignorance. OPCAT is potentially a valuable external monitoring system that could save governments from themselves...and from inevitable poll embarrassment.

The abuse of detainees in Australian facilities, as revealed in the media, has brought great shame to Australia. It has also caused significant political instability with the responsible NT minister having been stripped of his portfolio and with the likelihood that the NT Government will suffer a significant voter backlash over the issue at elections on 27 Aug 2016.

Meanwhile, you have established a Royal Commission which will not report for some nine months and will cost many millions of dollars. Civil Liberties Australia supports the work of the Royal Commission but, when it comes to OPCAT, your government does not have to wait for it to report. We strongly recommend that you finally take some action by ratifying and fully implementing OPCAT.

Civil Liberties Australia remains ready to assist you in whatever way we can to achieve this important objective.

Yours sincerely

Kris Klugman
President, Civil Liberties Australia

Copy to:

Senator the Hon George Brandis, Attorney-General
The Hon Julie Bishop MP, Minister for Foreign Affairs
Mr Simon Corbell MP, ACT Attorney-General
The Hon Gabrielle Upton, MP, NSW Attorney General
The Hon Adam Giles MLA, NT Chief Minister
The Hon Yvette D'Ath, Queensland Attorney-General
Mr Jon Rau MP, SA Attorney-General
Dr Vanessa Goodwin MLC, TAS Attorney-General
The Hon Martin Pakula MP, VIC Attorney-General
The Hon Michael Mischin MLC, WA Attorney-General