



# International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General  
31 August 2010

Original: English

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## Committee on the Elimination of Racial Discrimination Seventy-seventh session

### Summary record of the 2025th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 11 August 2010, at 10 a.m.

*Chairperson:* Mr. Kemal

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Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

*Fifteenth, sixteenth and seventeenth periodic reports of Australia (continued)*

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*The meeting was called to order at 10 a.m.*

**Consideration of reports, comments and information submitted by States parties under article 9 of the Convention** (*continued*)

*Fifteenth, sixteenth and seventeenth periodic reports of Australia* (continued)  
(CERD/C/AUS/15-17; CERD/C/AUS/Q/15-17; HRI/CORE/AUS/2007)

1. *At the invitation of the Chairperson, the delegation of Australia took places at the Committee table.*
2. **Mr. de Gouttes** observed that the complexity of the State party's federal legal system made it hard to appreciate whether the Convention was being fully implemented in legal and practical terms. He would welcome additional information on the State party's approach to its multicultural population.
3. He drew attention to the Committee's general recommendation No. 23 on the rights of indigenous peoples. The Government should ensure that indigenous peoples had the right to effective participation and consultation in all decisions that could affect their rights. In particular, it should ensure that any acquisition of indigenous lands took place only after the community concerned had been consulted and had given its free, prior and informed consent. Where that did not happen, fair compensation should be provided.
4. Similarly, in line with the Committee's general recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the State party should ensure the existence of ways of exercising justice that were relevant to indigenous peoples, taking account of customary conflict resolution. It should take steps to address the disproportionate number of indigenous people in prison, particularly women, and the socio-economic causes of that phenomenon, which were doubtless linked to marginalization, poverty, a lack of social integration and indigenous people's vulnerability. There was a need to reassess the mandatory detention policy for asylum-seekers, and ensure that detention was used only when justified and for a reasonable time period. The Government should ensure that its so-called "security policies", particularly the implementation of its anti-terrorist legislation and legislation on organized crime, did not result in any stigmatization or profiling of individuals on the basis of ethnic group or foreign origin. In future, the Committee would appreciate more detailed statistics on the number of complaints, prosecutions and convictions relating to acts of racial discrimination.
5. **The Chairperson** invited the representative of the Australian Human Rights Commission to address the Committee.
6. **Mr. Innes** (Australian Human Rights Commission) said that the Australian Human Rights Commission welcomed the Government's achievements in addressing racial inequality, and recognized the constraints of caretaker convention. He wished to know how much of the funding detailed in the periodic report was allocated specifically to a rights-based approach or to the elimination of racial discrimination, as opposed to broader policy agendas. Together with non-governmental organizations (NGOs), the Commission recommended that the Government should introduce a domestic mechanism for implementing the Convention, which would assist in addressing the complexities of coordination across the federal system. During the 2009 National Human Rights Consultation, communities had clearly called for improved protections and an enshrined bill of rights. The large group that had insisted that a bill of rights was already part of Australia's legal framework had advocated increasing investment in human rights education. While welcoming the Human Rights Framework, he noted that it constituted a small first step.

7. Two Aboriginal elders from Central Australia who had been living under the Northern Territory Emergency Response (NTER) system had clearly stated that they had not consented to that intervention. In their opinion, it was not a special measure, and had resulted in people's separation from their lands, their distinct practices and world values. The elders had stated that without land and community at their spiritual centre, all Aboriginal persons in Australia would be lost. The Commission's position on the application of so-called "special measures" in the Northern Territory was fully detailed in its alternative report. The Government should realize that providing standard services, which were available to all Australian citizens, to Aboriginal communities could not be considered to constitute special measures. The negative impact of the intervention would be long-lasting. Recovery, if possible, would not be achievable until protections against racial discrimination were guaranteed under the Constitution.

8. The reforms to the Native Title Act were welcome, but claims under the Act remained complex, highly adversarial, costly and inefficient. He asked how the Government planned to deliver land justice for Aboriginal communities and how it would empower the native title system to achieve the land, economic, social and cultural aspirations of indigenous people.

9. The National Congress of Australia's First Peoples was a commendable initiative, but did not constitute broader community participation, which was inherently linked to self-determination. Governments should always return to affected indigenous communities to conduct genuine consultations, in accordance with the principle of free, prior and informed consent.

10. Languages were critically endangered in Australia. Prior to colonization, there had been 250 distinct languages; there were now 100, most of them in varying stages of extinction. Only 18 indigenous languages were currently spoken by all age groups. Without action, indigenous language usage would cease in 10 to 30 years. The 2009 National Indigenous Languages Policy had demonstrated the Government's will to take remedial action, but without an increase in funding, it would have little effect in preventing language decline. Despite widespread recognition that bilingual education was one of the best strategies for language stabilization, only 9 out of 9,632 schools currently provided indigenous bilingual education.

11. Many Australians regarded migration as a problem, as demonstrated in public discourse on asylum-seekers, international students and population growth. The Commission called for a multicultural policy based on extensive community consultation and a broad definition of the term "multicultural community" to include people from refugee backgrounds, newly-arrived migrants, international students, temporary and seasonal migrant workers, and established ethnic communities. There were considerable gaps in data on issues affecting those groups, and no national data on the number of migrant victims of crime. The Commission had found that international students suffered from racism and discrimination, including a lack of access to affordable accommodation, poor employment conditions, high transport costs, inadequate student support services, variable quality of education, and social exclusion. Their experiences, particularly those of students from non-English-speaking backgrounds, reinforced the need for a federal law criminalizing race hate.

12. While there had been progress in the field of immigration, detainees often suffered from isolation and deteriorating mental health. The new detention policy was not law, and people were still mandatorily detained in isolated remote locations; those arriving by boat had reduced rights, and children and families were detained, albeit with less stringent security. He urged the Government to comply with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention

relating to the Status of Refugees, and to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

13. **Mr. Woolcott** (Australia) commended the NGOs, civil society and the Australian Human Rights Commission for their alternative reports and briefings to the Committee; their contribution to the reporting process was vital.

14. Replying to a question on public attitudes towards immigrants, he said that Australia was proud of its multicultural society and had welcomed about 7 million migrants from some 200 countries since the Second World War. Racism and xenophobia in any form were unacceptable to Australian society.

15. Australia had appropriate legislative and administrative measures in place to regulate the activities of Australian companies overseas, which remained subject to several Australian laws on corporate behaviour and some criminal legislation, particularly on corruption. Australian companies were also bound by the laws of the jurisdiction in which they operated, including legislation relating to racial discrimination. The Government supported a range of initiatives to improve corporate social responsibility and provided guidance to Australian companies operating overseas. It promoted the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises and was currently participating in the review of those Guidelines. It also encouraged responsible business behaviour through its National Contact Point. Australia supported several other mechanisms, including the Extractive Industries Transparency Initiative, the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones, the United Nations Global Compact, and the OECD Working Group on Bribery in International Business Transactions. The Department of Foreign Affairs and Trade provided training for Australian industries on trading with integrity, highlighting the Australian laws that continued to apply to Australians and Australian companies trading or investing overseas, and promoting awareness of the international best-practice guidelines.

16. In order to disseminate treaty body recommendations to civil society, the Department of Foreign Affairs and Trade and the Attorney-General's Department placed the recommendations on the agenda of the regular consultations with human rights NGOs. The two departments had recently held a combined forum with human rights NGOs as part of the Human Rights Framework. The Government had consulted the Australian Human Rights Commission in the preparation of the periodic report and had released the report for public comment. The submissions from civil society had assisted in the process of drafting the final report and in preparing for the delegation's dialogue with the Committee.

17. **Mr. Heferen** (Australia) said that the amendments to the NTER legislation would fully reinstate the Racial Discrimination Act (RDA), completely repealing all the provisions in that legislation that excluded the implementation of the Act and all the provisions indicating that the measures in the legislation were special measures. The repeal was not retrospective. As of 31 December 2010, appropriate proceedings could be brought to challenge the administration of any measures in the NTER legislation believed to breach the RDA. From that date, challenges could also be made to the legislation itself. The courts would determine in each case whether there had been a breach of the Act.

18. The defining elements of special measures were that they should result in a benefit to some or all members of a class of people; membership of that class should be based on race, colour, descent or national or ethnic origin; the measures should be for the sole purpose of improving the situation of the beneficiaries, enabling them to enjoy and exercise their human rights and fundamental freedoms equally with others; the protection afforded to the beneficiaries by the measures should be necessary in order to achieve equal enjoyment of human rights and freedoms; and the measures should end as soon as they had achieved

their aims. The Government believed that the remaining special measures were consistent with that definition.

19. The BasicsCard enabled people to purchase priority goods and services including essentials such as food, non-alcoholic drinks, clothing, footwear, basic personal hygiene items, basic household items, housing, household utilities, health care, childcare and development, education and training, items required for employment, funerals, public transport, motor vehicles and bicycles. Alcoholic drinks, tobacco products and pornographic material were excluded. As of August 2010, the BasicsCard had been accepted at over 4,300 commercial outlets nationally.

20. The NTER had had many positive effects, including focusing attention on the poor level of infrastructure and services in remote Northern Territory communities; allocating significant funding to those communities (\$A950 million in the first two years of the NTER); deploying additional police to several communities; upgrading existing police stations and establishing temporary police stations; operating night patrols in 80 communities; and establishing a Substance Abuse Intelligence Desk in Katherine. About half the respondents to a survey of Aboriginal people in the Northern Territory had said that alcohol and violence had caused fewer problems in their communities owing to the increased police presence. In addition, a mobile child protection team had investigated and provided follow-up services in over 1,600 cases; over 20 safe places were operating in 17 communities; a large number of health checks had been conducted and thousands of children had received treatment; the Government had funded 140 additional teachers and over 7,000 meals were provided to schoolchildren daily. In Government consultations with those affected by the NTER in 2009, communities had identified the benefits of measures on income management and alcohol restrictions, such as more money being spent on food, clothing and school-related expenses, less on alcohol, gambling, cigarettes and drugs, and less violence. The communities had strongly supported the continuation of the NTER pornography restrictions and controls on the use of publicly-funded computers in an attempt to ensure that children were not exposed to inappropriate materials.

21. The most negative effects the Aboriginal people had identified were that they felt hurt, humiliated and confused by the way the NTER had initially been implemented; that different standards had been applied to them compared to other Australians; and that some of the measures were not working as they should, such as alcohol restrictions not targeting communities where alcohol was a problem. The Government had responded to those criticisms by reinstating the RDA, making income management non-discriminatory and making the alcohol restrictions more flexible with increased scope for community control.

22. Victims of the “Stolen Generations” could bring compensation claims before the courts or under the legislative schemes that had been implemented in Queensland, Tasmania and Western Australia. In Queensland, some 6,800 such claims had been successful. The Western Australia scheme was relatively new and had made 100 payments to date. The Tasmania scheme had now closed and had made 84 payments in total.

23. The aim of the National Congress of Australia’s First Peoples was to be a national advocate for the recognition of Aboriginal and Torres Strait Islander peoples as First Nation peoples. It would defend their rights and work to secure an economic, social, cultural and environmental future for them. Membership of the Congress would be exclusive to Aboriginal and Torres Strait Islander peoples and would be fair and diverse, guaranteeing gender balance and ensuring the participation of youth and urban, regional and remote communities. It aimed to become financially sustainable by raising funds and gaining sponsorship. The Government had allocated \$A30 million to its establishment and operation until 2013. It would have an annual forum of 120 delegates in three chambers. The Government had expressed its recognition of Aboriginal and Torres Strait Islander people and had indicated that, while the immediate priority had been to close the gap on indigenous

disadvantage, it remained committed to working with indigenous Australians and the wider public to achieve constitutional recognition of Australia's indigenous peoples. There were a number of significant legislative, policy and cultural issues to address, which would require ongoing discussion and consultation. The National Congress of Australia's First Peoples should play a key role in any such discussions.

24. The plan of the Council of Australian Governments to close the gap on indigenous disadvantage was backed by an investment of \$A4.6 billion in indigenous-specific national partnership agreements which aimed to achieve fundamental reforms in health, early-childhood education, economic participation and remote service delivery. A family of two unemployed adults and two young children was entitled to about \$A32,000 a year in benefits, plus lump sum payments, particularly for newborns. However, the child protection system in the Northern Territory faced significant challenges. The Territory covered a huge land mass and had a dispersed and isolated population. The report from the enquiry conducted by the Northern Territory Children's Commissioner was due for publication in late 2010.

25. Five state parliaments had legislated to provide Aboriginal ownership of land under Aboriginal land rights acts, covering about one fifth of the country's land mass. Native title, by contrast, had not originally been legislative and was determined under a separate process. Currently about 12 per cent of Australia's land mass was covered by native title, and further claims would be made in future. Five-year leases did not affect the underlying title to land; traditional owners continued to own the land in question. The leases enabled the Government to access the land, repair buildings and develop infrastructure. In practice, a traditional owner would experience little impact from the leases, which would expire in August 2012. Under current policy, there would be no new compulsory leases. The Northern Territory Valuer-General determined a reasonable rent to be paid to the land owners, which was financed by the Federal Government.

26. The Government was committed to supporting indigenous languages, as confirmed in its 2009 National Indigenous Languages Policy. The Policy was underpinned by the Maintenance of Indigenous Languages and Records programme, which was expected to provide \$A9.4 million to support over 60 projects nationwide in 2010 and 2011, to maintain and revive indigenous languages.

27. **Ms. Jones** (Australia) said that her country's compliance with its international obligations was ensured through legislative prohibitions in all jurisdictions and an interrelated system of parliamentary, judicial and administrative structures, laws and institutions. They provided that the actions of public officials and any act undertaken on behalf of the Government were subject to review. Human rights were protected through strong democratic institutions and processes, complemented by specific constitutional and common law protections and statutory laws and mechanisms. The common law legal system was underpinned by the rule of law, requiring the Government to accept the courts' decisions on the meaning of laws and their application. Under the federal system of government, legislative, executive and judicial powers were distributed between the Federal Government, the six states and the three self-governing territories. The Federal Parliament could make laws on certain matters including international trade, foreign affairs, defence and immigration and it had exclusive powers in some matters. In others, the Commonwealth and the states had concurrent powers to legislate. Where there was any inconsistency between federal and state or territory laws, federal laws prevailed. The states retained legislative powers over matters not specifically listed in the Constitution.

28. All treaties, including human rights instruments, required legislative implementation in order to become effective in Australian law. Before ratifying a treaty, the Government ensured that the necessary domestic legislation was in place. Once ratified, treaties were binding on the whole country and state and territory governments were responsible for

many of the activities that gave effect to rights under the Convention. The Government took measures to ensure there was no conflict between Commonwealth and state laws in the implementation of treaty obligations. The Australian Human Rights Commission held the Government accountable to its human rights obligations and promoted understanding and respect for human rights. Other institutions also protected and promoted human rights, including the Commonwealth Ombudsman, the Australian Law Reform Commission and, where appropriate, Royal Commissions.

29. Approximately 32 per cent of Australia was indigenous-held land through either native title or statutory land rights. Statutory land rights schemes were in place in a range of states and territories, and provided various grounds for a land grant including traditional affiliation, historical association and economic need. The content of the rights varied according to the relevant legislation. In contrast, native title arose as a result of the recognition, under Australian common law, of indigenous rights and interests according to traditional laws and customs and was not a grant or right created by governments. Between 1 January 1994 and 17 June 2010, some 132 determinations of native title had been registered. Applications for native title were lodged with the Federal Court and tested by the National Native Title Tribunal, a separate institution. If the claim had a *prima facie* case for native title, the Court made orders about mediation to resolve it. During mediation, native title claimants could be requested by the other parties to report on their continued connection to the area of land and exercise of native title rights and interests. The Court had been assessing priority claims in the native title system in order to expedite the processing of those claims. In August 2010, it would publish a list of 105 priority claims which it would commit to resolving within two years. She could not comment on what the next Government might think about proposals to reverse the burden of proof in native title claims or any other proposed reforms to the Native Title Act.

30. Key reforms to the native title system in 2009 had given the Federal Court the authority to mediate native title claims and to require people to participate in a timely manner. They had allowed the Court to make separate orders about matters beyond native title, giving the parties more flexibility to comprehensively resolve claims. That had been necessary because the native title determination was often part of a larger number of issues that needed resolving, such as economic development and opportunities for training and employment. The reforms had also enabled the Court to rely on a statement of facts agreed between parties, rather than having to be independently satisfied of the facts. In addition, they had allowed the Court to use recent changes in evidence laws, including new exceptions to the hearsay and opinion evidence rules, so that oral evidence of the traditional laws and customs of Aboriginal and Torres Strait Islander groups was no longer treated as *prima facie* inadmissible.

31. The National Human Rights Consultation process and the introduction of the Human Rights Framework had raised awareness and generated debate about human rights in Australia. The Framework included measures to enhance human rights education; establish a Parliamentary Joint Committee on Human Rights; introduce a requirement that bills tabled in Parliament should be accompanied by a statement of compatibility with the country's international human rights obligations; consolidate federal anti-discrimination laws; and create an annual NGO human rights forum. The Consultation had involved 66 community round tables in 52 locations nationwide. Over 6,000 people had registered to attend, and many more had done so in practice. Participants had raised significant concerns about living conditions for indigenous Australians, and had said that many of the rights that Aboriginal and Torres Strait Islander peoples did not fully enjoy were economic, social and cultural rights. However, owing to the lack of support for different rights for different people, specific indigenous rights would not be recognized in the Human Rights Act. Indigenous people had supported legislative recognition of Aboriginal and Torres Strait Islander peoples as Australia's original inhabitants. The Consultation Report had noted the

importance of education and awareness campaigns incorporating the experiences of Aboriginal and Torres Strait Islander peoples, and participants' concern to improve those people's access to accredited interpreters. The Government had decided to develop the Human Rights Framework rather than a legislative charter. The Framework focused on ensuring that people understood their human rights and responsibilities and that laws were drafted with particular focus on ensuring their consistency with Australia's international human rights obligations.

32. When Australia had entered its reservation to article 4 (a) of the Convention in 1975, it had not been in a position to treat all of the matters covered by that article as offences. The reservation remained in place because acts of racial or religious hatred were not currently criminalized at the federal level. Successive governments had decided that existing federal, state and territory legislative frameworks, combined with educative measures, had been the best way to deal with racial discrimination and vilification. The RDA prohibited such practices, and contained civil remedies. All the states and territories except the Northern Territory had enacted legislation prohibiting racial discrimination and, in most cases, had criminal provisions against racial hatred.

33. The term "unlawful discrimination" was defined in federal anti-discrimination law describing acts, practices or omissions that constituted discrimination on the ground of a protected attribute, including race, that were not exempted as special measures, or necessary to balance other fundamental rights. The term was also used as shorthand to describe other unlawful conduct, such as racial hatred, sexual harassment and harassment of people with disabilities, for the purposes of the complaints process. The term "lawful discrimination" was not used in federal anti-discrimination laws. Section 8 (1) of the RDA incorporated the approach to special measures taken in the Convention. The test the Government had previously applied to determine whether a measure constituted a special measure was also based on article 1 (4) of the Convention, and a range of guidance material, including the Committee's general recommendation No. 32. In 2008 and 2009, the Australian Human Rights Commission had received 296 complaints under the RDA, 54 per cent of which had related to unemployment, while 3 per cent had been on the ground of victimization and 50 per cent on the ground of racial hatred. The Commission had resolved 72 per cent of the complaints.

34. In response to growing community concern and a request from the Government, in April 2010, the Australian Human Rights Commission and the Internet Industry Association had hosted a one-day summit with key stakeholders to consider strategies to tackle cyberracism. While recognizing that the issue was not confined by national boundaries, the Commission was following up by developing tools to explain the domestic measures that could be taken. In addition, under Commonwealth law, it was an offence punishable by a maximum of 3 years' imprisonment to use the Internet to menace, harass or cause offence, which could include offensive material of a racial or religious nature. Since 2004, some 261 prosecutions had been brought on that account, resulting in 181 convictions.

35. While state and territory governments were responsible for the criminal justice system, the Federal Government had indicated its wish to work closely with those authorities to address the disproportionately high number of indigenous people who came before the system. The National Indigenous Law and Justice Framework made specific reference to the need to eliminate systemic racism within the justice system and to ensure that the Government continued to address issues concerning indigenous law and justice. The Framework focused on community safety and reducing rates of alcohol and substance-related crime among Aboriginals and Torres Strait Islanders. As at 30 June 2009, males had made up 92 per cent of the indigenous prisoner population. The number of indigenous female prisoners had increased by 6 per cent between 2008 and 2009. The rate of



indigenous custodial deaths had been declining since 1995 and was below the rate of non-indigenous deaths in prison.

36. A specific indigenous justice system would be a matter for the next Government to consider. There was currently no separate indigenous jurisdiction. However, indigenous sentencing courts were currently operating or being piloted in all state and territory jurisdictions except Tasmania. The majority of people who came before the community courts in the Northern Territory were indigenous Australians. Those courts recognized traditional leadership and customary ways of addressing crime and violence in communities. Their functioning varied between jurisdictions. An individual's capacity to access the courts was generally dependent on a guilty plea being entered and on the nature of the offence.

37. **Ms. Maurer** (Australia), replying to members' questions about multiculturalism in Australia, said that the concept was sometimes misinterpreted as meaning the promotion of separate identities at the expense of unity. Australia's aim, however, was to unite its culturally diverse society around a core set of values and institutions, upholding the right to cultural self-expression, promoting the benefits of a culturally diverse community, ensuring freedom from discrimination and promoting social inclusion.

38. On the subject of multilingualism, she said that, in the latest national census dating from 2006, nearly 4 million people had stated that they spoke a language other than English at home. However, only 560,000 of them had also stated that their proficiency in English was poor. Adult migrants, humanitarian entrants and refugees with poor English were eligible for up to 910 hours of English language tuition in basic language skills and, where appropriate, vocational language skills and Australian workplace culture and practices. Translation and interpreting services were available to non-English speakers and were free of charge in the case of consultations with medical practitioners and translations of personal documents. A telephone interpreting service was available 24 hours per day, seven days per week. The Government's Access and Equity Strategy supported all federal agencies in responding to the cultural, linguistic and religious diversity of the Australian population in the design and delivery of their policies and programmes.

39. Replying to a question from Mr. Lindgren Alves, she said that the Isma project had been one of several projects which had contributed to the Diversity and Social Cohesion Programme, announced in May 2010, which aimed to address cultural, racial and religious intolerance by promoting respect, fairness and a sense of belonging for everyone. In 2009, the Department of Immigration and Citizenship had issued a publication entitled "The Australian Journey - Muslim communities", a copy of which had been sent to schools and other public institutions.

40. Replying to questions about the Government's detention policy for asylum-seekers, she said that non-citizens were held in mandatory detention only if they were unauthorized arrivals, posed an unacceptable risk to Australian society or had repeatedly failed to comply with their visa requirements. Their conditions of detention were monitored by the Commonwealth Ombudsman.

41. Mr. Calí Tzay had asked about the conditions of detention of immigrant children. Provision was made for such children to be held in low-security accommodation, managed under contract by a detention services provider, not in high-security immigration detention centres. Children remained under their parents' supervision: there was no question of their being escorted to their play areas by police officers, as Mr. Calí Tzay had been informed. Unaccompanied minors were cared for by professional care services providers, likewise employed under contract by the Department of Immigration and Citizenship. The Ombudsman, the Australian Human Rights Commission and the Australian Red Cross

monitored all care and processing arrangements in immigration detention and had full access to all detainees and all facilities.

42. Mr. Prosper had asked about asylum-seekers. Those who arrived lawfully in Australia and then claimed asylum were usually able to live in the community while their claims were processed. Those who arrived at an “excised offshore place” (a defined set of islands, including Christmas Island) were kept in immigration detention under the Refugee Status Assessment procedure while their application for a “protection visa” was processed. Decisions under that procedure and the protection visa application process were open to appeal, including judicial review. Christmas Island had the special status of an excised offshore place, but in all other respects it was a part of Australia like any other, and the Racial Discrimination Act 1975, the Migration Act 1958 and the international treaties to which Australia was a party were applicable there, as they were in the rest of the country. In a few days’ time, the High Court of Australia was due to hear a case related to the assessment of asylum claims made by persons who had entered Australia at Christmas Island. The case did not seek to challenge the island’s “excised offshore place” status, but the issue might nevertheless be raised.

43. In relation to the proposed regional immigrant processing centre, she said that the problems of people-smuggling and irregular migration in the Asia-Pacific region called for a regional response. The proposed processing centre, to be established in collaboration with countries of transit, destination and origin, relevant United Nations agencies and other international organizations, would create a fair and orderly procedure which would ensure that asylum-seekers were treated in accordance with Australia’s international obligations under the 1951 Convention relating to the Status of Refugees. Discussions were under way with Indonesia, Timor-Leste, New Zealand and the Office of the United Nations High Commission for Refugees.

44. **Ms. Jones** (Australia), replying to a question from Mr. Kut, said that law enforcement agencies were obliged to comply with the relevant legislation in their application of anti-terrorist laws. Persons who considered themselves unlawfully treated could appeal to the Australian Federal Police, the independent National Security Legislation Monitor or the Commonwealth Ombudsman. Recent legislation had established the post of National Security Legislation Monitor to ensure that national security and anti-terrorism legislation was appropriate and consistent with Australia’s international human rights obligations. A suitably qualified candidate was now being sought, but the final appointment was a matter for the next Government.

45. **Mr. Vines** (Australia), replying to questions about Australia’s plans to ratify the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), said that, in 2009, the Workplace Relations Ministers’ Council had introduced a new procedure for identifying ILO Conventions and prioritizing their ratification. However, he could not prejudge the priorities which the next Government might set.

46. Mr. Calí Tzay had asked how the ILO Convention concerning Discrimination in respect of Employment and Occupation (No. 111) was applied to indigenous workers. Australia had ratified that Convention in 1973. The relevant domestic legislation was the Fair Work Act 2009, which prohibited “adverse action” against employees or prospective employees (including refusal to employ, discrimination at work or dismissal) on grounds including race and social origin. The Act applied to all workers, including indigenous people and migrants. Persons who believed that their rights under the Act had been infringed could lodge a complaint with the Fair Work Ombudsman or the Australian Human Rights Commission. The latter was also responsible for diversity education and increasing community awareness of discrimination.

47. Turning to the new national educational curriculum that was currently under development, he said that the agency responsible, the Australian Curriculum Assessment and Reporting Authority, had based the new curriculum on the principles enshrined in the Melbourne Declaration on Educational Goals for Young Australians. The Education Ministers of the Federal Government, states and territories had agreed that all young Australians should be equipped to contribute to, and benefit from, the efforts at reconciliation between indigenous and non-indigenous people.

48. The three cross-cutting themes of the new curriculum included the history of the Aboriginal and Torres Strait Islander peoples, with due reference to their contribution to Australia and the impact of colonization, and Australia's engagement with Asia. It was designed to promote a range of personal skills, including intercultural understanding, respect and inclusion in social interactions and a respect for democracy, equity and justice. The history curriculum, in particular, took a "world history" approach, including the role of the United Nations, the origins and consequences of anti-colonial action and the struggles of the Aboriginal and Torres Strait Islander peoples.

49. The Federal Government allocated significant resources to language education under the National Education Agreement. According to the 2008 report "Indigenous language programs in Australian schools: the way forward", over 16,000 indigenous children and 13,000 non-indigenous children in 260 schools had learned indigenous languages, with over 80 languages on offer.

50. **Mr. Woolcott** (Australia), replying to a question about attacks on foreign students in Australia, said that, while crime statistics did not generally include data on nationality, ethnic origin or immigration status, it appeared that victims of crime who could be identified as foreign students had mostly suffered robberies or other non-racially-motivated crimes. Senior public figures, including the former Prime Minister and the Minister for Foreign Affairs, had publicly condemned any attacks which were racially motivated. It should, however, be noted that foreign students often lived in high-crime areas or worked late at night, which might help to explain the frequency of crimes against them, while not excusing it.

51. The states and territories were responsible for their own law enforcement services. To take the State of Victoria as an example, levels of policing had recently been increased in Melbourne; hatred of a particular group had been listed as an aggravating factor in the sentencing rules used by judges; the results of a review to determine whether existing laws adequately covered offences motivated by hate or prejudice were due in September 2010; and in July 2010, two men had been prosecuted under the state-level Racial and Religious Tolerance Act 2001, the first time the law had been invoked for an alleged act of racial vilification.

52. At present, no data were collected which might allow racially motivated crimes to be identified. The Australian Institute of Criminology had been commissioned by the Federal Government to develop a research methodology to determine the extent of crimes against foreign students. Police authorities from the Federal Government and all states and territories were involved in its research, which covered five nationalities: Chinese, Indian, Korean, Malaysian and United States.

53. At both federal and state level, a number of support groups had been established to advise foreign students and improve communication between them and law enforcement agencies, including the Police – Indian Western Reference Group, founded in Melbourne in January 2010. A new International Students Strategy for Australia was due to be launched during 2010.

54. **Mr. Heferen** (Australia) said that the ambitious Closing the Gap initiative was implemented through the National Indigenous Reform Agreement and national partnership

agreements between the Federal Government and the states and territories covering, inter alia, indigenous health, housing, early childhood development, economic participation and activities in the Northern Territory. Many of the national partnership agreements focused on indigenous people living in remote rural areas, and thus excluded the 75 per cent of the Aboriginal and Torres Strait Islander population who lived in urban or regional centres. The National Indigenous Reform Agreement therefore provided for an urban and regional development strategy, implemented by means of bilateral implementation plans agreed between the Federal Government and the state or territory concerned. The action actually was a matter for the next Government.

55. **Mr. Diaconu** said that the information provided by the delegation was very encouraging, particularly in respect of developments in the Northern Territory. However, the Committee had never before been told that an increased police presence should be considered a “special measure”. He would also like to know about the Government’s understanding of the term “multiculturalism”. The Committee interpreted it as meaning State support for mother-tongue education for children from minority groups, minority-language radio and television and minority cultural associations and events. It did not mean ensuring that everyone learned English.

56. **Mr. Woolcott** (Australia) said that new arrivals in Australia were very keen to learn English in order to obtain employment and make a better life for themselves and their families. However, the Government also helped them to maintain their own languages and cultures. For instance, it provided funding for the minority-language radio and television broadcaster SBS and the national channel ABC, which also provided minority-language programmes.

57. **Mr. Heferen** (Australia) said that the situation in the Northern Territory had called for extraordinary action to reduce levels of violence in families and communities. The bill amending the NTER measures, submitted to Parliament in November 2009, had been drawn up following extensive consultations with Aboriginal groups. The participants in the consultations had expressed overwhelming support for the maintenance of measures to reduce excessive consumption of alcohol and widespread pornography, which had particularly affected the lives of women and children. Higher levels of policing were required to enforce those measures.

58. **Ms. Jones** (Australia) said that the consultations had revealed the population’s desire to see the restoration of normal services, including police services, in the Northern Territory. In the endeavour to promote strong and positive relations between the police and the community, police officers received special training in culturally sensitive practices. In July 2010, the Attorney-General’s office had provided funding for community police officers, based at five or six locations across the Northern Territory, who would develop a particularly close relationship with the communities where they worked.

59. **Mr. de Gouttes** asked for examples of the reversal of the burden of proof in racial discrimination cases. It was often difficult for people who suffered racial discrimination to prove that the offence had occurred: in what circumstances might the alleged offender have to justify his or her actions instead?

60. Did the Australian Government allow “testing” of compliance with anti-discrimination legislation as evidence in criminal cases, and how frequently was the practice used? Testing consisted of sending officials, unannounced, to seek access to housing or employment opportunities, restaurants, nightclubs, etc., to see whether it would be denied.

61. He had been informed that biometric data were collected at Australian airports. Which information had proved useful, and for what purpose had it been used? How did the State protect the privacy of the individuals concerned?

62. **Mr. Kut** asked how the laws and regulations governing the collection of personal data served to prevent ethnic or racial profiling in practice. He enquired about cases where the legislation had been applied, and the outcome. What preventive measures were taken at policy level to ensure that specific communities were not associated with crime or terrorism, that biometric data were not collected only from citizens of certain countries, or that media reports did not refer to the ethnic group of an offender without good reason?

63. **Mr. Woolcott** (Australia) said that, unfortunately, the delegation was unable to comment on policy because of the restrictions incumbent upon the current caretaker Government.

64. **Ms. Jones** (Australia) said that the current Government had committed itself to reviewing federal anti-discrimination laws, including the complaints process and the burden of proof. The new Government would make its own decision about the action it wished to take.

65. Australia's national security laws were not biased against any ethnic or racial group. The Office of the Inspector-General of Intelligence and Security, a body independent of the Government, had extensive powers of investigation into the actions of national security agencies, including possible cases of racial profiling.

66. **Ms. Maurer** (Australia) said that the Department of Immigration and Citizenship considered the collection of biometric data, which was now standard practice in many countries, to be an important tool in the fight against identity crime. The necessary privacy safeguards were provided by the Privacy and Personal Information Protection Act 1998.

67. Biometric data, photographs and fingerprints were collected for all visa applicants who made their applications in certain countries on paper rather than via the Internet. No particular ethnic group or nationality was targeted. The locations where such data were collected were chosen for various reasons: they covered a broad geographical area, took into account risks to national security and potential identity fraud and included facilities where the Australian authorities could use equipment already installed by their United Kingdom counterparts under a cooperation agreement. The decision whether to expand the system to more locations would be taken by the new Government.

68. **Mr. Avtonomov** asked for more information to be provided in the next periodic report about the form of the consultations with the population of the Northern Territory. In some cases, such consultations were not truly representative of all sectors of the population.

69. **Mr. Amir** said that the periodic report contained little information about education in general, as opposed to English or minority-language learning. Education was an essential means of breaking down barriers between communities. How many indigenous children attained higher levels of education? How many studied mathematics, science or history?

70. **Ms. Crickley** asked how the proposed new legislation on equality would specifically protect against racial discrimination. She further asked how the Government hoped to promote support for the amended NTER legislation, since the original legislation, although well intentioned, had been widely perceived as disempowering by indigenous people. How did the Government intend to counter multiple discrimination, especially that suffered by Muslim women? She would also like to know what measures were planned to address the — surely unjustifiably high — proportion of indigenous women in the prison population.

71. **Mr. Calí Tzay** (Country Rapporteur) thanked the delegation for its responses, and the representatives of the Australian Human Rights Commission and civil society for their contributions to the debate. He hoped that the next periodic report would cover the following issues: the definition of the term "multiculturalism"; the situation of refugees, the Aboriginal population and foreign students; Australia's plans to ratify ILO Convention No.

169; and the special measures adopted in the Northern Territory. The Committee also hoped that Australia would include the Committee's definition of racial discrimination in its own legislation and withdraw its reservation to article 4 (a) of the Convention.

72. **The Chairperson** thanked the delegation for its excellent report and presentation, despite the constraints incumbent upon the current caretaker Government.

73. **Mr. Woolcott** (Australia) thanked the Committee for its thorough consideration of Australia's report.

*The meeting rose at 1 p.m.*