



Australian
Human Rights
Commission

everyone, everywhere, everyday

Information concerning Australia and the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*

.....
Australian Human Rights Commission Submission
to the ICERD Committee

8 July 2010

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1 Introduction

1. This submission was prepared by Australian Human Rights Commission (formerly named the Human Rights and Equal Opportunity Commission)¹. This submission provides information in relation to the Australian Government's combined 15th, 16th and 17th periodic report under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).
2. All of the material included in this document has been previously brought to the attention of the Australian Government through a range of Commission publications and submissions.

2 The Australian Human Rights Framework

3. The Government released the Australian Human Rights Framework in 2010. It commits to human rights education for the community and public sector; developing a National Action Plan on Human Rights; establishing a federal parliamentary scrutiny committee on human rights requiring that all new federal legislation be accompanied by a statement of compatibility with Australia's human rights obligations; and developing a consolidated federal anti-discrimination law. These measures will contribute to improved protection of human rights in Australia. The Framework will address some, but not all, of the weaknesses in Australia's human rights protection system, such as guaranteed protection against racial discrimination.

3 The Social Inclusion Agenda as a national policy priority

4. In 2009 the Australian Government launched the Social Inclusion Agenda, which is a whole-of-government policy. The Agenda is coordinated through the Department of the Prime Minister and Cabinet and the Department of Education, Employment and Workplace Relations.
5. The Australian Human Rights Commission welcomes the development of the Social Inclusion Agenda and the establishment of the Australian Government Social Inclusion Board.
6. The Australian Human Rights Commission notes the submission we provided to the Compendium of Social Inclusion Indicators feedback process in September 2009. This submission focused on the race and cultural diversity dimensions of social inclusion and how this could be properly measured.
7. The Australian Government's social inclusion priorities include:
 - supporting children at greatest risk of long term disadvantage
 - helping jobless families with children
 - focusing on the locations of greatest disadvantage
 - assisting in the employment of people with disability or mental illness
 - addressing the issue of homelessness
 - closing the gap for Indigenous Australians.

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8. In the introduction section of the Compendium of Social Inclusion Indicators, discrimination is identified as one of the major causes of social exclusion. However, the document does not go on to include race-based discrimination as one of the categories of analysis relating to social inclusion. Nor does it identify race-based discrimination as an indicator for social inclusion or social exclusion.
9. The Compendium identifies people from non-English speaking backgrounds as being one of the groups most vulnerable on the: (1) persistent relative poverty assessment and the (2) vulnerable on the more stringent risk of poverty assessment.²
10. Though the Commission supports the list of Social Inclusion priorities, we are disappointed that there is no specific priority that expressly focuses on the disadvantage of ethnic minorities in Australia.
11. The Australian Government has committed to developing a National Action Plan on Social Inclusion.

Recommendation 1: That the Australian Government Social Inclusion Board include in its list of priority areas (I) newly arrived migrants, (II) disadvantaged migrants and (III) people from refugee backgrounds in their list of priority areas.

4 The domestic implementation of ICERD and the Durban Declaration and Program of Action (DDPA)

4.1 An implementation mechanism for ICERD in Australia

12. There is currently no clear mechanism operating in Australia to consider, coordinate or enact the recommendations or the Concluding Observations of the ICERD Committee.

Recommendation 2: That the proposed Joint Parliamentary Committee on Human Rights be empowered to make recommendations in relation to the implementation of ICERD Committee Concluding Observations.

Recommendation 3: That the Department of Foreign Affairs and Trade and the Australian Human Rights Commission co-chair an annual ICERD implementation meeting to (I) delegate responsibilities and (II) monitor progress.

Recommendation 4: That the Australian Government appoint a full time Commissioner exclusively dedicated to race discrimination.

4.2 Consolidated approach to research and data

Recommendation 5: That the Department of Immigration and Citizenship and the Department of Families, Housing, Community Services and Indigenous

Affairs develop publicly available research frameworks that identify in respect of migrant communities and indigenous communities respectively (I) current research and data collection priorities and (II) research and data gaps relevant to migrant communities and Indigenous communities respectively.

Recommendation 6: That the Department of Immigration and Citizenship fund an independent biennial report on migrant disadvantage based on the Overcoming Indigenous Disadvantage report model.

Recommendation 7: That the Australian Government conduct a major national study on the experiences of temporary migrants in Australia (workplace experiences, safety, experiences of racism, social inclusion)

Recommendation 8: That the Australian Government conduct research on the international student population in Australia in the following key areas:

- income and expenditure
- living and working conditions
- experiences of discrimination
- strategies to support safe international student experiences.

Recommendation 9: That the Australian Bureau of Statistics work in partnership with state and territory police agencies to collect national data on racially motivated crime.

5 Positive developments

5.1 Aboriginal and Torres Strait Islander communities

13. Positive developments in addressing racism against Indigenous peoples and in the promotion and protection of Indigenous peoples' rights in Australia have included:

- the National Apology by the Prime Minister in the Australian Parliament to the Stolen Generations, for the past policies and practices of forcibly removing Indigenous children from their families on 13 February 2008.³
- the formal endorsement by the Australian Government of the United Nations Declaration on the Rights of Indigenous Peoples (Declaration) in April 2009.⁴
- the affirmation by the Council of Australian Government (COAG) of the National Integrated Strategy for Closing the Gap in Indigenous Disadvantage, which identified six Closing the Gap targets in the areas of health, education and employment in July 2009. These targets have been supplemented by substantial budget commitments under the National Indigenous Reform Agreement and associated National Partnership Agreements.⁵

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- the formation of the Aboriginal and Torres Strait Islander Healing Foundation in October 2009. The Foundation will support Aboriginal and Torres Strait Islander healing initiatives at the community level, conduct health promotion and public education activities and undertake research and evaluation.⁶
- the formation of the National Congress of Australia's First Peoples, in November 2009. The Congress is a new national representative voice for Aboriginal and Torres Strait Islander peoples.
- The lifting of the suspension of the RDA for the NTER legislation in June 2010.

5.2 *Migrants and people from culturally and linguistically diverse backgrounds*

14. There have been a number of positive developments in addressing racism against migrants and people from culturally and linguistically diverse backgrounds. These have included:
 - the establishment of the Australian Multicultural Advisory Council in 2008. The Council provides advice to the Minister for Immigration and Citizenship and the Parliamentary Secretary for Multicultural Affairs and Settlement Services on cultural diversity and social cohesion.
 - the release of the Australian Multicultural Advisory Council's the *People of Australia Statement* in April 2010, which was welcomed by the Australian Human Rights Commission. In particular, the Commission supports recommendation three which calls for the development of a coordinated national anti-racism strategy.
 - funding of the Commission's Community Partnerships for Human Rights (CPHR) Program under the Australian Government's *National Action Plan to Build on Social Cohesion, Harmony and Security*. The Commission received \$ 4.1M funding over a four-year period from the Department of Immigration and Citizenship. The program aimed to increase social inclusion and counter discrimination and intolerance directed at Australia's Muslim communities. The program included eight projects, which focus on a range of areas including research, community education and participation and resource development.

5.3 *Asylum seekers*

15. The Australian Human Rights Commission has welcomed positive reforms in the immigration area since the current Australian Government took office in late 2007. These have included:
 - the closure of the Australia's offshore immigration detention centres in Nauru and Papua New Guinea

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- the abolition of the detention debt regime for most immigration detainees
 - the removal of the so-called '45 day rule' which restricted access to work rights for asylum seekers on bridging visas, and the introduction of a 'New Directions in Detention' policy.
16. The Commission particularly welcomed the abolition of the Temporary Protection Visa (TPV) system in 2008. In its 2005 Concluding Observations on Australia, the Committee raised concerns about the TPV system, under which people in respect of whom Australia had protection under the Refugee Convention were issued with three-year temporary visas with limited entitlements including no right to family reunion.⁷

6 Issues relating to Indigenous peoples (Aboriginal and Torres Strait Islander peoples)

6.1 Constitutional protection against racial discrimination (ICERD Articles 1,2,5(a),6 and Declaration Article 2)

17. The Australian Human Rights Commission is concerned that the rights of Indigenous peoples are neither recognised nor formally protected in the Australian Constitution.
18. Nor does the Australian Constitution proscribe the enactment of racially discriminatory laws, such as the *Native Title Amendment Act 1998* (Cth) and the Northern Territory Emergency Response legislation.
19. Further:
 - Section 25 of the *Constitution* contemplates the exclusion of voters on racial lines
 - The amended section 51(xxvi) of the Constitution, (the ‘racies power’) has been interpreted by the High Court to allow for the Commonwealth to make both beneficial and adverse laws for Aboriginal people.⁸
 - In the case *Kruger v Commonwealth* (FN: (1997) 190 CLR 1) the High Court has also interpreted section 122 of the Constitution (the ‘Territories power’), which provides for the Commonwealth Parliament to make laws for the government of territories, to be unfettered by a general requirement of equality before the law or any express or implied rights in the Constitution.⁹
20. A constitutional guarantee of equality before the law and freedom from discrimination would provide comprehensive protection against racial discrimination
21. Constitutional reform is also considered by many to be part of the unfinished business of reconciliation.¹⁰ In particular, many consider that the first nations status of Indigenous peoples should be recognised in the preamble to the Constitution.

Recommendation 10: That the Australian Government commence a constitutional process, with the active engagement of Indigenous peoples, for the recognition of Indigenous peoples in the preamble; removal of section 25 of the Constitution and its replacement with a clause guaranteeing equality before the law and non-discrimination.¹¹

6.2 Implementing the Declaration

22. The Commission welcomed the Australian Government’s formal endorsement of the Declaration in April 2009. The Declaration has become increasingly

prominent in Australia's legal and policy landscape, with references to the Declaration being made in Parliament,¹² parliamentary committee reports,¹³ court decisions¹⁴ and in policies developed by Indigenous NGOs.¹⁵

23. However, the Government has yet to develop an action plan for the 'full realization of the provisions of [the] Declaration' (art 41). Such an action plan should be developed with the active participation of, and in full partnership with, Aboriginal and Torres Strait Islander peoples.
24. The Commission supports the use of the Declaration as a guide for interpreting Australia's obligations under the ICERD as they relate to Indigenous peoples. This is consistent with the interpretative mandate of the Committee outlined in the Vienna Convention on the Law of Treaties and the ICERD Committee's recommendation to the United States of America.¹⁶
25. Further, the Commission considers that the Declaration should be used to frame the Government's engagement with Indigenous peoples. In particular, the Commission considers that the Australian Government should consult and cooperate with Aboriginal and Torres Strait Islander peoples in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Recommendation 11: That all legislation, policies and programs be reviewed for consistency with the rights affirmed by the Declaration.¹⁷

6.3 *Ratification of international human rights instruments*

Recommendation 12: That the Australian the Government ratify the ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.¹⁸

Recommendation 13: That the Australian Government sign and ratify the Optional Protocol on Economic Social and Cultural Rights.¹⁹

6.4 *Indigenous disadvantage (ICERD Article 5 and Declaration Articles 3,4,19,21)*

26. There continues to be a significant gap between Aboriginal and Torres Strait Islander peoples and non-Indigenous peoples in terms of the realisation of human rights and fundamental freedoms. Indigenous peoples face a comparative disadvantage and discrimination across a range of indicators including life expectancy and health, housing and homelessness, education, welfare, employment, incarceration rates and child abuse and family violence. See Annex 3 for indicators of Indigenous disadvantage.
27. As discussed above (para 13), the Government has set targets to address this disadvantage under the COAG National Integrated Strategy for Closing the Gap in Indigenous Disadvantage, supplemented by budget commitments under the National Indigenous Reform Agreement and associated National Partnership Agreements.²⁰

28. However, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people ('Special Rapporteur on indigenous peoples') noted in his 2010 report on Australia that:

*Despite the Government's attention to indigenous issues, there is a continued need to develop new initiatives and reform existing ones, in consultation and in real partnership with indigenous peoples, to conform to international standards requiring genuine respect for cultural integrity and self-determination.*²¹

29. The Commission supports the recommendations of the Special Rapporteur on indigenous peoples that governments undertake greater consultation and engagement with Indigenous peoples concerning the design and delivery of government programs and services to address Indigenous disadvantage.²²

6.5 Indigenous health (ICERD 5 and DRIP 24)

30. The Commission has welcomed the substantial financial commitments for Indigenous health made under the COAG National Indigenous Reform Agreement and the COAG National Integrated Strategy for Closing the Gap in Indigenous Disadvantage. The Commission has also welcomed the establishment of a new peak body and the provision of additional funding for Aboriginal and Islander health workers, and the establishment of Pathways to Community Control under the Northern Territory Aboriginal Health Forum, which provides a road map for Governments and Aboriginal controlled health community organisations to work together as part of the long term vision of Closing the Gap.
31. The Commission notes the Government's positive progress towards the COAG target of halving the gap in mortality rates for Indigenous children under five years, within a decade. However, the Commission notes with concern the rising level of low birth weight babies which is clearly associated with under-five mortality and does not bode well for the future.
32. The Australian Government, the states of Victoria, Queensland, Western Australia and the Australian Capital Territory have signed the Close the Gap Statement of Intent. In doing so, they committed to develop a comprehensive, long-term plan of action to achieve equality of health status and life expectancy between Aboriginal and Torres Strait Islander peoples and non-indigenous Australians by 2030. Other commitments include:
- ensuring primary health care services and health infrastructure for Aboriginal and Torres Strait Islander peoples, which are capable of bridging the gaps in health standards, by 2018
 - ensuring the full participation of Aboriginal and Torres Strait Islander peoples and their representative bodies in all aspects of addressing their health needs

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- working collectively to systematically address the social determinants that impact on achieving health equality for Aboriginal and Torres Strait Islander peoples.
33. However, there is currently no national plan of action to implement these commitments. The National Indigenous Reform Agreement and the Integrated Strategy for Closing the Gap in Indigenous Disadvantage do not constitute a comprehensive national action plan on health. For instance, the national partnership agreements expire around 2015, which leaves a 15-year gap in planning until 2030.
34. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health observed that:

Undivided support and implementation of the Close the Gap Campaign is crucial to ensuring capacity building and empowerment of [I]ndigenous communities to take a leadership role in realising the right to health for all Australians.²³

Recommendation 14: That the Australian Government develop a comprehensive, long-term plan of action, that is targeted to need, evidence-based and capable of addressing the existing inequities in health services, in order to achieve equality of health status and life expectancy between Aboriginal and Torres Strait Islander peoples and non-indigenous Australians by 2030.

35. Aboriginal and Torres Strait Islander peoples experience disproportionately higher levels of hearing impairment and deafness when compared with the Australian community generally. This limits their rights to health, as well as related rights to education, livelihood and participation. Their exclusion can manifest in disadvantage and discrimination in the spheres of health, education, training, employment, the criminal justice system and social and cultural participation.
36. The Senate Community Affairs References Committee has recommended the Australian Government address the educational and employment needs of Indigenous peoples with hearing loss and provide adequate support within the criminal justice system.²⁴

Recommendation 15: That the Australian Government address the discrimination experienced by Aboriginal and Torres Strait Islander peoples with hearing impairment and deafness on the basis of their race and disability.

6.6 *Indigenous education and employment (ICERD Article 5 and Declaration Article 13, 14)*

37. Apart from some notable exceptions, most government and non-government schools in Australia provide a Western model of education.²⁵ Assimilation and the forces of mainstream culture mean that the revitalisation of Indigenous language and culture occurs at the margins of mainstream education, if at all.

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38. Bilingual education is considered to be one way to keep Indigenous language and culture alive.²⁶ Of the 9 581 schools that exist in Australia today, nine schools are bilingual schools, instructing students in their first Indigenous language. Evidence from an Australian study demonstrates marginally better English literacy outcomes for students from bilingual schools at the end of primary school compared with students from non-bilingual schools with similar languages, demography and contact histories.²⁷
39. In 2009 the Northern Territory Government implemented a policy which makes it mandatory for schools to begin each school day with four hours of English literacy. The policy is likely to dismantle bilingual education and potentially endanger some of the remaining Indigenous languages.

Recommendation 16: That the Government take urgent action to support the reinstatement of bilingual education approaches in schools, and safeguard the future of bilingual education through binding agreements with state and territory governments and the provision of ongoing resources to support its implementation.²⁸

40. In 2007 COAG committed to halve the gap in employment outcomes between Indigenous and non-Indigenous Australians within a decade. In February 2009, COAG signed the National Partnership Agreement for Indigenous Economic Participation to significantly improve opportunities for Indigenous people to engage in private and public sector jobs.²⁹
41. The Australian Government put in place reforms for the cessation of the Community Development Employment Projects (CDEP)³⁰ program in urban and major regional locations and the expansion of Structured Training Employment Projects brokerage services as an alternative as of 1 July 2009.³¹ The Commission's concerns with these reforms have included:
- a number of productive community roles and projects may cease to continue where these cannot be transformed into mainstream employment opportunities
 - a risk that Indigenous peoples become permanently isolated from the labour market in urban and regional areas
 - a risk that overall unemployment rates among Indigenous peoples will increase.
42. The Commission's concerns appear to have been unfortunately borne out as the estimates for Indigenous unemployment between 2008 and 2009 increased by 30% rising from 27 100 to 35 400.³²

6.7 Indigenous languages (ICERD Article 5 and Declaration Articles 13,14)

43. The Commission has welcomed the Government adoption of a national policy for the preservation of Indigenous languages (*Indigenous Languages - A National Approach 2009*). However, the Commission notes three major challenges that need to be addressed to ensure the successful implementation of this policy:
- different levels of governments in Australia need to be held to a consistent position on Indigenous language policy and action.
 - coordinating intra-government activity and ensuring quality control because language preservation requires interaction between multiple portfolio areas, including early childhood development services, employment, school education, higher education and research services.
 - stretching the limited resources (\$9.3 million for the financial year 2008-09) to address a critical and complex language situation across the nation.

Recommendation 17: That the Australian Government:

- Honour the commitment of *Indigenous Languages - A National Approach* to establish a national Indigenous languages body with functions and responsibilities similar to those of the Māori Language Commission.
- agree to resource an ongoing plan of action for the preservation and promotion of Indigenous languages as recommended by the national Indigenous languages body.
- Become a signatory to the *Convention for the Safeguarding of the Intangible Cultural Heritage (2003)*.
- through COAG, develop agreements to ensure consistency and compliance with Australia's *Indigenous Languages - A National Approach*.³³

6.8 Indigenous housing and homelessness (ICERD Article 5 and Declaration Articles 21,23)

44. According to the 2006 Census, 4116 Indigenous people were homeless on Census night.³⁴ In 2006, the Special Rapporteur on adequate housing identified that there was an Indigenous housing crisis in Australia, which is likely to worsen in coming years as a result of the rapid rate of population growth in Indigenous communities.³⁵
45. The Commission has welcomed the Australian Government's response to make the reduction of homelessness a national priority³⁶ and the recommendation of the House of Representatives Standing Committee on

Family, Community, Housing and Youth that new housing legislation be enacted.³⁷ Further the COAG National Partnership Agreement on Remote Indigenous Housing aims to address: significant overcrowding, homelessness, poor housing conditions and the severe housing shortage in remote Indigenous communities.³⁸

46. However, the Australian Government has made funding for housing under this COAG agreement conditional upon:
- secure land tenure being settled
 - the relevant state / territory government ensuring provision of standardised tenancy management and support for all Indigenous housing in remote areas consistent with public housing standards of tenancy management including through, where appropriate existing service providers
 - the relevant state / territory government developing and implementing land tenure arrangements to facilitate effective asset management, essential services and economic development opportunities.
47. These conditions risk reducing the capacity for Indigenous peoples and Indigenous organisations to be involved in the decision-making and management of Indigenous housing on Indigenous lands.
48. The Commission supports the Special Rapporteur on indigenous peoples' recommendation in relation to housing programs.³⁹

Recommendation 18: That housing programs should avoid imposing or promoting housing arrangements that would undermine Indigenous people's control over their lands; and should be administered by Indigenous community controlled institutions.⁴⁰

6.9 Family violence and other race and gender issues relating to Indigenous women (ICERD Article 5 and Declaration Article 22)

49. The Australian Government's National Plan to Reduce Violence Against Women and Children (the National Plan) identifies a number of measures specific to Indigenous communities.⁴¹ The Government has agreed to:
- reduce overcrowding in Aboriginal and Torres Strait Islander Communities
 - fund healing centres for Indigenous communities.
50. Given the increasing levels of incarceration of Indigenous peoples generally, their over-representation in the criminal justice system and high level of recidivism, any sustained response to family violence should also provide culturally appropriate offender rehabilitation programs.

51. The Commission's report on *Ending Family violence and Abuse in Aboriginal and Torres Strait Islander Communities* also highlights the need to support Indigenous community initiatives and networks, human rights education, government action, and robust accountability and monitoring.⁴²
52. During 2007 and 2008, the Commission designed and delivered a training program to prepare Community Legal Education workers for employment in Family Violence Prevention Legal Services. The training program focused on community development approaches to family violence prevention. Programs of this nature are an important means of strengthening the capacity of Indigenous workers to expand the education and understanding among Indigenous communities of the legal contexts of family violence. The Government has ceased funding the delivery of this training program.
53. Policies and programs aimed at preventing violence against Indigenous women and children must be designed and developed with the input of Indigenous women and children. Indigenous men also have a role in this process and should be engaged in addressing the causes of violence as well as the solutions. Prevention activity in the form of community development and education is critical to break the cycle of intergenerational violence that afflicts so many Indigenous communities.

Recommendation 19: That the Australian Government continue to fund community education and community development programs aimed at preventing family violence in Indigenous communities.

6.10 Indigenous peoples and the criminal justice system

54. High levels of Indigenous imprisonment have continued to occur since the 1991 Royal Commission into Aboriginal Deaths in Custody.⁴³ Since 1996 there has been a 48 percent increase in Indigenous imprisonment.⁴⁴
55. Nationally, Indigenous adults are 13 times more likely to be imprisoned than non-Indigenous people and Indigenous juveniles are 28 times more likely to be placed in juvenile detention than their non-Indigenous counterparts.⁴⁵
56. To address over-representation, the Social Justice Commissioner has advocated that governments adopt a criminal justice policy approach based on 'justice reinvestment'. Under this approach, money that would have been spent on imprisonment is reinvested in programs and services that address the underlying causes of crime in communities where there is a high concentration of offenders. Justice reinvestment still retains prison as a measure for dangerous and serious offenders but actively shifts the culture away from imprisonment and starts providing community services that prevent offending.
57. Results to date from overseas programs show promising results in terms of reductions in the prison population and prison expenditure, as well as significant investments in preventative and rehabilitative community based programs.

58. The Senate Legal and Constitutional Affairs Committee recommended governments develop and fund a justice reinvestment pilot program for the criminal justice system.⁴⁶ Similarly a review of juvenile justice in New South Wales recommended the government adopt a justice reinvestment approach in juvenile justice.⁴⁷

Recommendation 20: That:

- **the Australian Government, through COAG, set criminal justice targets that are integrated into the Closing the Gap agenda.**
- **the Standing Committee of Attorneys General Working Party identify justice reinvestment as a priority issue under the National Indigenous Law and Justice Framework, with the aim of conducting pilot projects in targeted communities in the short term.**
- **all state and territory governments consider justice reinvestment in tandem with their plans to build new prisons.**
- **a percentage of funding that is targeted to increasing prison beds be diverted on a trial basis to communities where there are high rates of Indigenous offenders.**

59. Mandatory sentencing laws are still in place in Western Australia and the Northern Territory.⁴⁸ These laws have resulted in situations of injustice, with individuals receiving sentences that are disproportionate to the circumstances of their offending.⁴⁹ Such policies are not only ineffective in deterring crime and rehabilitating offenders, but also costly and manifestly unjust.⁵⁰

60. The Social Justice Commissioner has called on the Western Australian Government to repeal its mandatory detention provisions and for the federal Parliament to exercise its responsibilities to ensure compliance by the WA Government with Australia's international human rights obligations by overriding the laws if necessary.⁵¹

6.11 Northern Territory Emergency Response (NTER)(ICERD Articles 1,2 and Declaration Articles 2,3,21,23)

61. The Commission has raised concerns about the Northern Territory National Emergency Response (NTER)⁵² in a number of parliamentary submissions and in consultations with Australian Government representatives.⁵³ International human rights bodies and experts have similarly raised concerns with the suspension of the RDA and the lack of conformity with Australia's obligations under human rights treaties.⁵⁴
62. In 2009 following consultations with the prescribed communities in the NT, the Australian Government introduced Bills to reinstate the RDA and re-design some of the NTER measures.⁵⁵ The Bills were reviewed in a Senate Inquiry which recommended the Bills be passed, although dissenting reports recommended a range of amendments to the Bills. The *Social Security and*

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Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2009 (the Act) was passed on 22 June 2010.

63. Ways in which the Act improves the compliance of the NTER with human rights standards include:
- lifting of the suspension of the RDA for the NTER legislation
 - redesigning the income management measures so that they are not applied on a racially discriminatory basis.
 - enabling a shift from the blanket imposition of alcohol bans to restrictions that are tailored to the needs of communities.
64. However, the Commission has noted⁵⁶ that the Act still retains some practical limitations on the reinstatement of the RDA and full compliance with international human rights obligations. These limitations include:
- the absence of notwithstanding clauses in the Act. The effect of this, in conjunction with provisions relating to its retrospective application, is that any remaining discriminatory measure under the NTER cannot be challenged by the 'reinstatement' of the RDA because being the later legislation, the NTER legislation will prevail. As a result the Commission is concerned that the discriminatory compulsory grant of five-year leases are protected from challenge under the RDA.
 - The Government has indicated that it considers the existing and redesigned NTER measures to be 'special measures' in accordance with the RDA, but these may not be compliant with the requirements of a special measure under the RDA.

In November 2009, the Commission issued *Draft guidelines for ensuring income management measures are compliant with the Racial Discrimination Act* (Draft Guidelines). The Draft Guidelines set out a practical approach to developing a special measure that is compliant with the RDA. Accordingly, the redesigned measures will not meet the requirements of a special measure where:

- the consultations do not meet the standard of consultation and consent of the affected group
- there is insufficient current and credible evidence which shows that the measure will be effective
- there are alternative means of achieving the objective that are not as restrictive of affected persons' human rights
- there are inadequate mechanisms for monitoring and evaluating the measure to ensure if it is working effectively and if its objective has been met.

The Commission is concerned that there has been a failure to require consent for measures that are intended to be 'special measures' for the purposes of the RDA and Australia's human rights obligations. For example, the alcohol restrictions measure in the NTER have not been developed with adequate community consultation and do not meet the requirements of consent for a special measure. Also, to be consistent with the RDA, measures relating to the management of land must be taken with the consent of the landowners. The redesigned five-year leases therefore remain inconsistent with the RDA in this respect.⁵⁷

In the Commission's view, it is preferable that measures that may limit the rights of people of a particular racial group are designed so as to be non-discriminatory under the RDA, rather than justified as special measures. The Commission has **serious concerns about the inappropriate classification of State actions as 'special measures', particularly in relation to measures that intentionally discriminate on the basis of race and which are formulated without the participation and the acceptance of Indigenous peoples**

- The broad categories of 'disadvantaged youth' and 'long-term welfare payment recipients' are not sufficiently targeted to comply with a human rights based approach to income management. The Commission has noted that the preferred features for an income management measure that would make it consistent with international human rights standards include:
 - voluntary/ opt-in approaches - rather than automatic quarantining or an exemption approach
 - a last-resort approach for targeted risk areas such as child protection (that is supported by case management and support services), akin to the Family Responsibilities Commission model in Queensland - rather than automatic quarantining and
 - a defined period of income management, where the timeframe for compulsory quarantining is proportionate to the context.
- The Commission is concerned that Indigenous peoples will be more vulnerable to being subjected to income management under these categories than non-Indigenous peoples. This risk stems from the limited access to education, training and employment for Aboriginal people, particularly in remote communities in the Northern Territory, and the consequent high proportion of Aboriginal people accessing welfare payments for extended periods. There is also a large Aboriginal youth population in the Northern Territory, many of whom also have difficulties accessing education, training and employment.
- The Commission is also concerned that including domestic violence as a trigger for being income-managed as a 'vulnerable welfare payment recipient' under the redesigned income management scheme, could place women in situations of domestic violence at greater risk of harm. Centrelink Social Workers currently provide women who have experienced domestic violence with information on entitlements and

services available. Including domestic violence as a trigger for income management could discourage women experiencing domestic or family violence from seeking assistance from Centrelink and consequently place women at greater risk, and result in under-reporting of domestic violence.

- To justify the continuation of the NTER there would need to be clear evidence that the NTER is yielding results in terms of its stated objects. The Special Rapporteur on indigenous peoples has noted that 'to date, the evidence in this respect is at best ambiguous... [and] even assuming there have been some improvements, there is no evidence that the rights-impairing discriminatory aspects of the NTER have been necessary'.⁵⁸ The Commission emphasises the need for the government to develop proper monitoring and evaluation systems to ensure adequate evidence is collated on the effectiveness of the NTER.⁵⁹

Recommendation 21: That, to bring the NTER into full compliance with human rights standards, the NTER be amended as follows:

- The categories of 'disadvantaged youth' and 'long-term welfare payment recipients' be reformulated to apply on a case-by-case basis .
- Domestic violence not be included as an indicator for 'vulnerable welfare payment recipient' under the redesigned income management scheme
- The capacity to compulsorily acquire any further five-year leases under Part 4 of the NTER Act be removed and the Government commit to obtaining the free, prior and informed consent of traditional owners to enter into voluntary lease arrangements for existing compulsory lease arrangements.
- The government move towards further amendments of the NTER to incorporate notwithstanding clauses in the legislation and ensure all measures that are intended to be special measures comply with the RDA.

Recommendation 22: That the Australian Government:

- supplement any income management scheme with additional support programs that address the rights to food, education, housing, and provide support in the form of financial literacy/budgeting skills.
- ensure the participation of Indigenous peoples in developing, implementing and monitoring alcohol management plans and ensure all alcohol management processes are consistent with the RDA. Alcohol restrictions should be supplemented by investment in infrastructure in the health and mental health sectors (including culturally appropriate detoxification facilities) and investment in culturally appropriate community education programs delivered by Indigenous staff.

6.12 Native Title (ICERD Articles 2, 5 and Declaration Articles 3,10,11,20,25,26, 27,28,29,32)

65. While the Commission welcomes the Government's commitment to improving the operation of the native title system, recent legislative reforms do not overcome the system's limitations.⁶⁰ For example, Indigenous peoples bear the burden of demonstrating continuity, from sovereignty to the present:
- of their society
 - in the observance of traditional laws and customs and
 - in the content of those laws and customs, to prove native title. This is despite the impact of colonisation.⁶¹
66. The Committee expressed several concerns about the native title system in its 2005 Concluding Observations on Australia.⁶² The Government's Report does not sufficiently address the Committee's concerns that:
- the 1998 amendments to the *Native Title Act 1993* (Cth) rolled back protection of native title, and provide legal certainty for Government and third parties at the expense of native title
 - the burden of proof for Indigenous peoples in Australia continues to be a significant barrier to achieving a determination that native title exists.

Recommendation 23: That the Australian Government take immediate steps to review the native title system and to implement measures to address the above concerns. Such measures should include amendments to the Native Title Act to provide for presumptions in favour of native title claimants, including a presumption of continuity in the acknowledgement and observance of traditional law and custom and of the relevant society.⁶³

6.13 Homelands (ICERD Article 5 and Declaration Articles 3,11,12,20,21)

67. Homelands are located on Aboriginal ancestral lands with cultural and spiritual significance to the Aboriginal people who live there. Homelands provide a healthy alternative living environment for Aboriginal people who want to avoid some of the problems that can be associated with living in larger regional centres.⁶⁴ Due to the relatively small populations of Homelands and their dispersal over large unpopulated regions homeland populations have been under-resourced and underfunded for many years.
68. Current government policy prioritises service delivery to 15-20 selected towns across the NT. This limits the delivery of services in homeland communities to existing homelands. No funding is being provided to construct housing on homelands, and most services are being made available through hub towns.⁶⁵ This could result in homeland communities being unable to access adequate housing, water, sanitation, power, education, and health

services within their homelands and having to move into larger cluster communities to access these services.

Recommendation 24: That the Australian and Northern Territory governments commit to supporting homelands through:

- reviewing, developing and implementing homeland policies with the active participation of representative leaders from homeland communities
- providing funding and support for homeland communities in all states and territories through the COAG National Indigenous Reform Agreement and associated National Partnership Agreements.⁶⁶

6.14 Stolen Generations (ICERD Article 6 and Declaration Article 8)

69. The *Bringing them home* report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (1997) document the experiences of the Stolen Generations, who were forcibly removed from their families under the guise of welfare and makes recommendations for reparation.⁶⁷
70. Aside from the National Apology and the establishment of the Aboriginal and Torres Strait Islander Healing Foundation, many of the other recommendations for reparation remain largely outstanding, including the establishment of compensation payment schemes for the Stolen Generations and their families. The only compensation scheme established for the Stolen Generations to date has been in Tasmania.

Recommendation 25: That the Commonwealth, through the Councils of Australian Governments, engage with State and Territory governments to develop a consistent approach with joint funding mechanisms in the provision of financial redress for the Stolen Generations.

6.15 Stolen Wages (ICERD Article 6 and Declaration Article 8)

71. Schemes have been established in Queensland and New South Wales to compensate Indigenous peoples for the withholding, non-payment and underpayment of wages under the control of government. Such schemes have not been established in other states or territories.
72. In December 2006 the Senate Standing Committee on Legal and Constitutional Affairs recommended that governments provide unhindered access to archives for the purposes of researching the stolen wages issue as a matter of urgency. They also recommended that funding be made available for education and awareness in Indigenous communities, as well as for preliminary legal research, into stolen wages issues.⁶⁸ These recommendations have not been adopted or implemented.

Recommendation 26: That Stolen Wages compensation schemes be established in other states and territories as appropriate.

7 Issues relating to migrants and ethnic minorities

7.1 National Multicultural Policy (ICERD Article 2)

73. Respect for racial equality and diversity is a key element of robust multicultural democracies and the international human rights framework. Australia has a proud history of multiculturalism that has, in general terms, been managed with success in fostering a cohesive and inclusive society. However, as this report outlines, emerging and established ethnic communities in Australia still experience significant challenges in relation to their social and economic participation, safety and health and wellbeing.
74. An evidence based and properly resourced national multicultural policy is critical in regard to (I) guiding whole of government policy and program development (II) improving the access and equity of people from culturally and linguistically diverse backgrounds and (III) fostering a tolerant and cohesive society.
75. Australia's last national multicultural policy, *United in Diversity 2003-2006* expired in 2006. Though the current Australian Government committed to developing a new federal multicultural policy in 2007, progress has been markedly slow.

Recommendation 27: That the Australian Government consider the following in the development of a national multicultural policy:

- that it should be based on extensive community consultation
- that it should be properly linked with the Australian Human Rights Framework,⁶⁹ the Human Rights Action Plan and the Social Inclusion Agenda⁷⁰
- that it adopts a broad definition of the 'multicultural community' in Australia that genuinely considers: newly arrived migrants, international students, temporary and seasonal migrant workers, people from refugee backgrounds and established ethnic communities
- that it addresses the issue of religious diversity and freedom of religion and belief
- that systems of auditing, benchmarking, compliance and evaluation are created.

7.2 Persistence of racist attitudes (ICERD Article 2)

76. The Australian Human Rights Commission is a partner in the Challenging Racism Project.⁷¹ The research began in 2007 and will be finalised in late 2010. The project is being led by Associate Professor Kevin Dunn, University of Western Sydney and research partners include: Macquarie

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University, the University of Melbourne, the University of South Australia and Murdoch University.

77. The purpose of the national research project is to:
- map (1) racist attitudes and (2) experiences of racism at the local level across Australia
 - develop current typologies of racism across Australia
 - develop context sensitive anti-racism strategies to respond to local variations of racism and intolerance across Australia.
78. The research was conducted through national telephone surveys and some of the key findings were that:
- around 85 percent of respondents believe that racism is a current issue in Australia
 - around 20 percent of Australians had experienced forms of race-hate talk (verbal abuse, name-calling, racial slurs, offensive gestures etc)
 - around 11 percent of respondents identified as having experienced race-based exclusion from their workplaces and/or social activities
 - Seven percent of respondents identified as having experienced unfair treatment
 - Six percent of respondents reported that they had experienced physical attacks based on their race and/or traditional dress.
 - race typologies and racist behaviour varies across local government areas and requires context sensitive/specific responses.⁷²
79. The *Mapping Cohesion Report* (Scanlon Foundation surveys) found that one in ten Australians experienced discrimination based on the grounds of ethnicity or religion during 2006-2007. The *Mapping Cohesion Report* 2009 found that one in ten Australians hold strongly negative views on cultural diversity and immigration.⁷³ Around six percent of respondents experienced discrimination on a continuing basis, that is, at least once per month.⁷⁴
80. In the Scanlon Foundation local surveys over half of the respondents whose first language was Mandarin, Cantonese or Vietnamese report experience of discrimination periodically over the course of their lives.⁷⁵
81. In 2008-2009 the Australian Human Rights Commission received 396 complaints under the RDA, including 50 racial hatred complaints.⁷⁶ This data cannot be considered as reliably indicative of people's experiences of racial discrimination in Australia.
82. The data emerging from the Challenging Racism Project and the findings from the Scanlon Foundation surveys is concerning given the significant

evidence links race-based discrimination and racism to ill health, reduced productivity, reduced life expectancy and morbidity.⁷⁷ Current evidence further suggests that race-based discrimination and exclusion impacts negatively on families and family life and local communities, with serious social and economic costs.⁷⁸

Recommendation 28: That the Australian Government develop a coordinated, national approach to anti-racism that is linked to the national multicultural policy framework. This recommendation is in accordance with the Durban Declaration and Program of Action, which calls on states to develop comprehensive national action plans to eradicate racism, racial discrimination, xenophobia and related intolerance.

7.3 International student safety (ICERD Article 5)

83. The Australian Human Rights Commission welcomes the Australian Government's review of the *Education Services for Overseas Students (ESOS) Act 2000* but notes its limited terms of reference focusing on the regulation of international education service providers.⁷⁹
84. The Australian Human Rights Commission welcomes the Australian Government's commitment to developing a National International Student Strategy but is disappointed with (I) the slow progress that has been made and (II) the limited parameters of the strategy.
85. In recent months the Australian Human Rights Commission has expressed ongoing concerns regarding the safety of international students in Australia and the vulnerability factors that can cause them to experience violence.
86. On 31 March 2010, the Academy of the Social Sciences, the Australian Human Rights Commission and Universities Australia held the *Racism and the Student Experience Policy Research Workshop*. The purpose of the Workshop was to assess available data from social science research to assist with the prevention of racially motivated crimes against international students and improve international student safety.
87. The current international student population in Australia has grown rapidly in recent years. International student enrolments grew from under 188,000 in 2000 to 631,000 in 2009.⁸⁰ Australia has a higher proportion of international students (as part of its total tertiary student population) than any other country in the world.⁸¹ The Workshop participants agreed that while the growth of international education has been a positive development for Australia, there needs to be a proportional investment in international student support services.
88. The Workshop participants agreed that segments of the international student population in Australia are at risk of experiencing multiple forms of discrimination. They also agreed that the international student population in Australia has a discernable set of human rights, including their rights to

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security of person, non-discrimination, housing, employment discrimination and information.

89. Participating academics discussed the recent high profile attacks on international students in Australia. A clarification was made that not all attacks are on students and certainly not all attacks have been on overseas students. Many Australians of 'Indian' and 'Sri Lankan' 'appearance' have also been attacked. Participating academics noted that there is no official national data on racially motivated crime. There are also significant gaps in relevant national survey data, for example the Australian Bureau of Statistics *Household Survey* and the *Victims of Crime Survey*. When considering how to determine whether a crime is racially motivated, participants noted the following:
- incidents range across a spectrum
 - in some cases racism is a clear motivator for a particular crime
 - in some cases racism is not a clear motivator but still shapes a crime
 - in some cases racism can become an element of an existing dispute (use of racist language)
 - in some cases motivation is ambiguous
 - we don't understand enough about the perpetrators
 - we need reform around the collection of policing data.
90. Participants discussed the vulnerabilities that caused some people or groups of people to become subject to crime. Indian students on average tend to have less economic security than other international students and subsequently are exposed to high risk situations. Participants cited examples such as:
- living in overcrowded and low income housing, often in lower socio-economic areas
 - working in precarious employment situations, for example having limited employment security and working late night shifts
 - travelling to and from work late at night on public transport.
91. The Commission notes the findings from *Safety of International Students in Metropolitan Melbourne* study conducted by the Institute for Community, Ethnicity and Policy Alternatives, Victoria University.⁸² The Institute surveyed one thousand domestic and international students and conducted in-depth interviews with student representative organisations, community police and other stakeholders. More than half of the international students surveyed identified that they found the city less safe than they had anticipated.⁸³ A number of factors were identified by students as safety threats including:
- lack of access to safe and affordable housing
 - high risk employment
 - poor transport options
 - racism (most frequently risk factor identified by the surveyed students)
 - sexual harassment experienced by female international students

92. The Commission also notes the findings from the *International Student Security Study* conducted by Professor Simon Marginson, University of Melbourne and Professor Chris Nyland, Monash University.⁸⁴ This research is the largest interview based study (same size 200) of international students in Australia and it found that:
- many of the respondents reported negative experiences in dealing with the Department of Immigration and Citizenship (time delays, non-transparent procedures and experiences of discrimination and hostile treatment)
 - just under two thirds of respondents experienced loneliness or isolation during their stay in Australia
 - nine out of ten respondents had friendships with other international students, while only 57 percent of respondents had even casual friendships with local students
 - fifty percent of respondents had experienced hostility or prejudice during their stay in Australia. Most frequently, respondents reported incidents of unprovoked abuse in public spaces such as on the street, in shopping centres or on public transport.

Recommendation 29: That the Australian Government revisit the recommendations made in the Commissions Report of National Inquiry into Racist Violence in Australia in 1991.⁸⁵

Recommendation 30: That the Australian Government: (I) broaden the parameters of the ESOS Act to include on campus student safety (II) language foundations (III) social support.

Recommendation 31: That the COAG International Student Strategy provides a regulatory framework that involves states, territories and local governments in addressing issues relating to safety, accommodation, transport and discrimination.

Recommendation 32: That the Australian Government compile national survey data on international students in Australia, particularly in relation to income and expenditure, housing experiences, employment discrimination and experiences of violence and sexual harassment.

7.4 African Australian communities (ICERD Articles 2,5)

93. In 2007 the Australian Human Rights Commission designed a report focusing on the experiences of African Australians. The report, entitled *In Our Own Words*, has an accompanying compendium. This is the first piece of research that considers the everyday experiences from a national perspective within a human rights context.⁸⁶

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94. In 2006, a total of 248,699 people born in Africa were living in Australia.⁸⁷ This figure represents 5.6 percent of Australia's overseas born population and around one percent of the country's total population.
95. The majority of African Australians (72.6 percent) are from Southern and Eastern Africa, around 22.9 percent are from North Africa (including Sudan) and 4.5 percent are from Central and West Africa.⁸⁸ Around 100,000 people were born in South Africa and other large communities include Zimbabwe (8.1 percent), Sudan (7.7 percent), Mauritius (4 percent), Kenya (4 percent) and Ethiopia (2.3 percent).⁸⁹
96. The aims of the project were to:
- identify what can help – and obstruct – the settlement and integration experiences of African Australians
 - suggest practical solutions to inform the development of policies, programs and services for African Australians
 - address some of the stereotypes about African Australians that have been raised in recent public debate and media reporting.
97. The *In Our Own Voices Report* is the result of a three year research project that engaged directly with African Australian communities, partner agencies and other stakeholders.
98. In the report, African Australian communities identified the following priority areas of action:
- racism and discrimination
 - child protection and family violence
 - increasing legal literacy in and around family law.
99. The Report also presents important findings in relation to employment and training, education, health, housing and engaging with the justice system and provides a number of best practice examples from around Australia.

Recommendation 33: That the Department of Immigration and Citizenship and other government agencies consider the findings of the *In Our Own Voices Report* in (I) policy development processes (II) service delivery improvements and (III) settlement services improvements.

7.5 Planning for population growth

100. The Australian Human Rights Commission welcomes the Australian Government's recent appointment of a Minister for Sustainable Population.
101. In 2010, a number of Australia's human service agencies have been involved in discussions about immigration levels, population targets and ecological sustainability.

Recommendation 34: That the Minister for Sustainable Population establish an Interdepartmental Committee across human services and sustainability agencies to: (I) share research data, (II) coordinate policy, (III) develop integrated approaches and (IV) provide strategic advice around balancing immigration flows, population targets, workforce planning, infrastructure and ecological sustainability.

7.6 Access to the labour market (ICERD Article 5)

102. The 2007 *Labour Force Status and Other Characteristics of Recent Migrants Survey* found the following:⁹⁰
- Almost four-fifths (79 percent) of recent migrants had a job at some time since arriving in Australia. Males were more likely to have had a job than females (89 percent compared to 70 percent).
 - Of the recent migrants who had found employment at some time since arriving in Australia, 36 percent reported having experienced difficulty finding their first job. Of those who experienced difficulty, the most commonly reported difficulties included: having a lack of Australian work experience or references (56 percent), language difficulties (35 percent) and having a lack of local contacts and networks (29 percent).
 - The overall labour force participation rate for recent migrants was 72 percent, with males (87 percent) having a higher rate than females (59 percent). In comparison, the participation rate for the Australian-born population was 69 percent. For males and females born in Australia, participation rates were 75 percent and 62 percent respectively. The Australian Human Rights Commission notes that the above data precedes the onset of the global financial crisis. According to the International Organisation for Migration, workers from migrant backgrounds are among the most vulnerable in relation to job losses and poor treatment in the workplace.⁹¹
 - Recent migrants who were born in main English-speaking countries had a higher participation rate than those born in other than main English-speaking countries (81 percent compared to 69 percent). The highest participation rate amongst recent migrants was for those who held skilled visas (83 percent).
103. The *Labour Force Status and Other Characteristics of Recent Migrants Survey* identifies language difficulties as a significant factor that impacts negatively on access to the Australian labour market. English language ability/language barriers should be included as an indicator under the lack of access to the job market section of the Compendium.
104. The process for the recognition of overseas gained skills and qualifications should similarly be recognised as a significant barrier in relation to accessing the Australian labour market. The 2003 *Review of Settlement Services for Migrants and Humanitarian Entrants* report noted that skills recognition

continues to be a major issue for newly arrived migrants/entrants. A number of more recent reports, including the *Economic Impacts of Migration and Population Growth*, identified the assessment process as requiring improvement to better enable the successful transition of migrants into the workforce.⁹²

105. Fifty percent of complaints made under the *Racial Discrimination Act 1975* (the RDA) in 2008-2009 were in the area of employment.⁹³

7.7 Health and well being of people from culturally and linguistically diverse backgrounds (ICERD Articles 5,7)

106. Good health is one of the core capabilities that people need to participate well in Australia's social and economic life.
107. The *Building on Our Strengths - A Framework to Reduce Race-Based Discrimination and Support Cultural Diversity in Victoria* provides a critical assessment of the health based impacts of racial discrimination and the health benefits of supporting cultural diversity.⁹⁴
108. The Framework established links between self-reported race discrimination and poor health outcomes including: depression, psychological distress, stress and anxiety. The link between self-reported discrimination and depression/anxiety is significant because stress factors are identified as major contributors to disease burden. The framework also establishes probable links between self-reported race discrimination and poor health outcomes including: high blood pressure, heart disease, diabetes, obesity, alcohol misuse, substance misuse, peer violence and low birth weight.
109. The Australian Bureau of Statistics measure health literacy levels across the Australian population using the *Adult Literacy and Life Skills Survey*. The survey is an OECD measure and is also used in eleven other countries. The survey was administered most recently in Australia in 2006.
110. The 2006 data showed that⁹⁵:
- approximately 40 percent of all Australians have 'adequate' levels of health literacy
 - 60 percent of all Australians have less than 'adequate' levels of health literacy
 - 6 percent of the Australian population enjoys high levels of health literacy
 - adequate levels of health literacy are enjoyed by 40.6 percent of 15-24 year olds in the Australian population. In comparison, 33.2 percent of people from culturally and linguistically diverse backgrounds aged between 15-24 years have adequate levels of health literacy
 - in the broader population 17.4 percent of 65-74 years olds have adequate health literacy levels in contrast to 3.4 percent of people from culturally

and linguistically diverse backgrounds have adequate health literacy levels.

111. There is an established relationship between literacy and poor health outcomes.⁹⁶ Good health literacy depends on at least basic reading and writing skills sufficient to enable everyday functionality.
112. Cultural beliefs or barriers can be strong determinants of who accesses health services. Culture is strongly linked with health and well being. Culture can define how health and illness are perceived, experienced, described and managed at an individual level.⁹⁷
113. Poor English language proficiency is the most common barrier identified to accessing health information and services in Australia. People with limited English language ability may not access the health care system because they are not able to adequately explain their health complaint (or understand instructions provided by health care professionals).⁹⁸
114. The Australian Human Rights Commission notes that English language difficulty is a critical issue for new and emerging communities in particular. The limited availability of interpreters has been a persistent issue for people from migrant and refugee backgrounds in Australia. Issues that can cause limited access to interpreters include:
 - lack of usage, or improper usage by health services
 - limited number of interpreters who are able to provide adequate assistance where a complex health issue presents
 - excessively long waiting periods.
115. Some women from migrant and refugee backgrounds experience compounding difficulties that may delay or prevent proper access to the health system. These compounding difficulties can include: a lack of English language competency, discrimination, limited mobility and limited income. Arabic women and women from other backgrounds may choose not to access health services or may access them less frequently because they are unable to see a female doctor.
116. For reasons outlined above, the cross-cultural competence of service providers and the availability/usage of interpreters should be considered in measuring (I) the accessibility of services and (II) service outcomes. Culturally appropriate health promotion/education strategies could also be used as a measure for both accessibility and inclusion. Cross-country comparisons (for example, comparative analysis with New Zealand) can provide useful benchmarks for accessibility and inclusion.

Recommendation 35: That the Australian Government gives consideration to the adoption of the *Building on our Strengths Framework* as part of its broader national preventative health agenda.

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Health impacts of experiences of racism in education settings

117. The *Impact of Racism upon the Health and Wellbeing of Young Australians* study (2009) aimed to:⁹⁹
- examine the experiences of racism for young people in Australia of mainstream, Indigenous, migrant and refugee backgrounds
 - investigate how young people in Australia report and respond to racism
 - explore the attitudes of mainstream youth in relation to key issues in contemporary race relations.
118. The sample population (823 participants from across 18 schools) reflected the ethnic demographic characteristics of the wider Australian population as set out in 2006 Australian Bureau of Statistics data.
119. The key findings in the report included the following:
- 70.1 percent of participants reported experiencing racism on an occasional basis (school as the main setting)
 - when experiences of racism were reported 52 percent alerted their teachers, 31.7 percent alerted school counsellors, 12 percent alerted police and 4.2 percent alerted a health professional
 - the majority of participants took no action to report incidences of racism or racist bullying
 - female students were identified as a group whose wellbeing was most affected by racism
 - over time, where students experience racism they consistently had lower health scores, decreased health/well being and poorer education outcomes.
120. In the *In Our Own Words* Report (2010) African Australian young people in every state and territory said that discrimination, prejudice and negative attitudes about their ability to succeed were a constant part of their education experience.
121. The report found that many young people from African Australian backgrounds, particularly girls, recounted being told by some teachers that they “shouldn’t aim too high” to avoid disappointment and were actively discouraged from pursuing further education.¹⁰⁰ They also felt unfairly targeted for not knowing class rules or how to behave in different social settings.
122. Another major concern for African Australian students was the lack of appropriate support available to them at school, including a lack of available support staff who could understand their backgrounds and culture.

123. The report found that the negative effects of these experiences on young African Australians can include low self esteem; reduced motivation; increased delinquency; depression and mental health problems particularly linked with reliance on substance misuse; and a greater likelihood of encountering problems with the law.

Recommendation 36: That human rights education modules be incorporated into the National Curriculum for secondary schools and the Australian Government provide a comprehensive package of measures to address commitments under the *World Programme for Human Rights Education*.¹⁰¹

7.8 Cyber racism (ICERD Article 2)

124. The Australian Human Rights Commission notes that developing strategies to address contemporary forms and manifestations of racism (such as racist materials promoted through communication technologies) is outlined in paragraph 143 of the Durban Declaration.
125. The Australian Human Rights Commission is concerned about the increasing number of complaints (around 18 percent) received in relation to web based racist content in recent years.
126. On 27 April 2010, the Australian Human Rights Commission and Internet Industry Association hosted a one-day Summit to initiate a dialogue about the issue of cyber-racism and possible solutions.
127. More than 50 people from a wide range of sectors attended the session. This included representatives from federal government agencies, Internet service providers, social networking companies, NGOs, academics, social changers and young people.
128. This cross-sector event marks an important milestone in co-operation on an area of mutual concern to government, industry and the community. All participants benefited from a better understanding of the nature and prevalence of cyber racism, and contributed information, expertise, experiences and ideas about how these issues are currently being handled.
129. Nine themes emerged during the Summit:
- While all recognise the positive power of the Internet, it is clear that it can be used inappropriately to convey racist messages which can do harm. This is an important human rights issue and community issue.
 - While cyber-safety is now on the radar of a wide range of groups in our community – including the groups that participated in the Summit – cyber-racism has gathered less attention. The challenge is to incorporate cyber-racism within broader cyber-safety strategies and (II) develop new initiatives focussing on cyber-racism itself.

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- There is a need to better recognise, showcase and share the strategies and initiatives which are already working and find ways to adapt and develop them.
- Any strategy to address cyber-racism should include a wide range of measures to reach and empower different categories of people involved in cyber-racism (including instigators of racism, participants in racist online groups, observers to those web pages and people harmed by the racism).
- Traditional regulatory responses alone will not solve the issue of cyber-racism - the problem is too big and fast moving for regulation to be effective.
- One of the most powerful ways to start addressing cyber-racism is to harness the positive potential of the Internet, social media and social marketing to educate the community about racism and empower them to participate in positive social change.
- Any strategy to address cyber-racism needs to focus on young people - the biggest users of Internet tools. Within that strategy there is a need to find ways to empower young people to create their own solutions.
- There is a need for better communication and co-operation amongst all the parties who engage in cyber space – including the representatives that participated in the Summit.
- There are gaps in the research around cyber-racism, and most definitely gaps in understanding about the issue of cyber-racism. In the Commission's view, this needs to be linked to human rights education and strategies to address systemic racism.

Recommendation 37: That evidence based strategies to address cyber-racism be included as part of a coordinated, national approach to anti-racism/national action plan to address racism.

7.9 Counter-terrorism laws

130. The Australian Government has introduced more than 50 new counter-terrorism laws since 2001, often without adequate consideration of their potential impacts on human rights.¹⁰² Some aspects of these new laws have eroded common law protections of fundamental rights and freedoms.¹⁰³ For example, these laws have enabled: detention without charge for 12 days;¹⁰⁴ secret searching of Australian homes and planting of surveillance devices, restricting movement through control orders issued by courts; and special powers of detention for the Australian Security Intelligence Organisation.¹⁰⁵
131. The Commission recognises the recent reviews of the National Security Legislation by the Attorney-General; the Review of Security and Counter-Terrorism Legislation by the Parliamentary Joint Committee on Intelligence and Security (PJCIS) in 2006; Inquiry into the proscription of 'terrorist

organisations' under the Australian Criminal Code by the Parliamentary Joint Committee on Intelligence and Security (September 2007).

Recommendation 38: The Commission recommends that all counter-terrorism laws be rigorously monitored and amended to ensure they comply with Australia's human rights obligations.¹⁰⁶

7.10 Exploitation of migrant workers (ICERD Articles 2,5,7)

132. The Commission remains concerned about cases of forced labour and exploitation of migrant workers on business (long stay) visas subclass 457 and seasonal work visas.¹⁰⁷
133. In particular the Commission has learned of a number of cases where workers on 457 visas have been denied access to the Commonwealth's General Employee Entitlements and Redundancy Scheme. The Scheme precludes persons not permanently resident in Australia from receiving basic employee entitlements (such as unpaid wages and redundancy pay) from the Commonwealth if their employer becomes insolvent.
134. The Pacific Islander Seasonal Worker Scheme is a three-year pilot project that was introduced in 2008. The Pilot will allow up to 2500 seasonal workers from Kiribati, Papua New Guinea, Tonga and Vanuatu to work in the horticultural industry in regional Australia for up to seven months each year. The Department of Education, Employment and Workplace Relations are responsible for administering and monitoring the scheme.
135. Under the pilot scheme workers will:
- be allowed to work in Australia for seven months in any twelve months
 - be permitted multiple entries to Australia during this period
 - be able to return to work in future years, if they comply with visa conditions
 - need to maintain private health insurance during their stay
 - not be permitted to apply for another visa while in Australia
 - need to pay for half their international travel, living expenses, and other incidentals
 - be limited to working with approved employers
 - not be able to bring dependents with them.

Recommendation 39: That the Australian Government provide a detailed report on what measures it has undertaken to strengthen the integrity of the temporary skilled migration (Subclass 457 visa) program since the Deegan Review in 2008.

Recommendation 40: That the Australian Government consider making the Commonwealth's General Employee Entitlements and Redundancy Scheme accessible to 457 visas holders.

Recommendation 41: That the Australian Government provide interim reports on (i) the monitoring and inspection frameworks designed for the seasonal

worker scheme and (II) employer compliance with the working conditions and standards protecting vulnerable migrant workers from exploitation.

Recommendation 42: That the Australian Government routinely provide targeted information about the rights of migrant workers, including options to lodge complaints and seek remedy without intimidation.

Recommendation 43: That the Australian Government ratify the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.

7.11 Freedom of Religion and Belief (ICERD Article 5)

136. The Commission is concerned by the limited protection of the right to freedom of religion and belief under Australia's existing equality framework. The Commission's 1998 report, *Article 18*, thoroughly reviewed the protection of the right to freedom of religion and belief under Australian Commonwealth, State and Territory law. It found that the Commonwealth Constitution does not provide a complete guarantee of protection for the right to freedom of religion and belief. Section 116 restricts only the legislative powers of the Commonwealth and falls far short of providing positive protection to the rights of the individual to freedom of religion and belief. The report also noted that:

Some Australians are protected from discrimination on the basis of religion and belief by State and Territory laws but many others are not. Laws providing protection from discrimination on the basis of religion and belief are patchwork across Australia (p 105).

137. In a submission to the Commission for the UPR, the Australian Bahá'í Community note that:

While members of our own community report only occasional and isolated incidents of religious discrimination in Australia, we recognise that for some other communities, such discrimination has become more frequent and widespread in recent years, despite the changes in some State and Territory legislation that have occurred in the past decade. Accordingly, we support the Commission's previous conclusion (in the Article 18 report) that "to comply with international human rights commitments Australia should enact federal legislation to make unlawful in Australia discrimination on the basis of religion and belief" (p 105).

138. The ICERD Committee has expressed this concern regarding this issue on several occasions. See further: UN Committee on the Elimination of Racial Discrimination: Concluding observations: Australia (2005), paragraph 9; UN Committee on the Elimination of Racial Discrimination: Concluding observations: Australia (2000), (paragraphs 6-10).
139. The Article 18 Report is available online at:
http://www.humanrights.gov.au/human_rights/religion/index.html.

Recommendation 44: That the Australian Government consider making discrimination on the basis of religion and belief unlawful in the consolidation of its federal anti-discrimination laws.

8 Issues relating to asylum seekers

8.1 Detention of ‘unlawful non-citizens’

140. In its 2005 Concluding Observations on Australia, the Committee raised concerns about the mandatory detention of asylum seekers and other unlawful non-citizens, in particular women, children, unaccompanied minors and stateless persons. The Committee was particularly concerned about the length of time many people were spending in immigration detention. The Committee recommended that Australia review the ‘mandatory, automatic and indeterminate character’ of its immigration detention system, and requested statistical data, disaggregated by nationality and length of detention, including in relation to people held in offshore detention centres.¹⁰⁸

8.2 Mandatory detention

141. Despite significant positive reforms, the legal architecture of Australia’s mandatory detention system remains. Under the *Migration Act 1958* (Cth) (Migration Act), it is mandatory for any non-citizen in Australia (other than in an excised offshore place¹⁰⁹) without a valid visa to be detained.¹¹⁰ These persons, called ‘unlawful non-citizens’, may only be released from detention if they are granted a visa or removed from Australia.¹¹¹
142. In July 2008 the Commission welcomed the government’s announcement of ‘New Directions’ for Australia’s immigration detention system.¹¹² The New Directions include seven key immigration values, as follows:
- 1) Mandatory detention is an essential component of strong border control.
 - 2) To support the integrity of Australia’s immigration program, three groups will be subject to mandatory detention:
 - a) all unauthorised arrivals, for management of health, identity and security risks to the community
 - b) unlawful non-citizens who present unacceptable risks to the community and
 - c) unlawful non-citizens who have repeatedly refused to comply with their visa conditions.
 - 3) Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre.
 - 4) Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.
 - 5) Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.
 - 6) People in detention will be treated fairly and reasonably within the law.
 - 7) Conditions of detention will ensure the inherent dignity of the human person.

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143. The Commission welcomes values 3 to 7, and expressed the need for them to be translated into policy, practice and legislative change as soon as possible. Since then, some positive policy changes have been introduced. However, there remains significant progress to be made. In particular, the values have not been implemented in legislation. In June 2009 the Australian Government introduced the Migration Amendment (Immigration Detention Reform) Bill 2009 (Cth) into Parliament. The Commission welcomed the Bill as a positive step, but expressed concern that it did not go far enough towards implementing the New Directions, including some of the values.¹¹³ As of May 2010, the Bill had not been passed.
144. The Commission has consistently called for the repeal of the mandatory detention system because it leads to breaches of Australia's international human rights obligations. The Commission has recommended that:
- the Migration Act be amended so that immigration detention occurs only when necessary. This should be the exception, not the norm. It should be for a minimal period, be reasonable and be a proportionate means of achieving at least one of the aims outlined in international law. These limited grounds for detention should be clearly prescribed in the Migration Act.
 - the Migration Act should be amended so that the decision to detain a person is subject to prompt review by a court, in accordance with international law
 - the Migration Act should be amended to include periodic independent reviews of the ongoing need to detain an individual, and a maximum time limit for detention.¹¹⁴

8.3 *Detainee numbers, nationalities and length of detention*

145. As reflected in the Australian Government report to the Committee, until 2008 there had been a decline in the number of people in immigration detention.¹¹⁵ The Commission welcomed this.¹¹⁶ However, since that time the number of detainees has increased significantly. As of 2 April 2010, there were 2686 people in immigration detention, including 272 children.¹¹⁷
146. The nationalities of these people were listed as follows: 1059 from Afghanistan; 660 from Sri Lanka; 209 from Iraq; 123 from Indonesia; 120 from the People's Republic of China; 116 from Iran; 36 from Burma; 15 from Vietnam; 14 from the Palestinian Authority; 12 from Nigeria; and 322 other nationalities.¹¹⁸
147. There has been some progress made by the current Australian Government in reducing the length of time people spend in immigration detention – particularly the very long-term cases. In June 2008, there were 52 people who had been detained for more than two years.¹¹⁹ As of April 2010, this had decreased to 18 people.¹²⁰ However, the Commission remains concerned that many people still spend prolonged periods in detention.

148. As of 2 April 2010, of the 2686 people in immigration detention:

- 24 had been detained for 18 months or more
- 25 had been detained for 12 to 18 months
- 377 had been detained for 6 to 12 months
- 387 had been detained for 3 to 6 months
- the remainder (1873) had been detained for up to 3 months.¹²¹

8.4 Conditions of detention

149. The Commission has repeatedly raised concerns about the lack of transparent and enforceable standards for conditions in immigration detention, and has called for minimum standards to be codified in legislation.¹²² Since the Australian Government prepared its report to the Committee, a new detention service provider (Serco) has taken over operation of immigration detention facilities. It is not clear what standards Serco is required to comply with. According to the Department of Immigration and Citizenship (DIAC), the contract with Serco 'encompasses a stronger focus on the rights and well-being of people in detention'.¹²³ However, while the Commission was consulted early in the tender documentation development, the Commission has not been provided with a copy of the final contract or the standards contained within it.

150. As noted in the Australian Government report, the Commission undertakes visits to immigration detention facilities in order to monitor whether conditions meet internationally accepted human rights standards.¹²⁴ The Commission releases public reports of these visits, which make recommendations to the Australian Government.¹²⁵ The Commission's 2008 Immigration detention report has been submitted to the Committee.¹²⁶ It should be noted that the Commission does not have the power to enforce the recommendations it makes in these reports.

151. In the Commission's view there is a need for a more comprehensive monitoring mechanism to ensure that conditions in immigration detention meet human rights standards. This mechanism should consist of an independent body with a statutory power to enter detention facilities, and a human rights-based mandate. The Australian Government should be legally required to consider and respond to its recommendations. One means of achieving this would be through the Australian Government ratifying the Optional Protocol to the Convention against Torture (OPCAT).¹²⁷

152. As a party to OPCAT, the Australian Government would be required to establish an independent National Preventive Mechanism to conduct regular inspections of all places of detention, including immigration detention.¹²⁸

153. The Australian Government report also notes that, under the Australian Human Rights Commission Act (1986) (Cth) (AHRC Act), the Commission can investigate complaints from individuals about alleged breaches of human rights in immigration detention.¹²⁹ Where the President of the Commission determines that a human rights breach has occurred, the President can prepare a report including recommended remedies. The Attorney-General

must table the report in Parliament.¹³⁰ However, unlike breaches of the RDA, breaches of human rights under the AHRC Act are not unlawful. As such, complaints of human rights breaches in immigration detention can be investigated and conciliated by the Commission, but there is no legally enforceable remedy.

Recommendation 45: That the Australian Government ratify the *Optional Protocol to the Convention against Torture (OPCAT)*.¹³¹

8.5 Detention of families and children

154. In 2004, the Commission's report of its *National Inquiry into Children in Immigration Detention, A last resort?*, found that Australia's mandatory detention system was fundamentally inconsistent with the Convention on the Rights of the Child.¹³² Since that time, there have been some significant developments. In 2005 most children and their family members were released from Australia's immigration detention centres, and the *Migration Act* was amended to affirm 'as a principle' that a minor should only be detained as a measure of last resort.¹³³ In 2008, the current Australian Government made a commitment that children, and where possible, their families will not be detained in an immigration detention centre.¹³⁴ The Commission has welcomed these developments.
155. However, the Commission has significant ongoing concerns.¹³⁵ In particular, while children are no longer detained in Australia's high security immigration detention centres, they are still detained in other types of immigration detention facilities including immigration residential housing, immigration transit accommodation and alternative places of detention such as the 'construction camp' detention facility on Christmas Island.¹³⁶
156. As of 2 April 2010, there were 272 children in immigration detention – 163 on Christmas Island and 109 on the mainland.¹³⁷ Of these 272 children, the vast majority (244 children) were in an immigration detention facility.¹³⁸ Only nine were in community detention.¹³⁹ The remaining 19 children were in alternative places of detention on the mainland – this may include temporary detention arrangements such as hotels and foster care placements.¹⁴⁰
157. The Commission has significant concerns about the practice of holding families with children and unaccompanied minors in immigration detention facilities. While the physical environment is generally preferable to the immigration detention centres, the effects of depriving children of their liberty can nevertheless be similar. In the Commission's view, families with children and unaccompanied minors should not be held in detention facilities for anything other than the briefest of periods. Rather, they should be issued with bridging visas to reside in the community while their immigration status is resolved, or placed in community detention.

Recommendation 46: That the Australian Government implement the remaining recommendations of A last resort? in order to address ongoing concerns about the situation of children under Australia's immigration detention system.¹⁴¹

8.6 Detention and offshore processing on Christmas Island

158. The Commission has raised significant concerns about the mandatory detention of asylum seekers on Christmas Island, a remote territory of Australia in the Indian Ocean. As of 26 March 2010, there were 2068 people in immigration detention on Christmas Island, including 163 children.¹⁴² The remote location and small size of the island limit detainees' access to appropriate services and support networks, and the location makes their detention arrangements less visible and transparent to the Australian public.
159. The Commission has also raised concerns about the excision regime, under which asylum seekers who arrive in excised offshore places such as Christmas Island are barred from the refugee status determination system that applies under the Migration Act.¹⁴³ Instead, they go through a non-statutory refugee status assessment process governed by policy guidelines.
160. The Commission's concerns are set out in full in its 2009 report, Immigration detention and offshore processing on Christmas Island.¹⁴⁴ This report has been submitted to the Committee.

Recommendation 47: That the Australian Government cease the practice of holding people in immigration detention on Christmas Island, and repeal the provisions of the Migration Act relating to excised offshore places.¹⁴⁵

8.7 The suspension of processing of some asylum claims

161. On 9 April 2010, the Australian Government announced that it was suspending processing of new refugee claims by asylum seekers from Sri Lanka and Afghanistan.¹⁴⁶ The suspension came into effect on the same day. It will impact any asylum seeker from Sri Lanka or Afghanistan who is intercepted at sea or who arrives in an excised offshore place (including Christmas Island) on or after that date, and any asylum seeker from Sri Lanka or Afghanistan who applies for refugee status on the Australian mainland on or after that date.¹⁴⁷
162. Asylum seekers from Sri Lanka or Afghanistan who arrive by boat on or after 9 April 2010 will be subjected to mandatory immigration detention for the duration of the suspension. The Australian Government has indicated that it will review the suspension in three months time in the case of asylum seekers from Sri Lanka, and in six months time in the case of asylum seekers from Afghanistan. However, there is no guarantee that the suspension will be lifted at those reviews.
163. The Commission has expressed serious concerns about the suspension decision.¹⁴⁸ In particular, the Commission is concerned that it could lead to

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the prolonged or indefinite detention of asylum seekers. This is a particular concern in the case of unaccompanied minors and families with children.

164. The Commission is also concerned that the suspension decision may be inconsistent with Australia's obligations under ICERD. While the Convention permits distinctions between citizens and non-citizens,¹⁴⁹ the Committee has stated that State Parties should 'ensure that immigration policies do not have the effect of discriminating against persons on the basis of race, colour, descent, or national or ethnic origin'.¹⁵⁰
165. The Commission is concerned that the suspension may constitute indirect racial discrimination under ICERD. The Committee has confirmed that the definition of racial discrimination in article 1 extends 'beyond measures which are explicitly discriminatory, to encompass measures which are not discriminatory at face value but are discriminatory in fact and effect'.¹⁵¹ In considering whether an action will have an effect contrary to the Convention, the Committee will look to see whether that action has disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin; and if so, whether the impact is justified.¹⁵²
166. The Australian Government has decided to suspend the processing of new refugee claims from asylum seekers who are nationals of Sri Lanka or Afghanistan. The Commission recognises that this distinction is on the basis of nationality. However, the impact of this policy clearly has a disproportionate effect on people of Sri Lankan and Afghan national origin.
167. The suspension decision potentially limits the right of Sri Lankan and Afghan nationals to equality before the law including equal treatment before tribunals and other organs administering justice (protected under article 5 of ICERD), and the right to freedom from arbitrary detention (protected under article 9 of the International Covenant on Civil and Political Rights).
168. The Commission is concerned that these potential restrictions on fundamental human rights have not been adequately justified. The rationale given by the Australian Government for the suspension decision is that the circumstances in Sri Lanka and Afghanistan are improving, and it is likely that those who may now be found to be refugees would not be so in the future. However, it seems that conditions in countries that have been unstable are by definition always changing. The government has provided no evidence to suggest that conditions in Sri Lanka and Afghanistan are certain to markedly improve within a very short timeframe such that its suspension is justified.

Recommendation 48: That the Australian Government promptly lift the suspension on new refugee claims by asylum seekers from Sri Lanka and Afghanistan.

9 Appendix One: List of acronyms

The following acronyms are used throughout the submission:

ATSIS	Aboriginal and Torres Strait Islander Services
COAG	Council of Australian Governments
DIAC	Department of Immigration and Citizenship
DDPA	Durban Declaration and Program of Action
AHRC Act	<i>Australian Human Rights Commission Act 1986 (Cth)</i>
ICERD	<i>International Convention on the Elimination of All forms of Racial Discrimination (1965)</i>
NT	Northern Territory
NTA	<i>Native Title Act 1993 (Cth)</i>
NTER	Northern Territory Emergency Response
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
RDA	<i>Racial Discrimination Act 1975 (Cth)</i>
UPR	Universal Periodic Review

10 Appendix Two: List of recommendations

Recommendation 1: That the Australian Government Social Inclusion Board includes (I) newly arrived migrants, (II) disadvantaged migrants and (III) people from refugee backgrounds in their list of priority areas.

Recommendation 2: That the proposed Joint Parliamentary Committee on Human Rights should be empowered to make recommendations in relation to the implementation ICERD Committee Concluding Observations.

Recommendation 3: That the Department of Foreign Affairs and Trade and the Australian Human Rights Commission co-chair an annual CERD implementation meeting to (I) delegate responsibilities and (II) monitor progress.

Recommendation 4: That the Australian Government fund a full time Race Discrimination Commissioner at the Commission.

Recommendation 5: That the Department of Immigration and Citizenship and the Department of Families, Housing, Community Services and develop publicly available research frameworks that identify (I) current research and data collection priorities and (II) research and data gaps relevant to migrant communities and Indigenous communities respectively.

Recommendation 6: That the Department of Immigration and Citizenship fund an independent biennial report on migrant disadvantage based on the Overcoming Indigenous Disadvantage report model.

Recommendation 7: That the Australian Government conduct a major national study on the experiences of temporary migrants in Australia (workplace experiences, safety, experiences of racism, social inclusion)

Recommendation 8: That the Australian Government conduct research on the international student population in Australia in the following key areas:

- income and expenditure data
- living and working conditions
- experiences of discrimination
- strategies to support safe international student experiences.

Recommendation 9: that the Australian Bureau of Statistics work in partnership with state and territory police agencies to collect national data on racially motivated crime.

Recommendation 10: That the Australian Government commence a constitutional process, with the active engagement of Indigenous peoples, for the recognition of Indigenous peoples in the preamble; removal of section 25 of the Constitution and its replacement with a clause guaranteeing equality before the law and non-discrimination.¹⁵³

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Recommendation 11: That all legislation, policies and programs be reviewed for consistency with the rights affirmed by the Declaration.¹⁵⁴

Recommendation 12: That the Australian the Government ratify the ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.¹⁵⁵

Recommendation 13: That the Australian Government sign and ratify the Optional Protocol on Economic Social and Cultural Rights.¹⁵⁶

Recommendation 14: That the Australian Government develop a comprehensive, long-term plan of action, that is targeted to need, evidence-based and capable of addressing the existing inequities in health services, in order to achieve equality of health status and life expectancy between Aboriginal and Torres Strait Islander peoples and non-indigenous Australians by 2030.

Recommendation 15: The Commission recommends the Australian Government address the discrimination faced by Aboriginal and Torres Strait Islander peoples with hearing impairment and deafness on the basis of their race and disability.

Recommendation 16: The Commission strongly recommends that the Government take urgent action to support the reinstatement of bilingual education approaches in schools, and safeguard the future of bilingual education through binding agreements with state and territory governments and ongoing resources to support its implementation.¹⁵⁷

Recommendation 17: That the Australian Government:

- establish a national Indigenous languages body with functions and responsibilities similar to those of the Māori Language Commission as per the commitment of Indigenous Languages - A National Approach.
- agree to resource an ongoing plan of action for the preservation and promotion of Indigenous languages as recommended by the national Indigenous languages body.
- Become a signatory to the *Convention for the Safeguarding of the Intangible Cultural Heritage (2003)*.
- through COAG, develop agreements to ensure consistency and compliance with Australia's Indigenous Languages - A National Approach.¹⁵⁸

Recommendation 18: That housing programs should avoid imposing or promoting housing arrangements that would undermine Indigenous people's control over their lands; and should be administered by Indigenous community controlled institutions.¹⁵⁹

Recommendation 19: That the Australian Government continue to fund community education and community development programs aimed at preventing family violence in Indigenous communities.

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Recommendation 20: The Commission recommends that:

- the Australian Government, through COAG, set criminal justice targets that are integrated into the Closing the Gap agenda.
- the Standing Committee of Attorneys General Working Party identify justice reinvestment as a priority issue under the National Indigenous Law and Justice Framework, with the aim of conducting pilot projects in targeted communities in the short term.
- all state and territory governments consider justice reinvestment in tandem with their plans to build new prisons.
- a percentage of funding that is targeted to prison beds be diverted to trial communities where there are high rates of Indigenous offenders.

Recommendation 21: To bring the NTER into full compliance with human rights standards the Commission recommends the NTER be amended as follows:

- The categories of 'disadvantaged youth' and 'long-term welfare payment recipients' be reformulated to apply on a case-by-case basis .
- Domestic violence not be included as an indicator for 'vulnerable welfare payment recipient' under the redesigned income management scheme
- The capacity to compulsorily acquire any further five-year leases under Part 4 of the NTER Act be removed and the Government commit to obtaining the free, prior and informed consent of traditional owners to enter into voluntary lease arrangements for existing compulsory lease arrangements.
- The government move towards further amendments of the NTER to incorporate notwithstanding clauses in the legislation and ensure all measures that are intended to be special measures comply with the RDA.

Recommendation 22: The Commission also recommends that the Australian Government:

- supplement any income management scheme with additional support programs that address the rights to food, education, housing, and provide support in the form of financial literacy/budgeting skills.
- ensure the participation of Indigenous peoples in developing, implementing and monitoring alcohol management plans and ensure all alcohol management processes are consistent with the RDA. Alcohol restrictions should be supplemented by investment in infrastructure in the health and mental health sectors (including culturally appropriate detoxification facilities) and investment in culturally appropriate community education programs delivered by Indigenous staff.

Recommendation 23: That the Australian Government take immediate steps to review the native title system and to implement measures to address the above concerns. Such measures should include amendments to the Native Title Act to

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provide for presumptions in favour of native title claimants, including a presumption of continuity in the acknowledgement and observance of traditional law and custom and of the relevant society.¹⁶⁰

Recommendation 24: The Commission recommends that the Australian and Northern Territory governments commit to supporting homelands through:

- reviewing, developing and implementing homeland policies with the active participation of representative leaders from homeland communities
- providing funding and support for homeland communities in all states and territories through the COAG National Indigenous Reform Agreement and associated National Partnership Agreements.¹⁶¹

Recommendation 25: The Commission recommends that the Commonwealth, through the Councils of Australian Governments, engage with State and Territory governments to develop a consistent approach with joint funding mechanisms in the provision of financial redress for the Stolen Generations.

Recommendation 26: The Commission recommends that Stolen Wages compensation schemes be established in other states and territories as appropriate.

Recommendation 27: That the Australian Government consider the following in the development of a national multicultural policy:

- that it should be based on extensive community consultation
- that it should be properly linked with the Australian Human Rights Framework, the Human Rights Action Plan and the Social Inclusion Agenda
- that it adopts a broad definition of the 'multicultural community' in Australia that genuinely considers: newly arrived migrants, international students, temporary and seasonal migrant workers, people from refugee backgrounds and established ethnic communities
- that it addresses the issue of religious diversity and freedom of religion and belief
- that systems of auditing, benchmarking, compliance and evaluation are created.

Recommendation 28: That the Australian Government develop a coordinated, national approach to anti-racism that is linked to the national multicultural policy framework. This recommendation is in accordance with the Durban Declaration and Program of Action, which calls on states to develop comprehensive national action plans to eradicate racism, racial discrimination, xenophobia and related intolerance.

Recommendation 29: That the Australian Government revisit the recommendations made in the Commissions Report of National Inquiry into Racist Violence in Australia in 1991.

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Recommendation 30: That the Australian Government: (I) broaden the parameters of the ESOS Act to include on campus student safety (II) language foundations (III) social support.

Recommendation 31: That the COAG International Student Strategy provides a regulation framework that involves states, territories and local governments in addressing issues relating to safety, accommodation, transport and discrimination.

Recommendation 32: That the Australian Government compile national survey data on international students in Australia, particularly in relation to income and expenditure, housing experiences, employment discrimination and experiences of violence.

Recommendation 33: That the Department of Immigration and Citizenship and other government agencies consider the findings of the *In Our Own Voices Report* in (I) policy development processes (II) service delivery improvements and (III) settlement services improvements.

Recommendation 34: That the Minister for Sustainable Population establish an Interdepartmental Committee across human services and sustainability agencies to: (I) share research data, (II) coordinate policy, (III) develop integrated approaches and (IV) provide strategic advice around balancing immigration flows, population targets, workforce planning and ecological sustainability.

Recommendation 35: That the Australian Government provides consideration to the adoption of the *Building on our Strengths Framework* as part of its broader national preventative health agenda.

Recommendation 36: That human rights education modules be incorporated into the National Curriculum for secondary schools and the Australian Government provide a comprehensive package of measures to address commitments under the *World Programme for Human Rights Education*.¹⁶²

Recommendation 37: That evidence based strategies to address cyber-racism should be included as part of a coordinated, national approach to anti-racism/national action plan to address racism.

Recommendation 38: The Commission recommends that all counter-terrorism laws be rigorously monitored and amended to ensure they comply with Australia's human rights obligations.¹⁶³

Recommendation 39: That the Australian Government provide a detailed report on what measures it has undertaken to strengthen the integrity of the temporary skilled migration (Subclass 457 visa) program since the Deegan Review in 2008.

Recommendation 40: That the Australian Government consider making the Commonwealth's General Employee Entitlements and Redundancy Scheme accessible to 457 visas holders.

Recommendation 41: That the Australian Government provide interim reports on (I) the monitoring and inspection frameworks designed for the seasonal worker scheme

and (II) employer compliance with the working conditions and standards protecting vulnerable migrant workers from exploitation.

Recommendation 42: That the Australian Government routinely provide targeted information about the rights of migrant workers, including options to lodge complaints and seek remedy without intimidation.

Recommendation 43: That the Australian Government ratify the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.

Recommendation 44: That the Australian Government consider making discrimination on the basis of religion and belief unlawful in the consolidation of its federal anti-discrimination laws.

Recommendation 45: That the Australian Government ratify the *Optional Protocol to the Convention against Torture (OPCAT)*.¹⁶⁴

Recommendation 46: That the Australian Government implement the remaining recommendations of *A last resort?* in order to address ongoing concerns about the situation of children under Australia's immigration detention system.¹⁶⁵

Recommendation 47: That the Australian Government cease the practice of holding people in immigration detention on Christmas Island, and repeal the provisions of the Migration Act relating to excised offshore places.¹⁶⁶

Recommendation 48: That the Australian Government promptly lift the suspension on new refugee claims by asylum seekers from Sri Lanka and Afghanistan.

¹ The Commission officially changed its name in August 2009 to distinguish us from state and territory commissions and other National Human Rights Institutions.

² Australian Social Inclusion Board, *Compendium of Social Inclusion Indicators*, pxii. At <http://www.socialinclusion.gov.au/AusGov/Board/Documents/Compendium.pdf> (viewed at 10 September 2009).

³ House of Representatives, Official Hansard No.1, Forty second Parliament, First Session, First Period (13 February 2008), p167. At <http://www.aph.gov.au/hansard/rep/dailys/dr130208.pdf> (viewed 10 June 2008).

⁴ J Macklin, *Statement on the United Nations Declaration on the Rights of Indigenous Peoples*, Parliament House, Canberra (3 April 2009). At http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/un_declaration_03apr09.htm (viewed 18 May 2010).

⁵ The six Closing the Gap targets include:

- Close the gap in life expectancy within a generation;
- Halve the gap in mortality rates for Indigenous children under five within a decade;
- Halve the gap for Indigenous students in reading, writing and numeracy within a decade;
- At least halve the gap for Indigenous students in year 12 attainment or equivalent attainment rates by 2020;

- Halve the gap in employment outcomes between Indigenous and non Indigenous Australians within a decade;
- Ensure all four-year-olds, including those in remote communities, have access to early childhood education, within five years.

For further information on COAG's National Agreements and National Partnership Agreements for meeting COAG's objectives see the COAG website. At <http://www.coag.gov.au/>.

⁶ Department of Families, Housing, Community Services and Indigenous Affairs, *Aboriginal and Torres Strait Islander Healing Foundation*. At

<http://www.fahcsia.gov.au/sa/indigenous/pubs/healing/Pages/default.aspx> (viewed 18 May 2010).

⁷ United Nations Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States Parties under Article 9 of the Convention, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Australia*, UN Doc. CERD/C/AUS/CO/14 (14 April 2005), para 24. At [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.AUS.CO.14.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CERD.C.AUS.CO.14.En?OpenDocument) (viewed 3 May 2010).

⁸ *Kartinyeri v Commonwealth* (1998) 195 CLR 337, 411

⁹ *Kruger v Commonwealth* (1997) 190 CLR 1. The High Court has since held that the acquisition of property pursuant to laws made under s122 are subject to the guarantee of just terms compensation as required by s51(xxxi) (*Wurridjal v The Commonwealth of Australia* (2009) HCA 2).

¹⁰ See, eg, Council for Aboriginal Reconciliation, *Roadmap to Reconciliation* (2000). At <http://www.austlii.edu.au/au/other/IndigLRes/car/2000/10/pg3.htm> (viewed 18 May 2010). See also Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2000*, (2000) ch 4; Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008*, (2008), ch 2.

¹¹ The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has made similar recommendations (Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people *Addendum: The Situation of Indigenous Peoples in Australia*, UN Doc A/HRC/15/ (2010). At

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¹² Commonwealth, *Parliamentary Debates*, House of Representatives (8 February 2010) p 97 (The Hon Tony Abbot, Leader of the Opposition).

¹³ Legal and Constitutional Affairs Committee, Parliament of Australia, *Native Title Amendment Bill (No.2) 2009 [Provisions]* (2010), para 357.

¹⁴ *Aurukun Shire Council & Anor v. CEO Office of Liquor Gaming and Racing in the Department of Treasury* [2010] QCA 37 (1 March 2010), para 33.

¹⁵ Northern Australian Indigenous Land and Sea Management Alliance, *A Policy Statement on Northern Australian Indigenous Water Rights*, (2009) at http://www.nailsma.org.au/projects/water_policy.html (viewed 26 March 2010); Goldfields Land and Sea Council, *Mining Policy: Our Land is Our Future*, (2008) at <http://www.glc.com.au/> (viewed 26 March 2010).

¹⁶ Committee on the Elimination of Racial Discrimination, *Concluding Observations on United States of America*, UN Doc CERD/C/USA/CO/6 (2008) para 29.

¹⁷ This was also a recommendation made by Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people in his 2010 report on Australia (Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Addendum: The Situation of Indigenous Peoples in Australia*, UN Doc A/HRC/15/ (2010). At <http://www2.ohchr.org/english/issues/indigenous/rapporteur/countryreports.htm> (viewed 18 May 2010)).

¹⁸ This has also been recommended by: the Aboriginal and Torres Strait Islander Social Justice Commissioner (Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008* (2008), ch 4; the Committee on Economic Social and Cultural Rights, (Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*, UN Doc. E/C.12/AUS/CO/4 (June 2009) at <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm> (viewed 18 May 2010)); and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Addendum: Situation of Indigenous Peoples in Australia* (2010), UN Doc A/HRC/15, p 30 at

<http://www2.ohchr.org/english/issues/indigenous/rapporteur/countryreports.htm> (viewed 18 May 2010)).

¹⁹ This was also a recommendation of the Committee on Economic Social and Cultural Rights, (Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*, UN Doc. E/C.12/AUS/CO/4 (June 2009). At <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm> (viewed 18 May 2010)).

²⁰ The six Closing the Gap targets include:

- Close the gap in life expectancy within a generation;
- Halve the gap in mortality rates for Indigenous children under five within a decade;
- Halve the gap for Indigenous students in reading, writing and numeracy within a decade;
- At least halve the gap for Indigenous students in year 12 attainment or equivalent attainment rates by 2020;
- Halve the gap in employment outcomes between Indigenous and non Indigenous Australians within a decade;
- Ensure all four-year-olds, including those in remote communities, have access to early childhood education, within five years.

For further information on COAG's National Agreements and National Partnership Agreements for meeting COAG's objectives see the COAG website. At <http://www.coag.gov.au/>.

²¹ Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Addendum: The Situation of Indigenous Peoples in Australia*, UN Doc A/HRC/15/, 2010, para 72-73. At <http://www2.ohchr.org/english/issues/indigenous/rapporteur/countryreports.htm>.

²² Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Addendum: Situation of Indigenous Peoples in Australia* (2010), UN Doc A/HRC/15, paras 91-93. At <http://www2.ohchr.org/english/issues/indigenous/rapporteur/countryreports.htm>.

²³ United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr Anand Grover, *Preliminary Observations and Recommendations*, Canberra, (4 December 2009), p 5. At <http://www2.ohchr.org/english/issues/health/right/docs/PressStatementAustralia041209.doc> (viewed 18 May 2010).

²⁴ Senate Community Affairs Committee, *Hear Us: Inquiry into Hearing Health in Australia* (2010). At http://www.aph.gov.au/senate/committee/clac_ctte/hearing_health/report/index.htm.

²⁵ Human Rights and Equal Opportunity Commission, *Education Access, National Inquiry into Rural and Remote Education* (2000), p. 70.

²⁶ Expert Mechanism on the Rights of Indigenous Peoples, *Study on lessons learned and challenges to achieve the implementation of the right of indigenous peoples to education* (2008), UN Doc A/HRC/EMRIP/2009/2. At

<http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/2nd/index.htm> (viewed 18 May 2010).

²⁷ Department of Employment, Education and Training, Northern Territory Government, *Indigenous Languages and Culture in Northern Territory Schools Report 2004 – 2005*, (2004) pp. 34-37.

²⁸ The Committee on Economic, Social and Cultural Rights has recommended the Australian Government preserve and promote bilingual education at schools. Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 And 17 Of The Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights*, Forty-second session Geneva, 4 to 22 May 2009, para 33. At

<http://www2.ohchr.org/english/bodies/cescr/docs/AdvanceVersions/E-C12-AUS-CO-4.doc> (viewed 12 June 2009). Similar recommendations were also made by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Addendum: Situation of Indigenous Peoples in Australia* (2010), UN Doc A/HRC/15 at

<http://www2.ohchr.org/english/issues/indigenous/rapporteur/countryreports.htm>) (viewed 18 May 2010)) and the Permanent Forum on Indigenous Issues (Economic and Social Council, Permanent Forum on Indigenous Issues 9th Session, *Draft Report* (2010), UN Doc E/C.19/2010/L.2)..

²⁹ Department of Education, Employment and Workplace Relations, *Indigenous Employment and Business*, <http://www.deewr.gov.au/Indigenous/Employment/Pages/default.aspx> (viewed 20 July 2009).

³⁰ CDEP was created under the Fraser government in 1977 as a form of community engagement in the job creation market. Essentially, the CDEP scheme is predicated upon the use of block grants (that total the equivalent of the unemployment benefits that would otherwise be available to Aboriginal people within certain communities) being made available to community controlled organisations. These organisations then have the capacity to manage their own projects and finances in line with the aspirations and skills of the community in which they operate. The CDEP scheme has enabled many Indigenous communities to develop valuable community services e.g. night patrol services; childcare centres; cultural and natural heritage programs and garbage removal services (Unpublished, *Job Futures response to government discussion paper: Indigenous Potential Meets Economic Opportunity*, (2006), p2. Response provided by Job Futures to the Aboriginal and Torres Strait Islander Social Justice Commissioner.). However, the CDEP scheme has also been criticised by Indigenous peoples and governments for reasons such as limiting the engagement of Indigenous peoples in mainstream employment opportunities that earn 'real wages'.

³¹ CDEP participants in remote areas are able to access CDEP wages until 30 June 2011 to support their transition to the new arrangements.

³² Australian Bureau of Statistics, 6287.0 - *Labour Force Characteristics of Aboriginal and Torres Strait Islander Australians, Estimates from the Labour Force Survey 2009*, At <http://www.abs.gov.au/ausstats/abs@.nsf/Products/6287.0~2009~Chapter~Unemployment> (viewed 25 June 2010)

³³ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009* (2009), ch 3. At http://www.hreoc.gov.au/social_justice/sj_report/sjreport09/chap3.html (viewed 18 May 2010).

³⁴ Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, ABS cat no 4704.0 (2008) p46.

³⁵ Miloon Kothari, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Addendum - Mission to Australia* (31 July to 15 August 2006), U.N. Doc. A/HRC/4/18/Add.2, (2007), para 80. At <http://daccessdds.un.org/doc/UNDOC/GEN/G07/125/72/PDF/G0712572.pdf?OpenElement> (viewed 18 May 2010).

³⁶ See Human Rights and Equal Opportunity Commission, *Submission on the Green Paper: Which Way Home?* (2008). At http://humanrights.gov.au/legal/submissions/2008/20080704_homelessness.html (viewed 18 May 2010).

³⁷ The House of Representatives Standing Committee on Family, Community, Housing and Youth report, *Housing the Homeless: Report on the Inquiry into homelessness legislation* recommends that new housing legislation specify the right of all Australians to adequate housing, which should include appropriate reference to Australia's international human rights obligations, a definition of adequate housing and explicit recognition that the right to adequate housing will be progressively realised. House of Representatives Standing Committee on Family, Community, Housing and Youth, *Housing the Homeless: Report on the Inquiry into homelessness legislation* (2009). At <http://www.aph.gov.au/house/committee/fchy/homelessness/report/fullreport%20as%20at%2025%20Nov.pdf> (viewed 18 May 2010).

³⁸ COAG has also agreed to a National Affordable Housing Agreement, a National Partnership Agreement on Social Housing and a National Partnership Agreement on Homelessness, which also address elements of Indigenous housing and homelessness. These are available on the COAG website at <http://www.coag.gov.au/>.

³⁹ Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Addendum: Situation of Indigenous Peoples in Australia* (2010), UN Doc A/HRC/15, para 74. At <http://www2.ohchr.org/english/issues/indigenous/rapporteur/countryreports.htm> (viewed 18 May 2010).

⁴⁰ Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Addendum: Situation of Indigenous Peoples in Australia* (2010), UN Doc A/HRC/15, para 74. At <http://www2.ohchr.org/english/issues/indigenous/rapporteur/countryreports.htm> (viewed 18 May 2010).

⁴¹ National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021* (2009). At

http://www.fahcsia.gov.au/sa/women/pubs/violence/np_time_for_action/national_plan/Documents/The_Plan.pdf (viewed 20 July 2009).

⁴² Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities: Key issues* (2006), pp 5-6. See also Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, pp 194-95.

⁴³ National Indigenous Drug and Alcohol Committee, *Bridges and barriers: addressing Indigenous incarceration and health* (2009). At

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⁴⁴ Australian Bureau of Statistics, *Prisoners in Australia 2006*. At

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⁴⁶ Senate Legal and Constitutional Affairs Committee, *Access to Justice* (2009). At

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⁴⁷ Noetics Solutions, *A Strategic Review of the New South Wales Juvenile Justice System: Report for the Minister for Juvenile Justice* (2010), p ix. At http://www.dji.nsw.gov.au/strategic_review.htm (viewed 18 May 2010).

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⁵¹ See further Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2001*, available at: http://www.hreoc.gov.au/social_justice/sjreport_01/index.html (viewed 23 September 2008).

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⁵⁴ Committee on the Elimination of Racial Discrimination, 'Correspondence to the Australian Government following up on the Early Warning and Urgent Action Procedure on the issues raised before the Committee in relation to the Northern Territory Emergency Response' (28 September 2009), at http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Australia28092009.pdf (viewed 20 January 2010); Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Addendum: The Situation of Indigenous Peoples in Australia*, UN Doc A/HRC/15/ (2010) at <http://www2.ohchr.org/english/issues/indigenous/rapporteur/countryreports.htm> (viewed 18 May 2010); Special Rapporteur on the situation of human rights and fundamental

freedoms of Indigenous people, the Special Rapporteur on violence against women, its causes and consequences, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, *Correspondence to Australian Government regarding the Northern Territory Emergency response* (10 October 2007); Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*, UN Doc E/C.12/AUS/CO/4 (2009), para 15 at <http://www2.ohchr.org/english/bodies/cescr/docs/AdvanceVersions/E-C12-AUS-CO-4.doc> (viewed 20 January 2010); Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia*, UN Doc CCPR/C/AUS/CO/5 (2009), para 14, at <http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-C-AUS-CO-5.doc> (viewed 20 January 2010). The ICERD Committee requested the government to provide information in its report for the Australia's forthcoming review on its efforts to bring the NTER measures into full compliance with CERD. Committee on the Elimination of Racial Discrimination, 'Correspondence to the Australian Government following up on the Early Warning and Urgent Action Procedure on the issues raised before the Committee in relation to the Northern Territory Emergency Response' (28 September 2009), at http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Australia28092009.pdf (viewed 20 January 2010).

⁵⁵ Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009; Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009.

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¹⁰¹ The first phase of the World Programme focuses on primary and secondary level schooling.

¹⁰² For an overview of these laws as at 2008 see:

http://www.cla.asn.au/Article/070604_Alford_Report.pdf. In a submission to the Commission for the UPR, the Human Rights Law Resource Centre notes the significant impact of counter-terrorism laws on particular communities such as Somalis, Tamils, Kurds and Muslim people more generally.

¹⁰³ Australian Human Rights Commission, *A Human Rights Guide to Australia's Counter-Terrorism Laws*, (2009). At http://www.humanrights.gov.au/legal/publications/counter_terrorism_laws.html.

¹⁰⁴ J Clarke, *Report of the Clarke Inquiry into the Case of Dr Mohamed Haneef* (November 2008). At: <http://www.haneefcaseinquiry.gov.au/> (viewed 5 May 2010).

¹⁰⁵ The UN Human Rights Committee and the Committee against Torture have both raised concerns that some provisions of Australia's counter-terrorism laws are incompatible with fundamental rights. UN Human Rights Committee, *Concluding Observations: Australia* (2009), para 3 - 4. See also Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, *Australia: Study on Human Rights Compliance while Countering*

Terrorism, UN Doc A/HRC/4/26/Add.3 (2006) at <http://daccessdds.un.org/doc/UNDOC/GEN/G06/155/49/PDF/G0615549.pdf?OpenElement>; UN Committee against Torture, *Concluding Observations: Australia* (2008), para 3.

The Law Council of Australia has also expressed concern at the enactment of non-association provisions in criminal legislation. These provisions, modelled on pre-existing provisions directed at terrorist organisations, seek to extend the traditional boundaries of criminal liability to capture conduct which is not linked to the commission or planned commission of any specific offence, but which is alleged to facilitate criminal activity on a broader level.

The Law Council of Australia notes:

In shifting the focus of criminal liability from a person's conduct to their associations, offences of this type unduly burden freedom of association and are likely to have a disproportionately harsh effect on certain sections of the population who, simply because of their familial or community connections, may be exposed to the risk of criminal sanction.

These non-association provisions, recently incorporated into State and Territory criminal laws and the Commonwealth Criminal Code, have been justified by the need to address serious and organised crime, and in some jurisdictions, specifically directed at motorcycle gangs. Often the non-association provisions have been accompanied by powers for law enforcement officers or the courts to make 'control orders' restricting the liberty of persons who are members of or associated with criminal organisations.

¹⁰⁶ A submission to the Commission for the UPR notes that "the Australian Government refuses to independently investigate the torture and ill treatment of both David Hicks and Mamdouh Habib whilst rendered and illegally detained in Guantanamo Bay. David Hicks is still living under a suspended sentence due to an unlawful conviction (the charges were retrospective and not even legitimate war crimes, not to mention the plea was signed under duress). David Hicks was placed on a gag order and provisions that are outlined in the plea agreement interfere directly with his freedom of expression. He was placed on a control order which severely impinged on his human rights (freedom of expression, movement, association etc)." It urges that "the Australian Government undertake an independent, thorough and binding investigation into the allegations of torture and ill treatment made by the Australians rendered and illegally detained at Guantanamo Bay, the Government's involvement in the treatment, and the subsequent legality of the conviction of David Hicks and their involvement in the process."

¹⁰⁷ There have been positive developments in addressing these issues, such as recent changes to the *People Trafficking Visa Framework* and the *Support for Victims of People Trafficking Program* but the Commission is concerned that trafficking in person and related offences do not comprehensively reflect Australia's international legal obligations in this area, or that there are always effective remedies available.

See further: Sex Discrimination Commissioner, Elizabeth Broderick, 'For trafficked people, Government changes put human rights first', media release (17 June 2009), http://www.hreoc.gov.au/about/media/media_releases/2009/50_09.html (viewed 21 April 2010). The Commission also acknowledges the Government's 2008 publication of 'Guidelines for NGOs working with trafficked people' and an accompanying two-page 'Know Your Rights' fact sheet. See: http://www.hreoc.gov.au/sex_discrimination/publication/traffic_NGO/index.html (viewed 19 April 2010). The Commission is only aware of one award of compensation to a person who was trafficked to Australia, see: N Craig, 'Sex slave victim wins abuse claim – EXCLUSIVE - 'It still hurts to talk about it ... I have been depressed'', *The Age*, (29 May 2007).

For discussion of another effort to obtain compensation in a trafficking case see J Lewis, 'Out of the Shadows', *Law Society Journal* (February 2007) 17; and E Broderick and B Byrnes, *Beyond Wei Tang: Do Australia's human trafficking laws fully reflect Australia's international human rights obligations?* (Speech delivered at Workshop on Legal and Criminal Justice Responses Trafficking in Persons in Australia: Obstacles, Opportunities and Best Practice, Monash University, 9 November 2009).

There have been limited legal actions to address trafficking in Australia. See further: A Scholenhardt, G Beirne and T Corsbie, 'Human Trafficking and Sexual Servitude in Australia' (2009), 32(1) *UNSW Law Journal*, 27.

¹⁰⁸ United Nations Committee on the Elimination of Racial Discrimination, note, para 23.

¹⁰⁹ In 2001, the Migration Act was amended to designate a number of islands as 'excised offshore places'. A person who becomes an unlawful non-citizen (a non-citizen without a valid visa) by entering Australia at such

a place is referred to as an ‘offshore entry person’. The purpose of these amendments was to bar offshore entry persons from being able to apply for a visa, unless the Minister for Immigration determines that it is in the public interest to allow them to do so. See *Migration Act 1958* (Cth), ss 5(1), 46A. Under sections 189(3) and 189(4) of the Migration Act, unlawful non-citizens in excised offshore places may be detained. The current policy of the Australian Government is that all unauthorised boat arrivals in excised offshore places will be subject to mandatory detention on Christmas Island.

¹¹⁰ *Migration Act 1958* (Cth), ss 189 (1), 189(2).

¹¹¹ *Migration Act 1958* (Cth), s 196(1).

¹¹² C Evans, *New Directions in Detention – Restoring Integrity to Australia’s Immigration System* (Speech delivered at the Centre for International and Public Law Seminar, Australian National University, Canberra, 29 July 2008). At <http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm> (viewed 14 April 2010).

¹¹³ Australian Human Rights Commission, *Submission to the Senate Standing Committee on Legal and Constitutional Affairs on the Migration Amendment (Immigration Detention Reform) Bill 2009* (2009). At http://humanrights.gov.au/legal/submissions/2009/20090731_migration.html (viewed 14 April 2010).

¹¹⁴ See, for example Australian Human Rights Commission, *2008 Immigration detention report: Summary of observations following visits to Australia’s immigration detention facilities* (2009). At http://humanrights.gov.au/human_rights/immigration/idc2008.html (viewed 5 May 2010).

¹¹⁵ Commonwealth of Australia, *Combined Fifteenth, Sixteenth and Seventeenth Periodic Reports of the Government of Australia under Article 9 of the International Convention on the Elimination of all Forms of Racial Discrimination* (2009), para 278.

¹¹⁶ Australian Human Rights Commission, *2008 Immigration detention report*, note 114, section 7.

¹¹⁷ Department of Immigration and Citizenship, Community and Detention Services Division, *Immigration Detention Statistics Summary* (2 April 2010). At <http://www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/> (viewed 6 May 2010).

¹¹⁸ As above.

¹¹⁹ Commonwealth of Australia, note 115, p114.

¹²⁰ Department of Immigration and Citizenship, note 117.

¹²¹ Department of Immigration and Citizenship, note 117.

¹²² See, for example Australian Human Rights Commission, *2008 Immigration detention report*, note 114, section 6; Australian Human Rights Commission, *2009 Immigration detention and offshore processing on Christmas Island* (2009), section 10, at http://humanrights.gov.au/human_rights/immigration/idc2009_xmas_island.html (viewed 5 May 2010).

¹²³ Department of Immigration and Citizenship, ‘Immigration detention services contract signed’ (Media Release, 29 June 2009). At http://www.newsroom.immi.gov.au/media_releases/726 (viewed 4 May 2010).

¹²⁴ Commonwealth of Australia, note 115, pp 66-67. For further information about the Commission’s inspections, see http://humanrights.gov.au/human_rights/immigration/detention_rights.html#9_3.

¹²⁵ The Commission’s immigration detention inspection reports are available at http://humanrights.gov.au/human_rights/immigration/detention_rights.html#9_4.

¹²⁶ Australian Human Rights Commission, *2008 Immigration detention report*, note 116.

¹²⁷ *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (2002) (OPCAT). At <http://www2.ohchr.org/english/law/cat-one.htm> (viewed 4 May 2010). The Australian Government has signed OPCAT, but has not yet ratified it.

¹²⁸ In 2008, the Commission released a report of research it commissioned into options for implementing OPCAT in Australia. The report suggests a mixed National Preventive Mechanism (NPM) model, with separate NPMs in each state and territory and a national coordinating NPM. The report suggests that the Commission should be the national coordinating NPM. See Report to the Australian Human Rights Commission by Professors Richard Harding and Neil Morgan, Centre for Law and Public Policy, The University of Western Australia, *Implementing the Optional Protocol to the Convention against Torture: Options for Australia* (2008). At http://www.humanrights.gov.au/human_rights/publications/opcat/index.html (viewed 4 May 2010).

¹²⁹ See Commonwealth of Australia, note 115, p 67; *Australian Human Rights Commission Act* (1986) (Cth), s 11(1)(f).

¹³⁰ *Australian Human Rights Commission Act* (1986) (Cth), s 46.

¹³¹ *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (2002) (OPCAT). At <http://www2.ohchr.org/english/law/cat-one.htm> (viewed 4 May 2010). The Australian Government has signed OPCAT, but has not yet ratified it.

¹³² Human Rights and Equal Opportunity Commission, *A last resort? National Inquiry into Children in Immigration Detention* (2004). At http://www.humanrights.gov.au/human_rights/children_detention_report/index.html (viewed 4 May 2010).

¹³³ *Migration Act 1958* (Cth), s4AA.

¹³⁴ See C Evans, note 112.

¹³⁵ The Commission's concerns are set out in further detail in the following: Australian Human Rights Commission, *2009 Immigration detention and offshore processing on Christmas Island* (2009), note 122, section 11; Australian Human Rights Commission, *2008 Immigration detention report*, note 114, section 14; Australian Human Rights Commission, *Information provided to the OHCHR study on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration* (2010), at http://humanrights.gov.au/legal/submissions/2010/201004_OHCHR_child_migration.html (viewed 5 May 2010).

¹³⁶ For further details, see Australian Human Rights Commission, *2008 Immigration detention report*, note 114, section 14; Australian Human Rights Commission, *2009 Immigration detention and offshore processing on Christmas Island*, note 122, section 11.

¹³⁷ Department of Immigration and Citizenship, note 117.

¹³⁸ On the mainland there were 70 children in immigration transit accommodation and 14 children in immigration residential housing. On Christmas Island there were 160 children in the 'construction camp' immigration detention facility. These facilities have a much lower level of security than the high security immigration detention centres, and in that sense they are preferable. However, people detained in these facilities remain in immigration detention – they are not free to come and go.

¹³⁹ In 2005, the Minister for Immigration was granted the power to issue a 'residence determination' permitting an immigration detainee to live at a specified residence in the community instead of in an immigration detention facility. This is known as 'community detention'. People in community detention are still immigration detainees in a legal sense, but they are not under physical supervision. They are generally free to come and go, subject to meeting conditions such as living at a specified address, reporting to DIAC on a regular basis, and refraining from engaging in paid work or a formal course of study.

¹⁴⁰ Department of Immigration and Citizenship, note 117.

¹⁴¹ See A last resort, note 132.

¹⁴² Department of Immigration and Citizenship, note 117.

¹⁴³ The Migration Act was amended in 2001 to designate a number of islands as excised offshore places. A person who becomes an unlawful non-citizen by entering Australia at such a place is referred to as an offshore entry person. The purpose of these amendments was to bar offshore entry persons from being able to apply for a visa (including a protection visa) unless the Minister for Immigration determines that it is in the public interest to allow them to do so. See *Migration Act 1958* (Cth), ss 5(1), 46A.

¹⁴⁴ Australian Human Rights Commission, *2009 Immigration detention and offshore processing on Christmas Island*, note 122.

¹⁴⁵ See Australian Human Rights Commission, *2009 Immigration detention and offshore processing on Christmas Island*, note 122, section 3; Australian Human Rights Commission, *2008 Immigration detention report*, note 114, section 13.

¹⁴⁶ Minister for Immigration and Citizenship, 'Changes to Australia's Immigration Processing System' (Joint Media Release with Minister for Foreign Affairs and Minister for Home Affairs, 9 April 2010). At <http://www.minister.immi.gov.au/media/media-releases/2010/ce10029.htm> (viewed 15 April 2010).

¹⁴⁷ According to information provided by the Department of Immigration and Citizenship on 12 April 2010, the suspension will be applied as follows. In the case of asylum seekers from Sri Lanka or Afghanistan who are intercepted at sea or who arrive in an excised offshore place on or after 9 April 2010, all processing relating to their asylum claims will be suspended. In the case of asylum seekers from Sri Lanka or Afghanistan who apply for refugee status on the Australian mainland on or after 9 April 2010, the processing of their applications will be accorded the lowest processing priority.

¹⁴⁸ Australian Human Rights Commission, 'Suspension of processing asylum seekers raises serious concerns' (Media Release, 9 April 2010). At http://humanrights.gov.au/about/media/media_releases/2010/29_10.html (viewed 15 April 2010).

¹⁴⁹ ICERD article 1.2.

¹⁵⁰ United Nations Committee on the Elimination of Racial Discrimination, *General Recommendation 30: Discrimination Against Non Citizens*, UN Doc 01/10/2004, (2004), para 9.

¹⁵¹ United Nations Committee on the Elimination of Racial Discrimination, *Opinion of the Committee on the Elimination of Racial Discrimination under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination: Communication No. 31/2003 : Slovakia*, UN Doc CERD/C/66/D/31/2003 (2005), para 10.4.

¹⁵² UN Committee on the Elimination of Racial Discrimination, *General Recommendation 14: Definition of Discrimination (Art. 1, par. 1)*, UN Doc 22/03/93 (1993).

¹⁵³ The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has made similar recommendations (Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people *Addendum: The Situation of Indigenous Peoples in Australia*, UN Doc A/HRC/15/ (2010). At

<http://www2.ohchr.org/english/issues/indigenous/rapporteur/countryreports.htm> (viewed 18 May 2010)).

¹⁵⁴ This was also a recommendation made by Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people in his 2010 report on Australia (Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Addendum: The Situation of Indigenous Peoples in Australia*, UN Doc A/HRC/15/ (2010). At

<http://www2.ohchr.org/english/issues/indigenous/rapporteur/countryreports.htm> (viewed 18 May 2010)).

¹⁵⁵ This has also been recommended by: the Aboriginal and Torres Strait Islander Social Justice Commissioner (Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008* (2008), ch 4; the Committee on Economic Social and Cultural Rights, (Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*, UN Doc. E/C.12/AUS/CO/4 (June 2009) at

<http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm> (viewed 18 May 2010)); and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Addendum: Situation of Indigenous Peoples in Australia* (2010), UN Doc A/HRC/15, p 30 at <http://www2.ohchr.org/english/issues/indigenous/rapporteur/countryreports.htm> (viewed 18 May 2010)).

¹⁵⁶ This was also a recommendation of the Committee on Economic Social and Cultural Rights, (Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*, UN Doc. E/C.12/AUS/CO/4 (June 2009). At <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm> (viewed 18 May 2010)).

¹⁵⁷ The Committee on Economic, Social and Cultural Rights has recommended the Australian Government preserve and promote bilingual education at schools. Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 And 17 Of The Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights*, Forty-second session Geneva, 4 to 22 May 2009, para 33. At

<http://www2.ohchr.org/english/bodies/cescr/docs/AdvanceVersions/E-C12-AUS-CO-4.doc> (viewed 12 June 2009). Similar recommendations were also made by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Addendum: Situation of Indigenous Peoples in Australia* (2010), UN Doc A/HRC/15 at

<http://www2.ohchr.org/english/issues/indigenous/rapporteur/countryreports.htm> (viewed 18 May 2010)) and the Permanent Forum on Indigenous Issues (Economic and Social Council, Permanent Forum on Indigenous Issues 9th Session, *Draft Report* (2010), UN Doc E/C.19/2010/L.2)..

¹⁵⁸ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009* (2009), ch 3. At http://www.hreoc.gov.au/social_justice/sj_report/sjreport09/chap3.html (viewed 18 May 2010).

¹⁵⁹ Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Addendum: Situation of Indigenous Peoples in Australia* (2010), UN Doc A/HRC/15, para 74. At <http://www2.ohchr.org/english/issues/indigenous/rapporteur/countryreports.htm> (viewed 18 May 2010).

¹⁶⁰ See also the recommendations on native title by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people: Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people *Addendum: Situation of Indigenous Peoples in Australia*, UN Doc A/HRC/15 (2010). At

<http://www2.ohchr.org/english/issues/indigenous/rapporteur/countryreports.htm> (viewed 18 May 2010).

¹⁶¹ Similar recommendations were also made for supporting homelands by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Addendum: Situation of Indigenous Peoples in Australia* (2010), UN Doc A/HRC/15. At

<http://www2.ohchr.org/english/issues/indigenous/rapporteur/countryreports.htm> (viewed 18 May 2010)).

¹⁶² The first phase of the World Programme focuses on primary and secondary level schooling.

¹⁶³ A submission to the Commission for the UPR notes that “the Australian Government refuses to independently investigate the torture and ill treatment of both David Hicks and Mamdouh Habib whilst rendered and illegally detained in Guantanamo Bay. David Hicks is still living under a suspended sentence due to an unlawful conviction (the charges were retrospective and not even legitimate war crimes, not to mention the plea was signed under duress). David Hicks was placed on a gag order and provisions that are outlined in the plea agreement interfere directly with his freedom of expression. He was placed on a control order which severely impinged on his human rights (freedom of expression, movement, association etc).” It urges that “the Australian Government undertake an independent, thorough and binding investigation into the allegations of torture and ill treatment made by the Australians rendered and illegally detained at Guantanamo Bay, the Government’s involvement in the treatment, and the subsequent legality of the conviction of David Hicks and their involvement in the process.”

¹⁶⁴ *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (2002) (OPCAT). At <http://www2.ohchr.org/english/law/cat-one.htm> (viewed 4 May 2010). The Australian Government has signed OPCAT, but has not yet ratified it.

¹⁶⁵ See A last resort, note 132.

¹⁶⁶ See Australian Human Rights Commission, *2009 Immigration detention and offshore processing on Christmas Island*, note 122, section 3; Australian Human Rights Commission, *2008 Immigration detention report*, note 114, section 13.



Australian
Human Rights
Commission

Information concerning Australia's compliance with the International Convention on the Elimination of All Forms of Racial Discrimination

**AUSTRALIAN HUMAN RIGHTS COMMISSION
SUBMISSION TO THE UN COMMITTEE ON THE
ELIMINATION OF RACIAL DISCRIMINATION**

30 October 2017

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1 Introduction

1. This submission is made by the Australian Human Rights Commission. The Commission is an 'A status' national human rights institution established and operating in full compliance with the Paris Principles.
2. The Commission has a statutory power to promote and protect human rights under the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act). The AHRC Act defines human rights as the international instruments scheduled to or declared under the AHRC Act, which includes the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD). The Commission's work relating in this area is led by Dr Tim Soutphommasane, Australia's Race Discrimination Commissioner.
3. *The Racial Discrimination Act 1975* (Cth) (RDA) gives effect to Australia's international human rights commitments, including CERD, and promotes equality between people of different backgrounds. The RDA protects people across Australia from unfair treatment on the basis of their race, colour, descent, or national or ethnic origin in different areas of public life. It also makes racial vilification unlawful.
4. The Commission has the power under the AHRC Act to investigate and conciliate complaints made under the RDA by people who experience direct or indirect discrimination. Further information about the Commission can be found at www.humanrights.gov.au.
5. The Commission thanks the United Nations Committee on the Elimination of Racial Discrimination (the Committee) for the opportunity to provide a written contribution prior to its consideration of Australia's 18th to 20th periodic report under CERD. The Commission looks forward to further engaging with the Committee.
6. The Commission recognises the steps taken by the Australian Government to improve Australia's human rights situation following the Committee's concluding observations in respect of Australia's 15th to 17th periodic report. The primary purpose of this submission is to identify issues of concern to assist the Committee with its assessment of Australia's 18th to 20th periodic report at the Committee's 94th session in Geneva.
7. This submission provides information concerning racial discrimination experienced by key population groups in Australia and other thematic issues relating to racial discrimination. In relation to each section, the Commission has, where appropriate, referred to the relevant articles of CERD engaged and the relevant paragraph of the Committee's concluding observations of 13 September 2010 on Australia's 15th to 17th periodic report.
8. This submission is based on work that has been undertaken by the Commission in accordance with its mandate and functions, or otherwise on publicly available information. The Commission has brought the issues raised in this submission to the attention of the Australian Government.

9. The Commission's proposed recommendations are contained in the body of this submission and also compiled in **Attachment 1**.

2 Priority areas

10. The Commission considers all of the information and recommendations provided in this submission to be of importance to Australia's compliance with CERD. However, the Commission wishes to draw the Committee's attention to three areas of particular importance:
- The collection of comprehensive data in relation to racial discrimination, cultural diversity, racially motivated crimes and multiculturalism generally, as discussed in [section 4.5](#).
 - Consideration and implementation of relevant recommendations, once released, of the Royal Commission into the Protection and Detention of Children in the Northern Territory, as discussed in [section 5.4\(b\)](#).
 - Training of police in cultural competency and anti-racism; compliance of police practices with international human rights law (including those rights enshrined in CERD and given expression in the *Racial Discrimination Act 1975* (Cth)); and the response of the Queensland Government to *Wotton v State of Queensland (No 5)* [2016] FCA 1457, as discussed in [section 7](#).
11. **The Commission recommends that the Committee request an update from the Australian Government on progress in relation to the following priority areas in 12 months time under article 9(1) of CERD and rule 65 of the Rules of procedure:**
- i. **The collection of comprehensive data in relation to racial discrimination, cultural diversity, racially motivated crimes and multiculturalism generally (see Recommendation 18).**
 - ii. **Consideration and implementation of relevant recommendations, once released, of the Northern Territory Royal Commission into Children in Detention (see Recommendation 22).**
 - iii. **Training of police in cultural competency and anti-racism; compliance of police practices with international human rights law (including those rights enshrined in CERD and given expression in the Racial Discrimination Act 1975 (Cth)); and the response of the Queensland Government to *Wotton v State of Queensland (No 5)* [2016] FCA 1457 (see Recommendation 37).¹**

3 Human rights framework

3.1 *Scrutiny of human rights and the Parliamentary Joint Committee on Human Rights (CERD article 2; CO 9 & 10)*

12. The Commission commends the Australian Government for establishing the Parliamentary Joint Committee on Human Rights (PJCHR) in 2011.
13. The PJCHR analyses bills and legislative instruments introduced into the federal Parliament for compliance with human rights. Since August 2012, the PJCHR has produced over 65 reports to Parliament assessing over 960 bills.²
14. The *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) requires each bill, regulation and ordinance introduced into Parliament to be accompanied by a statement of compatibility with human rights, defined as the seven core international human rights instruments to which Australia is a party.³
15. The Commission is concerned that the PJCHR's views and concerns do not always appear to be given consideration during the legislative process. It is also concerned that it is possible for a bill to pass into law prior to the PJCHR releasing its conclusions in relation to the human rights compliance of the bill.⁴
16. The Commission is concerned that there is variable quality in the drafting of statements of compatibility within and across Government departments.⁵ Some statements of compatibility devote cursory attention to assessing a draft law's identified impingement on human rights and some simply assert (without due explanation) that a draft law is compatible with human rights even where an impingement on rights has been acknowledged.⁶
17. The Commission notes that some other parliamentary committees also scrutinise legislation and consider compliance with human rights.⁷
18. The Commission notes that the Australian Law Reform Commission (ALRC) has made a number of suggestions to improve the mechanisms and processes for the scrutiny of laws for compatibility with rights and freedoms (including the PJCHR).⁸

Recommendation 1: That the Australian Government ensure that concerns raised by the Parliamentary Joint Committee on Human Rights are fully considered in the legislative process.

Recommendation 2: That the Australian Government ensure that all statements of compatibility are consistently of a high standard and are supported by evidence and analysis.

3.2 Domestic incorporation (CERD article 2; CO 9, 10 & 17)

(a) Incorporation of CERD

19. Australia implements CERD primarily through the RDA and the work of the Commission.⁹ There are also anti-discrimination laws at state and territory level relating to racial discrimination.¹⁰
20. The Commission notes the following gaps that remain in Australia's domestic incorporation of CERD:
 - i. The federal Parliament may by express words, or by implication, amend any existing federal legislation through the making of subsequent legislation. The federal Parliament can therefore amend or repeal the RDA as it sees fit.¹¹ Accordingly, the RDA does not offer comprehensive protection against racially discriminatory laws passed by the federal Parliament. The most recent example of a federal law that overrode the RDA protections was the legislation that brought into effect the Northern Territory Emergency Response (also referred to as the 'Northern Territory Intervention').¹²
 - ii. Judicial interpretation of what constitutes 'special measures' under s 8 of the RDA does not fully comply with the Committee's *General Recommendation No 32*.¹³ For example, there is no requirement that affected groups be consulted and participate in the design and implementation of proposed special measures. There is also no requirement for the objective of special measures to alleviate present disparities in the enjoyment of human rights, protect groups and individuals from discrimination or prevent further imbalances.¹⁴ The Committee is aware of successive governments' reliance on special measures to implement racially discriminatory measures as part of the NT Intervention.¹⁵
 - iii. Australia made a reservation to CERD in relation to the criminalisation of racial hatred (article 4).¹⁶ The Government has recently maintained that it will not presently consider withdrawal of this reservation.¹⁷
21. The Commission notes that Australia's constitutional arrangements do not fully protect against racial discrimination. In particular:
 - i. Section 25 of the Australian Constitution contemplates the ability of Australian state governments to disqualify a group of people from voting based on race.
 - ii. Under Australia's Constitution, the federal Parliament is permitted to make laws under enumerated 'heads of power' in s 51. Under s 51(xxix), the 'external affairs power', the federal Parliament may pass legislation that implements international treaty obligations.¹⁸ However, under s 51(xxvi), the 'races power', the federal Parliament may pass laws with respect to 'the people of any race for whom it is deemed necessary to make special laws'.¹⁹ Judicial interpretation of the 'races power' suggests that it is not limited to matters that are beneficial in

nature and could validly support the passage of adverse racially discriminatory laws.²⁰

22. There have been calls for the repeal of s 25 and the reform or repeal of the 'racies power' as a means of removing the potential for discrimination on the basis of race from the Constitution.²¹
23. Recently, the Australian Government appointed a Referendum Council to identify how best to recognise Aboriginal and Torres Strait Islander peoples in the Australian Constitution. In that context, the Referendum Council recommended the monitoring of the use of the 'racies power'.²² It did not otherwise recommend the repeal or amendment of the 'racies power' or s 25, noting that it 'does not go far enough and would not be acceptable to Aboriginal and Torres Strait Islander peoples'.²³ The Commission directs attention to [section 5.3](#) below regarding constitutional recognition of Aboriginal and Torres Strait Islander peoples.
24. To our knowledge, the Australian Government has not articulated a position on constitutional reform of s 25 and the 'racies power'. In relation to these constitutional issues, the Commission has previously suggested the:
 - i. removal of s 25, and
 - ii. insertion of a provision guaranteeing, for all Australians, equality before the law and freedom from discrimination, with such a protection drafted in a way that would guide the operation of the 'racies power' to ensure that 'special laws' for the people of a particular race could not be made if they were (adversely) discriminatory.²⁴
25. The scrutiny provided for by the PJCHR, while a welcome extension of existing parliamentary rights review mechanisms, is not a substitute for full incorporation of CERD into domestic law through mechanisms such as a national human rights Act. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (Special Rapporteur on racial discrimination), the Special Rapporteur on rights of indigenous peoples and the Special Rapporteur on human rights of migrants have each recently recommended that Australia adopt some form of comprehensive federal human rights Act, such as a bill or charter of rights.²⁵
26. The Commission considers that full incorporation of CERD requires a comprehensive protection against any racially discriminatory federal laws.

Recommendation 3: That the Australian Government:

- **fully incorporate CERD into Australian law**
- **ensure that federal laws do not undermine the protections in the *Racial Discrimination Act 1975* (Cth), and**
- **explore options to remove any potential for racially discriminatory laws to be passed under the Australian Constitution. The Commission notes that this is a separate issue to developing with**

Aboriginal and Torres Strait Islander peoples a model for their recognition in the Australian Constitution and negotiating in good faith with Aboriginal and Torres Strait Islander peoples about national representative mechanisms.

(b) Implementation of Committee's Concluding Observations

27. The Commission notes that Australia's 18th to 20th periodic report was due on 30 October 2014, but only submitted to the Committee on 2 February 2016. The Commission commends the Australian Government's establishment of a Standing National Human Rights Mechanism to strengthen its engagement with human rights reporting. This is an opportunity to improve the timeliness of Australia's responses to UN treaty body communications.
28. The Commission also notes that there is no domestic mechanism in place to consider, coordinate or implement the recommendations or the concluding observations of the Committee.

Recommendation 4: That the Australian Government introduce formal mechanisms to consider and implement recommendations of treaty committees, including the concluding observations of the Committee in relation to Australia's 18th to 20th periodic report under CERD.

(c) Ratification of OPCAT

29. The Commission remains concerned by the gaps in independent monitoring of places of detention in Australia (including in respect of population groups which are prone to racial discrimination, particularly of Aboriginal and Torres Strait Islander peoples and refugees and asylum seekers).
30. On 9 February 2017, the Australian Government announced its intention to ratify the *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT). OPCAT provides for ongoing independent monitoring of places of detention, to ensure adherence to minimum standards in conditions and treatment.
31. The Commission commends the Australian Government's commitment to ratify OPCAT by December 2017.²⁶

Recommendation 5: That the Australian Government fulfil its commitment to ratify the *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) by December 2017 and commence its progressive implementation immediately thereafter.

(d) Other relevant instruments

32. The Commission notes that the Australian Government has not ratified the *Convention on Protection of the Rights of All Migrant Workers and Members of Their Families* (ICRMW) and is not a party to *ILO Convention No 169 concerning Indigenous and Tribal Peoples in Independent Countries*. The

Commission considers that ratification of these instruments would assist Australia's compliance with CERD.²⁷

33. As noted in [section 5.2](#) below, the Commission also considers that the Australian Government should give effect to the UN Declaration on the Rights of Indigenous Peoples.

Recommendation 6: That the Australian Government consider ratification of the *Convention on Protection of the Rights of All Migrant Workers and Members of Their Families* and other international instruments relating to issues of racial discrimination.

3.3 Education (CERD article 7; CO 11, 21 & 27)

(a) Human rights education in the national curriculum

34. The Commission commends the inclusion of some references to human rights in the national school curriculum, but considers that this could be improved.
35. The Special Rapporteur on the rights of indigenous peoples noted that the mainstream education system contains inadequate components of Aboriginal and Torres Strait Islander history and the impact of colonisation.²⁸
36. The Special Rapporteur on racial discrimination noted that the teaching of Indigenous subjects, particularly of languages and cultures, remains non-existent or very rare.²⁹ The Commission welcomes the recent *Aboriginal Languages Act 2017 No 51* (NSW), which received assent on 24 October 2017. The Act establishes an 'Aboriginal Languages Trust' to bring together persons with relevant profession qualifications in languages and persons with knowledge of Aboriginal languages to perform various functions, including promotion of education in Aboriginal language activities.³⁰ The Commission considers it important that sufficient ongoing funding be provided to the Aboriginal Languages Trust so that it can successfully fulfil its functions. The Commission also considers it important for the NSW government to ensure that the legislation does not seek to impose ministerial controls or intervention in relation to Aboriginal languages.³¹

Recommendation 7: That the Australian Government incorporate more comprehensive human rights education (including in relation to racial discrimination and CERD) in the national school curriculum.

(b) Multiculturalism education in the national curriculum

37. While surveys consistently demonstrate strong public support for multiculturalism in Australia,³² public understanding about cultural diversity can be strengthened. In more general terms, Australians' civic knowledge, including their understanding of the political system, has been found to be low.³³ A more comprehensive civics education, including through the formal school curriculum, could encompass a clear articulation of multiculturalism and values of cultural diversity.

38. The Commission refers to the recent parliamentary inquiry into strengthening multiculturalism and the resulting report of the Select Committee on Strengthening Multiculturalism.³⁴ Noting the social and economic value of a multilingual Australia, and the role of interfaith and intercultural understanding in promoting social cohesion, the Select Committee has recommended the development of an intercultural and multicultural education curriculum including 'compulsory language education' and 'comprehensive intercultural education' for primary and secondary school students.³⁵

Recommendation 8: That the Australian Government strengthen public education about multiculturalism, including through the national school curriculum.

(c) *Human rights education in the public service*

39. The Commission considers that human rights education for public servants could be improved, especially for those officials in the administration of justice and with legislative responsibilities to develop statements of compatibility with human rights for newly proposed legislation.
40. The Commission also notes that Australia's activities for the World Program for Human Rights Education are uncoordinated and not systematic.

Recommendation 9: That the Australian Government support human rights education for all areas of the public sector, particularly in the administration of justice and places of detention, including targeted initiatives for public officials.

(d) *National Anti-Racism Strategy*

41. Education initiatives such as the National Anti-Racism Partnership and Strategy (the Strategy), coordinated by the Commission, play a vital role in supporting the maintenance of racial tolerance. The aim of the Strategy is to promote a clear understanding in the Australian community of what racism is, and how it can be prevented and reduced.³⁶
42. The Commission conducted an evaluation of the Strategy in 2015 and concluded that it has been effective in raising awareness of racism and how best to respond to it.³⁷
43. A key component of the Strategy is a national anti-racism campaign, *Racism. It Stops with Me*.³⁸ The campaign now has more than 360 organisational supporters, from across local and state governments, business, education, sporting organisations, the arts and civil society.
44. The Commission commends the Australian Government's commitment to support the Strategy and the *Racism. It Stops with Me* campaign.³⁹
45. The Commission notes that the Select Committee on Strengthening Multiculturalism has recommended that the Australian Government continue to provide ongoing support for the Strategy, through continuing to fund activities that raise public awareness and empower individuals and communities to

prevent and reduce the incidence of racism, and promoting the Strategy at relevant opportunities.⁴⁰

Recommendation 10: That the Australian Government continue to support the anti-racism and other educative work of the Commission, including the National Anti-Racism Partnership and Strategy.

4 Racial discrimination in Australia

4.1 Multicultural Australia

46. Australia has experienced successive waves of mass immigration since the end of the Second World War. An estimated 26% of the Australian population was born overseas and about 49% of the Australian population has at least one parent who was born overseas.⁴¹ The two largest source countries of permanent settlement are currently China and India.⁴²
47. Australia has been highly successful in the economic and civic integration of immigrants. In 2015 the 'foreign-born' unemployment rate was lower than the 'native-born' rate, and was the fifth lowest in the OECD.⁴³ The children of immigrants constitute a higher proportion of people in highly skilled occupations than the children of 'native-born' parents.⁴⁴
48. In the Scanlon Foundation's *Australians Today* survey, almost two-thirds of migrant respondents indicated a sense of belonging in Australia to a 'great' or 'moderate' extent, while only 9% of recent arrivals indicated no sense of belonging in Australia 'at all'.⁴⁵
49. The Commission further notes that migrants to Australia have a high uptake of citizenship.⁴⁶ The national Au@2015 survey found that 82% of those migrants who had been resident in Australia for between 15 and 24 years had become citizens. The highest take-up of citizenship for those who had been resident in Australia for between five and nine years was by migrants from South Sudan (91%), Iraq (89%), and the Philippines (83%).⁴⁷

4.2 Racial discrimination generally

50. Despite Australia's success as a multicultural nation, racial discrimination continues to be present in Australian society.
51. The Commission draws the Committee's attention to the Scanlon Foundation's 2016 'Mapping Social Cohesion' Survey report (2016 Scanlon Survey).⁴⁸ The 2016 Scanlon Survey brings together a series of detailed surveys on social cohesion, immigration and population issues in Australia.
52. According to the 2016 Scanlon Survey, those of non-English speaking backgrounds in the Australian population reported the highest experience of discrimination, 27% compared to 17% of those born in Australia and 19% of those born overseas in English speaking countries.⁴⁹

53. The 2016 Scanlon Survey also reveals an increase of 5% in the number of respondents indicating experience of discrimination based on skin colour, ethnicity or religion, from 15% to 20%. This is the highest level recorded in the history of the Scanlon Foundation Surveys.⁵⁰
54. In its national consultations in 2015, which focused on lived experiences of racism, the Commission found the persistence of the following forms of racial discrimination: discrimination in employment; racial vilification and bigotry; and social exclusion.⁵¹ It also found strong community support for existing legislative protections against racial discrimination and hatred.⁵² This is a finding supported by survey evidence.⁵³
55. In carrying out its conciliation function, the Commission records statistics relating to complaints of discrimination, harassment and vilification. In the 2016–17 reporting year, 21% of all complaints (409 complaints) received by the Commission were received under the *Racial Discrimination Act 1975* (Cth) (RDA). Of those complaints, 26% related to employment, 20% related to the provision of goods and services, and 34% related to racial hatred.⁵⁴

Recommendation 11: That the Australian Government recognise the importance of maintaining effective legal protections against racial discrimination and hatred in setting a standard for public conduct in a multicultural society.

4.3 Strengthening multiculturalism

56. The Commission considers that strengthening multiculturalism is an important aspect of protecting persons from racial discrimination, improving cultural diversity in institutions and organisations and promoting CERD rights.
- (a) *Multiculturalism policy (CERD article 2; CO 14)*
57. The Commission commends the Australian Government's 2017 multicultural policy statement, 'Multicultural Australia: United, Strong, Successful'. The statement rejects racism, affirms the value of mutual respect, and emphasises the safety and productivity of Australia.⁵⁵

Recommendation 12: That the Australian Government continue to support a policy of multiculturalism as a means of promoting social cohesion, cultural harmony and national unity.

- (b) *Multiculturalism legislation (CERD article 2; CO 14)*
58. The Commission considers that public recognition of Australian multiculturalism is important.
59. The Select Committee on Strengthening Multiculturalism recommended that the Australian Government consider developing and implementing a federal Multicultural Act to enshrine agreed principles of multiculturalism to support and frame multiculturalism in Australia.⁵⁶ Others have also advocated for the introduction of a federal Multicultural Act.⁵⁷

60. The Commission notes that Parliament may be well positioned to clarify the meaning of multiculturalism in Australia and that an annual parliamentary statement of multicultural principles may be an appropriate mechanism for a regular re-commitment to multicultural values and cultural diversity. In 2016 Parliament reiterated its 'commitment to maintaining Australia as a culturally diverse, tolerant and open society, united by an overriding commitment to our nation, and its democratic institutions and values'.⁵⁸

Recommendation 13: That the Australian Parliament consider further public recognition of Australian multiculturalism, including periodic public statements affirming parliamentarians' support of a multicultural Australia.

(c) Policy machinery (CERD article 2; CO 14)

61. The Commission considers that the Australian Government can strengthen the policy machinery for multiculturalism. An Office of Multicultural Affairs functioned in the 1980s and 1990s. Such an office would ensure coordinated leadership on multicultural affairs and, if established in an appropriate departmental home (such as the Department of Prime Minister and Cabinet), would send a strong message about multiculturalism being a policy priority.
62. The Commission also notes that the Select Committee on Strengthening Multiculturalism recommended that the Australian Government, in consultation with relevant government, non-government and community bodies, consider developing and implementing federal legislation to establish an ongoing Multicultural Commission that is sufficiently resourced to promote and protect multiculturalism throughout Australia, ensuring that all Australians recognise that multiculturalism is essential to the fabric of the Australian nation.⁵⁹

Recommendation 14: That the Australian Government strengthen the policy machinery of Australian multiculturalism, including through the re-establishment of an Office of Multicultural Affairs.

(d) Citizenship requirements (CERD article 2; CO 14)

63. The Commission is concerned about the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 (Cth), which, if passed, will make it more difficult to obtain Australian citizenship by: imposing additional requirements on people seeking to obtain Australian citizenship by conferral;⁶⁰ centralising discretionary power in the hands of the Minister to make decisions about who should and who should not be an Australian citizen, with very limited rights of external review; and reducing the ability of particular groups of people to qualify for citizenship.⁶¹
64. A Senate Legal and Constitutional Affairs Committee inquiry into the Bill recommended that the Senate pass the Bill subject to numerous proposed amendments, including lowering the standard for English-level competency.⁶² The Senate Select Committee for Strengthening Multiculturalism, however, recommended that the Bill not be passed.⁶³

65. The Bill passed the Australian House of Representatives on 14 August 2017. However, the Bill was discharged from the Notice Paper in the Australian Senate on 18 October 2017 and is no longer under active consideration.⁶⁴
66. The Commission also notes the Australian Government's ongoing consultation regarding simplification of Australia's visa system.⁶⁵

Recommendation 15: That the Australian Parliament not pass the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 in its current form.

Recommendation 16: That the Australian Government ensure that any amendment to Australia's visa system comply with international human rights law (including rights enshrined in CERD).

4.4 Cultural diversity in Australian organisations and institutions (CERD article 5; CO 14)

(a) Leadership

67. There is currently a limited level of cultural diversity represented in the leadership of Australian organisations and institutions.⁶⁶
68. The Commission notes the 2016 Blueprint for cultural diversity and inclusive leadership, *Leading for Change*, a publication of the Working Group on Cultural Diversity and Inclusive Leadership, convened by the Race Discrimination Commissioner.⁶⁷ The Blueprint provides a snapshot of the cultural composition of senior leaders in Australian business, politics, government and civil society. The Blueprint found an 'under-representation' of cultural diversity in leadership positions in Australia. It notes that:
- of CEOs in ASX 200 companies, 76.62% had an 'Anglo-Celtic' background, 18.41% had a 'European' background, 4.98% had a 'non-European' background and none had an 'Indigenous' background
 - of federal parliamentarians, 78.76% had an 'Anglo-Celtic' background, 15.93% had a 'European' background, 3.54% had a 'non-European' background and 1.77% had an 'Indigenous' background
 - of federal Ministers and Assistant Ministers, 85.71% had an 'Anglo-Celtic' background, 11.90% had a 'European' background, 2.38% had an 'Indigenous' background and none had a 'non-European' background
 - of federal and state public service leaders (Secretaries and heads of departments), 82.26% had an 'Anglo-Celtic' background, 15.32% had a 'European' background, 1.61% had a 'non-European' background and 0.81% had an 'Indigenous' background

- of university Vice-Chancellors, 85% had an 'Anglo-Celtic' background, 15% had a 'European' background, and none had a 'non-European' or 'Indigenous' background.⁶⁸

(b) *Media*

69. A Screen Australia study on diversity in Australian TV drama in 2016 found an underrepresentation of culturally diverse, 'non-Anglo-Celtic' groups on Australian television. The study notes that people of 'non-European' backgrounds were particularly underrepresented.⁶⁹
70. The Commission refers to its 2010 review of human rights and social inclusion issues affecting African Australians (*In Our Own Words* report),⁷⁰ and notes that African Australians expressed concern about the negative coverage of their communities in the mainstream media, often triggered by comments from public figures, which influenced overall perceptions of their communities and undermined their relationships with the broader Australian community.⁷¹
71. The Select Committee on Strengthening Multiculturalism concluded that the evidence presented throughout its inquiry into multiculturalism demonstrated a lack of diversity in on-screen media content, which is in part due to systemic barriers to participation by, and representation of, culturally and linguistically diverse communities. The Select Committee recommended that all media broadcasters seek to improve pathways for culturally and linguistically diverse individuals and communities to participate in broadcast media.⁷²

(c) *Law enforcement*

72. The Special Rapporteur on racial discrimination, in the report of his recent country visit to Australia, has recommended that the Australian Government ensure that law enforcement agencies, in particular police forces, reflect the diversity of Australian society and the communities they serve and increase their intake of recruits from Indigenous and minority communities.⁷³

Recommendation 17: That the Australian Government consider the recommendations of the Select Committee on Strengthening Multiculturalism and investigate pathways to improve cultural diversity in Australian institutions and organisations.

4.5 Data collection (CERD article 2; CO 23)

73. The Commission refers to its own collection of data relating to complaints of discrimination, harassment and vilification.⁷⁴
74. The Commission is concerned that there is currently no comprehensive process in Australia for collecting data on crimes motivated by racial hatred or prejudice.⁷⁵ The Commission refers to and endorses the recommendation of the Select Committee on Strengthening Multiculturalism that the Australian Government consider developing options for collecting more comprehensive data on issues concerning multiculturalism and racially motivated crimes.⁷⁶

75. The Commission strongly considers that there is a need for the Australian Government to collect better data on cultural diversity in Australian organisations and institutions.
76. The Commission draws the Committee's attention to the UK Race Disparity Audit, a governmental audit into racial disparities performed across Britain to examine how people of different backgrounds are treated across areas including health, education, employment and the criminal justice system.⁷⁷ The Prime Minister of the United Kingdom, Theresa May, has said that the audit data may be 'uncomfortable', but will also be 'regarded as the central resource in the battle to defeat ethnic injustice'.⁷⁸ The Commission encourages the Australian Government to commission a comprehensive audit into racial disparity in Australia.

Recommendation 18: That the Australian Government collect more comprehensive data on racial discrimination, racially motivated crimes, cultural diversity and multiculturalism generally.

The Commission considers this to be of such importance that the Committee should request an update from the Australian Government on progress in 12 months.

5 Aboriginal and Torres Strait Islander peoples

5.1 Experiences of racial discrimination

77. Aboriginal and Torres Strait Islander peoples are particularly affected by racial discrimination, including institutional racism. There are numerous studies into institutional racism and Aboriginal and Torres Strait Islander peoples.⁷⁹ Settings identified as being of special concern include employment, education, shops, public spaces and sport, health and justice.⁸⁰
78. The Commission noted in its 2016 Social Justice Report that most complaints to the Commission made by Aboriginal and Torres Strait Islander peoples were about racial discrimination.⁸¹ While the 2016 Australian Census found that Aboriginal and Torres Strait Islander people represented 2.8% of the Australian population, of all complaints made under the RDA in 2016–17, 25% were made by Aboriginal and Torres Strait Islander people.⁸²
79. The Special Rapporteur on the rights of indigenous peoples found the prevalence of racism against Aboriginal and Torres Strait Islander peoples to be 'deeply disturbing',⁸³ and that 'racism manifests itself in different ways, ranging from public stereotyped portrayals as violent criminals, welfare profiteers and poor parents, to discrimination in the administration of justice'.⁸⁴

5.2 UN Declaration on Indigenous Peoples (CERD article 2; CO 15)

80. The Commission considers that more robust consideration and implementation of the *UN Declaration on Indigenous Peoples* (Declaration)

would address a number of racial discrimination issues faced by Aboriginal and Torres Strait Islander peoples. The Commission supports the use of the Declaration as a guide for interpreting Australia's obligations under CERD as they relate to Indigenous peoples.⁸⁵

81. The Special Rapporteur on the rights of indigenous peoples has called for the Declaration to be specifically included in the definition of human rights in the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).⁸⁶
82. Further, the Commission considers that the Declaration should be used to frame the Australian Government's engagement with Indigenous peoples. In particular, the Commission considers that the Australian Government should consult and cooperate with Aboriginal and Torres Strait Islander peoples in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Recommendation 19: That the Australian Government, in partnership with Aboriginal and Torres Strait Islander peoples, develop a National Strategy to give effect to the *UN Declaration on the Rights of Indigenous Peoples*.

Further, that the Declaration be included in the definition of 'human rights' in the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) to ensure that legislation is regularly assessed for conformity with the Declaration.

5.3 Constitutional recognition (CERD article 1, 2, 5, 6; CO 15)

83. The Commission notes the First Nations National Constitutional Convention to discuss constitutional recognition, held on 23–26 May 2017. The Uluru Statement from the Heart (Uluru Statement) was adopted at the Convention. The Uluru Statement calls for the establishment of a First Nations' Voice enshrined in the Constitution and of a Makarrata Commission to supervise a process of agreement making between governments and First Nations that includes truth telling about Aboriginal and Torres Strait Islander peoples' history. The Commission welcomes the Uluru Statement and supports the calls for a First Nations' Voice to Parliament.⁸⁷
84. The Commission is very concerned by the Australian Government's recent announcement that it rejects the proposal for the establishment of a constitutionally enshrined First Nations' Voice to Parliament.⁸⁸
85. The Australian Government has recently suggested that a parliamentary Joint Select Committee will consider the question of constitutional recognition of Aboriginal and Torres Strait Islander peoples.⁸⁹ This parliamentary Committee will give consideration to the recommendations of the existing bodies of work developed by the Expert Panel on Constitutional Recognition of Indigenous Australians (2012)⁹⁰, the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (2015)⁹¹ and the Referendum Council (2017)^{92, 93}

86. The Special Rapporteur on the rights of indigenous peoples has encouraged the Australian Government to explore the possibility of a national ‘treaty’ with Aboriginal and Torres Strait Islander peoples.⁹⁴ The Commission notes that, while there are discussions about a Makarrata Commission at the national level, ‘treaty’ negotiations are more likely to take place at the state level. The Commission notes that ‘treaty’ discussions have commenced in Victoria and South Australia.⁹⁵
87. The Special Rapporteur on racial discrimination has recommended that the Australian Government finalise a constitutional amendment in order to recognise the inherent rights and culture of Aboriginal and Torres Strait Islander peoples and set up constitutionally protected institutions to protect their ancestral rights and promote their culture and identity.⁹⁶

Recommendation 20: That the Australian Government develop with Aboriginal and Torres Strait Islander peoples a model for constitutional recognition and negotiate in good faith with Aboriginal and Torres Strait Islander peoples about national representative mechanisms.

5.4 Incarceration of Aboriginal and Torres Strait Islander people (CERD article 5; Declaration articles 7 & 22; CO 19 & 20)

(a) Disproportionate rates of incarceration

88. The Commission is extremely concerned that Aboriginal and Torres Strait Islander people are significantly overrepresented in Australia’s prison population,⁹⁷ especially those with mental health disorders or cognitive disability⁹⁸ and children.⁹⁹
89. Rates of imprisonment of Indigenous women are extremely concerning. Aboriginal and Torres Strait Islander women account for 34% of the adult female prison population.¹⁰⁰ It is also important to note that 80% of Aboriginal and Torres Strait Islander women in prison are mothers.¹⁰¹
90. Despite currently being only 2% of the total Australian population aged over 18 years, Aboriginal and Torres Strait Islander prisoners represent over a quarter (27%) of all prisoners in Australia.¹⁰²
91. Laws and policies disproportionately affecting Aboriginal and Torres Strait Islander people have contributed to these incarceration rates. In particular, the Commission notes:
- Imprisonment from fine default — often caused by small overdue fines for criminal offences that, on their own, do not carry an imprisonment penalty — is contributing to high incarceration rates.¹⁰³
 - Bail laws and policies have become more restrictive in Australia and have led to a significant increase in the number of Aboriginal and Torres Strait Islander people held on remand.¹⁰⁴ Research indicates that the length of time individuals spend on remand affects the

likelihood of them receiving a custodial rather than non-custodial sentence.¹⁰⁵

- The Special Rapporteur on the rights of Indigenous peoples has said that mandatory sentencing laws need to be reviewed.¹⁰⁶
 - The Commission has previously reported on several cases where Indigenous people are in prolonged detention due to being considered ‘unfit to plead’, resulting in them being detained for a period longer than the maximum sentence if they had been tried and found guilty.¹⁰⁷
92. The Commission notes that the current inquiry by the ALRC into the incarceration of Aboriginal and Torres Strait Islander peoples, reporting in December 2017, will assist in identifying laws requiring amendment to reduce Indigenous incarceration.¹⁰⁸
93. The Commission has advocated that justice targets be set to halve the gap in rates of incarceration for Aboriginal and Torres Strait Islander peoples, as compared with non-Indigenous people.¹⁰⁹ The Senate Legal and Constitutional Affairs Committee, and successive Social Justice Commissioners, have recommended justice reinvestment strategies, which involve diverting and reinvesting funds used for imprisonment to services that address underlying causes of crime in communities with high rates of offending.¹¹⁰
94. The Commission notes that the Australian Government recently expressed its support for states and territories to implement a justice reinvestment approach, but noted that it ‘cannot effectively fund justice reinvestment projects because state and territory governments are solely responsible for managing corrections systems in Australia’ and that ‘the success of justice reinvestment ... ultimately rests with the states and territories’.¹¹¹

Recommendation 21: That all Australian governments commit to national justice targets to reduce the rates of imprisonment of Aboriginal and Torres Strait Islander adults and juveniles and that these targets be introduced into the Closing the Gap Strategy.

(b) Northern Territory Royal Commission

95. The Commission is extremely concerned about the conditions of detention for Aboriginal and Torres Strait Islander juveniles.
96. The Commission commends the Australian Government’s establishment of a Royal Commission into the Protection and Detention of Children in the Northern Territory (NT Royal Commission).¹¹² The inquiry is considering the situation of all juveniles in detention and care and protection in the Northern Territory. However, statistics show that 94% of the children and young people in detention in the Northern Territory are Aboriginal.¹¹³ Furthermore, 89% of children and young people in out-of-home care in the Northern Territory are Aboriginal.¹¹⁴
97. The NT Royal Commission released its interim report on 31 March 2017. The interim findings noted that site visits to the current youth detention centres

have revealed fundamental problems with the structural design of the Northern Territory youth detention centres. The NT Royal Commission has heard concerns about the age and unhygienic conditions of the detention centres, their inappropriate design, the absence of privacy and the lack of windows for natural light and ventilation.¹¹⁵

98. The Royal Commission will deliver its final report on 17 November 2017.

Recommendation 22: That the Australian Government, with the Northern Territory Government, swiftly consider the implementation of its response to the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory once its final report is delivered.

The Commission considers this issue to be of such importance that the Committee should request an update from the Australian Government on progress in 12 months time.

(c) *Deaths in police custody*

99. The issue of Aboriginal and Torres Strait Islander deaths in police custody and in prison has been cause for alarm for several decades. The 25 year anniversary of the recommendations of the Royal Commission into Aboriginal Deaths in Custody was in 2016.¹¹⁶ The Commission is concerned that the issue of deaths in police custody remains a serious issue. Nationally in 2014–15, there were 11 deaths in police custody, of which five were Aboriginal and Torres Strait Islander deaths.¹¹⁷
100. The Commission notes the death of Cameron Doomadgee (known posthumously as Mulrunji) in police custody in 2004 on Palm Island and its aftermath and directs attention to issues of discriminatory police practices, as discussed in [section 7](#) below.
101. The Commission also refers to ‘paperless arrest’ laws in the Northern Territory, which provide police with the power to detain a person for up to four hours (or longer if the person is intoxicated) if they suspect the person has committed or is about to commit an ‘infringement notice offence’ (a minor offence).¹¹⁸ The Commission considers that ‘paperless arrest’ laws lead to the unnecessary locking up of Aboriginal and Torres Strait Islander people and are inconsistent with the recommendations of the Royal Commission into Aboriginal Deaths and Custody.¹¹⁹

5.5 Family/domestic violence (CERD article 5 & Declaration article 22)

102. Aboriginal and Torres Strait Islander women are particularly at risk of violence.¹²⁰ They are hospitalised for family violence-related assault at 30 times the rate of non-Indigenous women.¹²¹ Aboriginal and Torres Strait Islander children are overrepresented as child victims of physical assault and sexual assault in a residential location.¹²² The issue of violence against Aboriginal and Torres Strait Islander women and children remains a national

crisis. Indigenous women, men and children must be included in national discussions to appropriately identify and address violence.

103. The Commission notes that the *National Plan to Reduce Violence against Women and their Children 2010–2022*, which has been developed to support all women (including Indigenous women) and their children experiencing violence, builds on the Council of Australian Governments' (COAG's) commitment under the Close the Gap framework.¹²³
104. The Commission considers that action on violence against Aboriginal and Torres Strait Islander women and children should be developed in close consultation with Aboriginal and Torres Strait Islander women and children, and other relevant stakeholders.
105. Several of the recommendations made to Australia at the Universal Periodic Review in 2015 concerned violence against women and their children and in particular Aboriginal and Torres Strait Islander women and children.¹²⁴
106. Noting that a federal approach is needed to address imprisonment rates and the experience of violence, the Commission welcomes the Change the Record Coalition's *Blueprint for change*.¹²⁵

Recommendation 23: That all Australian governments:

- **implement policies to reduce disproportionate rates of violence against Aboriginal and Torres Strait Islander people to close the gap by 2040, with priority strategies for women and children, and**
- **prioritise early intervention and prevention initiatives that provide comprehensive support and protection from violence to vulnerable Indigenous populations, including women, children and the elderly.**

5.6 Support to human rights defenders and related bodies (CERD article 2; CO 15 & 19)

107. The Australian Government has provided some funding support for Aboriginal and Torres Strait Islander peak organisations. However, it has provided limited funding support to the National Congress of Australia's First Peoples despite it being a newly established national representative body.¹²⁶
108. The Commission emphasises the importance of Indigenous legal aid services to assisting Aboriginal and Torres Strait Islander people with legal issues in relation to their interactions with the criminal and civil justice systems.
109. The Special Rapporteur on the situation of human rights defenders noted that:

 'many indigenous human rights defenders still experience severe disadvantages compared with non-indigenous defenders. They are marginalised and unsupported by state and territory governments. This situation is compounded by the tendency of the central government to use the

federal system as limitation on its ability to exercise responsibility for supporting indigenous rights defenders'.¹²⁷

Recommendation 24: That the Australian Government provide adequate ongoing funding of the Aboriginal and Torres Strait Islander peak organisations and for Indigenous legal assistance.

5.7 *Cultural rights (native title) (CERD articles 2, 5; Declaration articles 3, 10, 11, 20, 25, 26, 27, 28, 29, 32; CO 16 & 18)*

110. The Commission welcomes recent initiatives to address barriers to the recognition of native title and challenges to enabling Indigenous-led development on the Indigenous Estate, such as COAG's Investigation into Indigenous Land Administration and Use¹²⁸ and the ALRC's review of the *Native Title Act 1993* (Cth).¹²⁹
111. The Australian Government has released a White Paper on the development of northern Australia. Significant tranches of land in northern Australia (Western Australia, Queensland and the Northern Territory) are held by Aboriginal and Torres Strait Islander peoples. Serious concerns have been raised about the extent of genuine engagement by governments with these land holders on issues that affect them and the effectiveness of laws for the protection and management of Indigenous heritage sites and knowledge.¹³⁰

Recommendation 25: That the Australian Government ensure that any reforms that affect Aboriginal and Torres Strait Islander peoples' lands are undertaken with their participation and free, prior and informed consent.

Recommendation 26: That the Australian Government implement the recommendations of the ALRC's Connection to Country Review of the *Native Title Act 1993* (Cth) and the Council of Australian Governments' Investigation into Indigenous Land Administration and Use in order to better recognise and protect Aboriginal and Torres Strait Islander peoples' native title rights and interests.

Recommendation 27: That the Australian Government ensure that Aboriginal and Torres Strait Islander peoples' rights to their traditional estates are not negatively affected by the development of northern Australia.

5.8 *Closing the Gap Strategy (CERD article 5; Declaration articles 3, 4, 13, 14, 19, 21, 23 & 24; CO 21 & 22)*

112. The Commission welcomes the targets in the Australian Government's Closing the Gap strategy. These targets are:
- i. to halve the gap in child mortality by 2018
 - ii. to close the gap in life expectancy by 2031
 - iii. to have 85% of all Indigenous four-year-olds enrolled in early childhood education by 2025

- iv. to close the gap in school attendance by the end of 2018
 - v. to halve the gap in reading and numeracy for Indigenous students by 2018
 - vi. to have the gap in Year 12 attainment by 2020, and
 - vii. to halve the gap in employment by 2018.¹³¹
113. The Commission notes that only the target to halve the gap in year 12 attainment rates is on track; the other six targets were either not on track or stalled this year.¹³²
114. The Commission commends the Australian Government's commitment to the Implementation Plan for the National Aboriginal and Torres Strait Islander Health Plan 2013–2023,¹³³ a human rights-based approach to improving the health of Indigenous peoples developed in partnership with Indigenous peak bodies. Future federal Budgets must adequately resource its application and operation to ensure that rights are progressively realised.
115. The Special Rapporteur on racial discrimination expressed concern about the disparity in employment rates between Indigenous and non-Indigenous Australians, particularly that Indigenous Australians are three times more likely to be unemployed than non-Indigenous peoples.¹³⁴

Recommendation 28: That all Australian governments increase their efforts to achieve the Closing the Gap targets.

5.9 Compulsory income management schemes (CERD article 5; Declaration article 8; CO 16)

116. The Commission is concerned by the operation of income management schemes, such as the Australian Government's Healthy Welfare Card trials, and the disproportionate impact of these income management measures on Aboriginal and Torres Strait Islander people.¹³⁵
117. As at September 2016, 75% of trial participants in Ceduna and 82% of trial participants in the East Kimberley were Indigenous.¹³⁶ The Commission remains concerned that the measures will continue to disproportionately affect Aboriginal and Torres Strait Islander people. Although the measures may not directly target Aboriginal and Torres Strait Islander peoples, their practical effect will unduly affect them, as government pensions and allowances are a main source of income for approximately 46.9% of this group.¹³⁷
118. Most recently, the Social Services Legislation Amendment (Cashless Debit Card) Bill 2017 has been referred to the Senate Community Affairs Legislation Committee for inquiry. The Bill seeks to remove s 124PF of the *Social Security (Administration) Act 1999*, which currently provides for the trial of the cashless debit card in three discrete locations, to no more than 10,000 participants, expiring on 30 June 2018. The Bill proposes to amend these arrangements, allowing for the continuation of the trial in existing sites and enabling the expansion of the cashless debit card to further locations.

119. The Commission has made a submission in relation to this Bill, arguing that the measures are not proportionate to the benefits sought by the Bill because their purpose could be achieved through other, less restrictive means.¹³⁸ As designed, these programs are not opt-in schemes, are insufficiently tailored to individual circumstances and disproportionately impact upon Aboriginal and Torres Strait Islander peoples' human rights.¹³⁹

Recommendation 29: That the Australian Government ensure that current models of income management schemes be discontinued or redesigned on a voluntary, opt-in basis with appropriate oversight of decision making and monitoring.

6 Migrants, ethnic minorities and culturally and linguistically diverse (CALD) peoples

6.1 General

120. Racial discrimination continues to affect migrants and Australia-born people of many cultural backgrounds. Among migrants, higher levels of discrimination are reported by more recent arrivals, as well as by migrants from non-English speaking backgrounds.¹⁴⁰
121. In respect of young people, a Foundation of Young Australians report found that over 80% of 'non-Anglo Australian' background children indicated they had been subjected to some form of racism.¹⁴¹
122. Migrant communities report to the Commission the damaging social and civic effects of racism. In addition to the harm it can inflict on a person's wellbeing and sense of freedom, it can also undermine a sense of belonging to the community and feed social disillusionment.¹⁴²
123. Australia has a civil prohibition of racial hatred under the RDA.¹⁴³ It also criminalises the urging of violence against a person or group when the targeted group is 'distinguished by race, religion, nationality, national or ethnic origin or political opinion'.¹⁴⁴ States and territories also criminalise serious racial vilification, including the incitement of racial hatred.

6.2 Muslim Australians (CERD article 2; CO 23)

124. The Commission is concerned at the high prevalence of negative attitudes towards Muslim Australians, as reported in the Scanlon Survey. Of particular concern is the finding from the 2016 survey that strong negative views towards Muslims increased from 11% to 14%.¹⁴⁵ The Special Rapporteur on racial discrimination noted that anti-Muslim hate speech has been on the increase in recent years, especially on social media platforms.¹⁴⁶
125. A study commissioned by the Challenging Racism Project of Western Sydney University and the Islamic Sciences and Research Academy found 'high experiences' of racism by Muslims. A majority (57%) of respondents had

experienced racism ‘at least sometimes’ in at least one of the situations noted in the study (in the workplace, at school, etc).¹⁴⁷

126. There are also several recently established groups dedicated to reporting anti-Muslim or anti-Islam behaviour and sentiments. Islamophobia Register Australia and Islamophobia Watch Australia have begun to aggregate data and information, and allow those who witness Islamophobia to report it.¹⁴⁸
127. Arab and Muslim Australians have reported to the Commission that global concerns about terrorism and national security have produced a political environment hostile to them.¹⁴⁹ A Western Sydney University study found that 78% of surveyed Muslims considered that the Australian media’s portrayal of Muslims is ‘unfair’.¹⁵⁰
128. As with discrimination experienced by other groups, the hostile treatment towards Muslim Australians has had demonstrable negative effects, impinging upon the exercise of their freedoms.¹⁵¹
129. The Commission directs attention to [section 6.5](#) below.

6.3 African communities in Australia (CERD article 2; CO 23)

130. Migrants from African countries, including Ethiopia, Kenya, Zimbabwe and South Sudan, have reported particularly high levels of discrimination and racial profiling.¹⁵² Young people, particularly those of African descent, report concerns about encountering racism from public institutions, including police.¹⁵³
131. The Special Rapporteur on racial discrimination, during his recent country visit to Australia, was made aware of incidents of racial profiling of members of sub-Saharan African and Arab communities.¹⁵⁴
132. The *In Our Own Words* report included consultations with community members and other stakeholders and provided a number of specific suggestions for improvements in several areas, including training and employment, education, health, housing and the justice system.¹⁵⁵

Recommendation 30: That the Australian Government support measures to address discrimination faced by African people and communities, including by ensuring targeted settlement services.

6.4 International students (CERD article 2; CO 23)

133. Following a number of incidents of racist violence directed at international students, the Commission launched its publication, *Principles to promote and protect the human rights of International Students* (the Principles).¹⁵⁶
134. In 2014, the Commission reviewed the Principles by conducting a telephone survey of key stakeholders. The telephone survey revealed that the top three human rights issues facing international students identified by respondents

were employment,¹⁵⁷ accommodation,¹⁵⁸ and racism and racial discrimination.¹⁵⁹

135. The Commission conducted a national survey on sexual assault and sexual harassment in Australian universities and released a report in 2017 (*Change The Course* report). In the Commission's survey, 5.1% of international students reported being sexually assaulted in 2015 and/or 2016, and 1.4% reported experiencing this in a university setting.¹⁶⁰

Recommendation 31: That all Australian governments provide targeted services to protect international students from discrimination. Further, that the Australian Government ensure appropriate data is compiled on the experience of international students in Australia, particularly in relation to income and expenditure, housing experiences, employment discrimination and experiences of violence and sexual harassment.

6.5 Religious discrimination or vilification (CERD articles 4 & 5)

136. Attacks on places of worship and on people who are visibly religious are regularly reported in the news media. Attacks on and threats towards mosques and Islamic prayer rooms,¹⁶¹ synagogues,¹⁶² and churches¹⁶³ occur, as do instances of public abuse and physical attack on people perceived to belong to a particular religion, such as Muslims,¹⁶⁴ Jews¹⁶⁵ and Sikhs.¹⁶⁶
137. In the context of discrimination, the distinction between religion and race is not always clear. For example, many Muslim Australians have described anti-Muslim sentiment in terms of racism. Muslim Australians have altered their participation in public life and cancelled public events due to fears of being attacked or abused for their religion.¹⁶⁷ However, the RDA does not protect against discrimination based on religion rather than race.
138. For the period covering 1 October 2015 – 30 September 2016, the Executive Council of Australian Jewry reported that 210 anti-Semitic incidents were logged, including 12 physical attacks, 22 instances of property damage and vandalism, and dozens of instances of abuse, harassment, intimidation, and threats.¹⁶⁸ Anti-Semitic incidents occur regularly 'around synagogues on the Jewish Sabbath'.¹⁶⁹ The report notes that many instances go unreported.¹⁷⁰
139. The Federal Court of Australia has indicated that Jewish people constitute an ethnic group for the purposes of the RDA on account of their shared customs, beliefs, traditions and characteristics derived from a common history and identity.¹⁷¹ The Federal Court has not directly considered whether other religious groups — including Muslims — fall within the scope of the RDA.¹⁷²
140. The Commission notes that a parliamentary inquiry is underway relating to the status of the right to freedom of religion and belief in Australia.¹⁷³

Recommendation 32: That the Australian Government consider how Australian law could better reflect international human rights law relating to religious belief and observance.

6.6 Migrant settlement outcomes (CERD article 5; CO 24)

141. Attitudes within the existing population towards immigration continue to be broadly positive.¹⁷⁴ However, racial discrimination still occurs and can have a significant negative impact on settlement outcomes. Experiences of racial vilification can undermine a sense of belonging to the community, alienate victims from society and feed a sense of disillusion and disempowerment.¹⁷⁵
142. While many humanitarian migrants have significant 'background disadvantages' that impede a completely smooth settlement journey (such as a low level of English proficiency, disrupted education and experiences of torture or trauma), these migrants are reported to have high levels of English uptake and engagement in study and work upon settling in Australia.¹⁷⁶ Integration is a generational process, and while humanitarian migrants' disadvantages mean they may struggle with unemployment and workforce participation initially, labour force engagement rates converge towards those of Australia-born people over time, as residence in Australia continues.¹⁷⁷
143. The Commission notes the Joint Standing Committee inquiry into migrant settlement outcomes,¹⁷⁸ and the recommendations it has made in its submission to that inquiry.¹⁷⁹

Recommendation 33: That the Australian Government maintain a migration policy and program that does not discriminate against visa applicants on the basis of their race, colour, descent, religion or national or ethnic origin.

Recommendation 34: That the Australian Government continue to fund and support initiatives to address racism and racial discrimination as a complementary measure to settlement services.

6.7 Refugees and asylum seekers

144. Australia maintains a range of policies which discriminate against refugees and asylum seekers on the basis of their mode of arrival in Australia (specifically, whether they arrived by boat and whether they held a valid visa on arrival).¹⁸⁰ The main countries of origin for asylum seekers arriving by boat are Iran, Sri Lanka, Afghanistan, Pakistan, Iraq, Vietnam and Bangladesh.¹⁸¹ A significant number of these asylum seekers have refugee claims based on their race, ethnicity or religion. These include stateless Kurds from Iran and Iraq, Tamils from Sri Lanka, Hazaras from Afghanistan and Pakistan, and stateless Rohingya from Burma.
145. Asylum seekers who arrived in Australia by boat after August 2012 may be subject to third country processing in Nauru or Manus Island, Papua New Guinea. Those permitted to remain in Australia are subject to a 'fast track' assessment process, which does not provide for full merits review of negative decisions. Most asylum seekers who arrive without valid visas are not eligible for government-funded legal advice to assist them in preparing their claims.

146. Asylum seekers who arrive with valid visas and are subsequently found to be refugees are granted permanent visas. Those who arrive without valid visas are granted temporary visas, which last for three to five years and provide limited access to support services and entitlements.
147. Refugees on temporary visas are permitted to work; are eligible for Medicare, limited social security benefits and free primary and secondary education; and can receive free English language tuition. However, they have limited access to tertiary education; are not eligible to receive settlement services; are not permitted to sponsor relatives (including immediate family members) to join them in Australia; and cannot travel overseas without losing their visa unless there are 'compassionate or compelling circumstances' to justify their travel and they have received written approval.

Recommendation 35: That the Australian Government revise policies that discriminate against refugees and asylum seekers on the basis of their mode of arrival.

6.8 Visa refusals and cancellations on character grounds

148. Under s 501 of the Migration Act, the Minister for Immigration or their delegate can refuse or cancel a visa on the basis that the person does not pass the 'character test'. Legislation passed in 2014 significantly broadened the scope of s 501, resulting in an increase in visa refusals and cancellations on character grounds.
149. The Commission has previously raised concerns that decisions to refuse or cancel visas on character grounds under s 501 may lead to breaches of Australia's international human rights obligations.¹⁸²

Recommendation 36: That the Australian Government put in place transparent decision-making and external review processes to ensure the exercise of discretionary power in s 501 of the Migration Act complies with international human rights law (including CERD).

7 Police practices (CERD article 5)

150. The Commission is concerned about allegations of systemic racially-discriminatory policing practices and allegations of profiling, excessive force and harassment. The Commission notes the Flemington & Kensington Community Legal Centre's Police Accountability Project, which focuses on police accountability law and strategies and undertakes independent investigations of police misconduct.¹⁸³
151. The Special Rapporteur on the rights of indigenous peoples has noted several instances of police profiling of Indigenous peoples. She has recommended that efforts be made to recruit Aboriginal and Torres Strait Islander prison staff and that police and prison staff be trained in cultural sensitivity.¹⁸⁴

7.1 Palm Island

152. The Commission notes conduct of officers of the Queensland Police Service (QPS) following the death of 36-year-old Aboriginal man named Cameron Doomadgee (known posthumously as Mulrunji) in police custody on Palm Island.¹⁸⁵ The way QPS officers dealt with the aftermath of Mulrunji's death led to numerous coronial inquests and reviews, a number of court cases and, most relevantly, a representative proceeding brought to the Federal Court of Australia in 2016 by a group of people on Palm Island alleging unlawful racial discrimination by QPS officers during that time.
153. In *Wotton v State of Queensland (No 5)* [2016] FCA 1457 ('*Wotton (No 5)*'), the Federal Court was asked to decide whether, in the police investigation into Mulrunji's death, in the management of community concerns, tension and anger on Palm Island in the week after his death, and in the police responses to protests and fires that occurred in the aftermath (including a fire at the police station), officers of the QPS contravened s 9(1) of the RDA.
154. Section 9(1) of the RDA provides:
- 'It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.'
155. The Federal Court held that the State of Queensland, through the QPS officers, breached s 9 of the RDA.¹⁸⁶ The Federal Court found that:
- (a) The QPS officers with command and control of the investigation did not act impartially and independently.¹⁸⁷
 - (b) There were substantial failures by QPS officers on the island to communicate with the Palm Island community and defuse tensions.¹⁸⁸
 - (c) An emergency declaration was issued which triggered the evacuation of non-Aboriginal people from the island. Only local Palm Islanders could not travel to and from the Island.
 - (d) A special group of armed officers were used to arrest suspects and to conduct entries and searches of houses on Palm Island. They broke into houses with assault rifles raised and confronted unarmed men, women and children. The use of these officers to effect the arrests was unnecessary, disproportionate and undertaken as a show of force against local people who had protested about the conduct of police.
156. The Court found that QPS officers acted in these ways because they were dealing with an Aboriginal community. If the events took place in an isolated non-Aboriginal community in Queensland, the above conduct would not have occurred.¹⁸⁹

157. Importantly, the Court also noted that the conduct of the investigation, treatment of Aboriginal witnesses, failure to communicate with the community or defuse tensions, and various other aspects of police conduct violated the right to access services intended for the public under art 5(f) of CERD.¹⁹⁰
158. The State of Queensland has decided not to proceed with an appeal of the decision in *Wotton (No 5)*.¹⁹¹

7.2 Kalgoorlie

159. The Commission notes in passing that Indigenous communities in Western Australia are considering legal action under the RDA in relation to alleged racial discrimination in the community and in police handling of a riot following the death of a 14-year-old Indigenous boy, Elijah Doughty, in Kalgoorlie in 2016.¹⁹²
160. Elijah was killed after he was struck by a vehicle while riding a motorcycle. The motorcycle was allegedly stolen and was said to have belonged to the driver.¹⁹³ The driver was charged with manslaughter.¹⁹⁴
161. Violent riots were sparked by frustrations that the charge was not more serious than manslaughter. Race-based comments on social media pages were said to have contributed to an atmosphere of tension in the town and helped to spark the violence.¹⁹⁵
162. A relative of Elijah, Mr Yarran, was sentenced to one year in jail for yelling obscenities at police prior to the riots. On appeal, Mr Yarran's sentence was reduced to a suspended 12 month jail term and supervision order.¹⁹⁶ Mr Yarran's lawyer claims the initial punishment was excessive and racially discriminatory and that 'the harsh sentence and actions of the police and courts following Elijah's death revealed fractures within the WA justice system'.¹⁹⁷
163. The driver responsible for Elijah's death was eventually found not guilty of manslaughter but was convicted for dangerous driving causing death and sentenced to three years jail.¹⁹⁸

Recommendation 37: That:

- **all Australian governments ensure police are trained in cultural competency and anti-racism**
- **all Australian governments implement independent review mechanisms to monitor compliance of police practices with international human rights law (including CERD and the *Racial Discrimination Act 1975* (Cth)), and**
- **the Queensland Government respond appropriately to the Federal Court of Australia's decision in *Wotton v State of Queensland (No 5)* [2016] FCA 1457.**

The Commission considers these issues to be of such importance that the Committee should request an update from the Australian Government on progress in 12 months time.

8 Counterterrorism (CERD article 5; CO 12)

164. The Commission recognises the vital importance of ensuring that intelligence and law enforcement agencies have appropriate powers to protect Australia's national security and to protect the community from terrorism.
165. The Commission also recognises that human rights law accepts, subject to certain conditions, that the exercise of those powers might impinge to some extent on individual rights and freedoms. However, any such limitation on human rights must be clearly expressed, unambiguous in its terms, and necessary and proportionate in how it responds to potential harm.
166. On 3 October 2017, Australia's Prime Minister announced an intention to introduce new counterterrorism laws.¹⁹⁹ A bill has not yet been introduced, but the media has so far relevantly reported the following new measures:
- adding driver licences to the Government's database of passport and immigration information to allow authorities to immediately identify people suspected of or involved in terrorist activities
 - biometric screening at airports and information sharing between States to better detect anyone posing a national security risk
 - laws to detain terror suspects indefinitely, including those radicalised in prison, after their sentences were complete
 - increasing the pre-charge detention periods from seven to 14 days
 - more scope for security agencies to question suspects while they are detained but before they have been charged
 - new crimes for terrorist hoaxes and the spread of 'instructional terrorist material'
 - changes to preventative detention orders to allow police to question suspects, while removing the need for a court order before a period of interim detention starts
 - amending laws to include a 'presumption against parole' for those with terror links, and
 - 'intervention orders' that would allow a magistrate to prevent someone contacting others — for instance, a young person who is at risk of being radicalised by suspected terror recruiters.²⁰⁰
167. The Commission is concerned by stereotypes of Muslim Australians with regard to terrorism and emphasises the importance of ongoing reviews of counterterrorism laws to ensure compliance with international human rights law, including rights enshrined in CERD. The Commission notes that governments should be vigilant in avoiding any risk of racial profiling in the exercise of counterterrorism measures.

168. The Commission notes the role of the Independent National Security Legislation Monitor (INSLM).²⁰¹ The INSLM reviews the operation, effectiveness and implications of Australia's counterterrorism and national security legislation on an ongoing basis. In performing that function, the INSLM has regard to Australia's international human rights obligations.²⁰²
169. The Commission is concerned that the Australian Government has passed counterterrorism measures despite concerns raised by a previous INSLM. This has occurred in relation to the control order²⁰³ and preventative detention order²⁰⁴ regimes. The current INSLM has concluded that each regime is consistent with Australia's human rights, counter-terrorism and international security obligations; proportionate to the current threats of terrorism and to national security; and necessary. He has recommended that, subject to implementation of suggested safeguards, each of these laws be renewed for a further period of five years.²⁰⁵ These laws and others are currently the subject of further review by a parliamentary joint committee.²⁰⁶

Recommendation 38: That the Australian Government ensures that counterterrorism measures do not unnecessarily limit human rights (including rights enshrined in CERD) and considers the concerns raised by the Independent National Security Legislation Monitor in that process.

9 Cyber-racism (CERD article 2)

170. The Commission notes that developing strategies to address contemporary forms and manifestations of racism (such as racist materials promoted through communication technologies) is outlined in paragraph 143 of the Durban Declaration.²⁰⁷
171. The Commission is concerned about complaints received in relation to web based racist content in recent years. In 2016/17, internet-based racial hatred represented 5% of the complaints of racial hatred received by the Commission.²⁰⁸
172. The Special Rapporteur on racial discrimination gave attention to cyber-racism on the internet and social media platforms in his recent report on his mission to Australia, and noted in particular that anti-Muslim hate speech has been on the increase in recent years, especially on social media platforms.²⁰⁹
173. The Australian Senate has referred an inquiry into cyberbullying to the Legal and Constitutional Affairs References Committee.²¹⁰ The inquiry is in relation to the capacity of existing offences in the Commonwealth Criminal Code and of state and territory criminal laws to capture cyberbullying.
174. The Commission commends the establishment of an eSafety Commissioner.²¹¹ The eSafety Commissioner's role has focused on cyberbullying of young people and cyber abuse (including cyber-racism).²¹²
175. The Commission notes that the Cyber Racism and Community Resilience research project, a joint project involving a number of Australian Universities with support from industry partners, seeks to examine the production of,

prevalence of, exposure to, and strategies for responding to and limiting the negative impact of cyber-racism.²¹³

Recommendation 39: That the Australian Government continue to support evidence-based strategies to address cyber-racism as part of a coordinated approach to address racism.

10 Freedom of expression

10.1 Racial vilification and discrimination in public discourse (CERD article 2, 4 & 7)

176. Racial vilification is consistently raised as a concern by communities that experience racism. It is encountered not only in public places, such as on streets or in public transport, but also in public debates.²¹⁴
177. The Commission considers that those who participate in public discussion have a responsibility to do so in a civil manner without resorting to prejudice or hatred. Parliamentarians and the news media, in particular, set a standard for public discussion of race and cultural diversity.
178. The Select Committee on Strengthening Multiculturalism has called for a Parliamentary Code of Multicultural Ethics to set an appropriate standard for public discourse, particularly when discussing issues relating to multicultural affairs, migration and citizenship, to guide respectful public debate.²¹⁵
179. The Australian Press Council's Statement of General Principles instructs publishers to 'avoid causing or contributing materially to substantial offence, distress or prejudice, or a substantial risk to health or safety, unless doing so is sufficiently in the public interest'.²¹⁶ The Select Committee on Strengthening Multiculturalism recommended that the Australian Press Council develop a broadcast media Code of Conduct, requiring commercial broadcasters to report in such a way that raises awareness of Australia's diversity and prohibits misrepresentation of culturally and linguistically diverse communities.²¹⁷
180. The Commission's considers that recognising a responsibility for civil discourse does not risk shutting down debate or rendering certain topics relating to race and ethnicity 'off limits'. One large-scale study on the impact of hate speech laws analysed 'letters to the editor' published in Australian newspapers over many years. It found that the public debate on matters of race and ethnicity had not abated over the 1990s and 2000s, though the manner in which issues were articulated became less prejudicial or discriminatory as time went on.²¹⁸

Recommendation 40: That the Australian Government recognise that Australian race relations and community harmony can be profoundly influenced by the tone of public debate about immigration, multiculturalism and national security.

10.2 *Inquiries into freedom of expression (CERD article 2 & 7)*

181. The Commission notes that a number of inquiries have been held into particular aspects of freedom of expression:
- the ALRC's report, *Traditional Rights and Freedoms — Encroachments by Commonwealth Laws*²¹⁹
 - the PJCHR's report in relation to whether the operation of Part IIA of the Racial Discrimination Act 1975 (Cth) (RDA) imposes unreasonable restrictions upon freedom of speech,²²⁰ and
 - the current Senate inquiry into laws of contempt in Australia, which will consider how competing principles, including freedom of speech, are balanced in contempt laws.²²¹
182. The Commission refers to its submission to the PJCHR's inquiry, and the importance of both freedom of speech and freedom from racial vilification.²²²
183. The Commission considers the inquiries to date to be narrowly tailored to specific areas and that Australia would benefit from a broader inquiry into freedom of expression in Australia. Such an inquiry should cover criminal laws,²²³ secrecy laws,²²⁴ laws regarding participation in the democratic process,²²⁵ media, broadcasting and communications laws and freedom of information laws, while maintaining respect for the importance of multiculturalism in Australian society.

Recommendation 41: That the Australian Government commission an independent, broadly focused inquiry into freedom of expression in Australia.

11 *Immigration detention (CO 24)*

184. The Commission notes the Committee's interest in Australia's mandatory detention regime and treatment of refugees and asylum seekers, as expressed in paragraph 24 of its concluding observations of 2010. The Commission provides up-to-date information in this regard below.

11.1 *Detainee numbers, nationalities and length of detention*

185. At 31 August 2017, there were 1,259 people in immigration detention facilities, including 948 on mainland Australia and 311 on Christmas Island:
- 176 from New Zealand, 92 from Iran, 88 from Vietnam, 74 from Sri Lanka, 63 from Malaysia, 61 from China, 56 from India, 50 from the United Kingdom, 39 from Afghanistan and 560 of other nationalities.²²⁶
 - 1,180 adult men, 78 adult women and one child.²²⁷
 - 468 had been detained after having their visa cancelled on character grounds, 332 were asylum seekers who had arrived by boat, 265 had

overstayed their visas, 145 had been detained after having their visa cancelled on non-character grounds, 44 had been detained after being denied entry at an Australian airport and five were undocumented or inadequately documented seaport arrivals (such as stowaways).²²⁸

186. The average length of detention in immigration detention facilities has increased significantly in recent years. The average rose from 72 days in July 2013²²⁹ to almost 400 days by August 2014, and has remained at or above that level ever since.²³⁰ As at 31 August 2017, the average length of detention was 445 days. Over a third of people in detention (36%) had been detained for at least a year, and around a fifth (22%) had been detained for more than two years.²³¹
187. As at 31 August 2017, there were 369 people (including 43 children) residing in the Regional Processing Centre in Nauru and 773 adult men residing in the Regional Processing Centre in Manus Island, Papua New Guinea. In both countries, a significant number of people are also residing in the community after having been released from Regional Processing Centres.²³²

11.2 Legislative framework

188. Under the *Migration Act 1958* (Cth) (the Migration Act), immigration detention remains mandatory for all unlawful non-citizens.²³³ Australian courts do not have jurisdiction to remove a person from detention on the basis that their detention is arbitrary, and there is no legislative time limit on detention.
189. Positive developments relating to immigration detention in recent years include: the release of almost all children from closed facilities into alternative community arrangements;²³⁴ the closure of several detention facilities;²³⁵ increased use of community alternatives to detention; commitment to ratification of OPCAT; and the release of a number of refugees who previously had been detained indefinitely due to having received an adverse security assessment.
190. However, the Commission is concerned about an increase in long-term detention, an increase in the number of people detained due to visa cancellation, and a small number of refugees who continue to be indefinitely detained due to adverse security assessments.
191. The Commission has recommended that the Australian Government continue to expand the use of alternatives to closed detention and, where immigration detention is necessary, ensure that it is time limited, strictly necessary (such as for the purpose of public health and security checks) and subject to individualised decision-making and judicial oversight.
192. There are no minimum standards for conditions of detention codified in Australian law. Introducing these standards would help to ensure greater consistency in conditions across the detention network, prevent breaches of Australia's international obligations and facilitate access to appropriate remedies if breaches do occur. The Commission's publication *Human rights standards for immigration detention*, which sets out benchmarks for the

humane treatment of people held in immigration detention, could provide the basis for these minimum standards.²³⁶

193. Ratification of OPCAT will likely result in more systematic consideration of the adequacy and appropriateness of conditions of detention in the coming years.

12 Business and human rights (CO 13)

194. The Commission notes that, in paragraph 13 of its concluding observations, the Committee indicated its interest in legislative or administrative measures to prevent acts by Australian corporations infringing the rights of Indigenous peoples domestically and overseas and to regulate the extraterritorial activities of Australian corporations abroad. The Committee also encouraged Australia to fulfil its commitments under the international initiatives it supports to advance responsible corporate citizenship.

195. The Commission provides up-to-date information in this regard below.

12.1 National Action Plan

196. The Commission commends the Australian business community's support for the UN Guiding Principles on Business and Human Rights (UNGP) through the Global Compact Network Australia.²³⁷
197. The Commission notes that the Australian Government is undertaking a national consultation on the implementation of the UNGP,²³⁸ and established a Multi-Stakeholder Advisory Group on the Implementation of the UNGP.²³⁹ Members of the Advisory Group represent a broad range of perspectives and have been drawn from across business sectors and civil society.²⁴⁰
198. The Commission notes the advice of the Multi-Stakeholder Advisory Group that the Australian Government deliver a coordinated policy statement in the form of a National Action Plan, which sets out the concrete steps that it will take to implement the UNGPs.²⁴¹
199. The Commission is very concerned that Australia's Foreign Minister has advised the Multi-Stakeholder Advisory Group that the Australian Government is not proceeding with a National Action Plan at this time.²⁴²

Recommendation 42: That the Australian Government, in consultation with the business sector, take measures to implement Australia's international law obligations in the area of business and human rights and to enhance protections for those harmed by Australian business activities.

12.2 Modern slavery

200. The Commission welcomes the Australian Government's proposal for large corporations and other entities operating in Australia to publish annual statements outlining their actions to address modern slavery in their operations and supply chains.²⁴³ At this stage, it is not proposed that these

requirements will apply to Australian governments, despite them having supply chains of significant scale. The Commission notes that a national consultation process to refine the Australian Government's proposed model is underway.

201. The Commission welcomes the Joint Standing Committee on Foreign Affairs, Defence and Trade inquiry into establishing a Modern Slavery Act in Australia. The Commission also notes the Joint Committee's recommendation that the Australian Government consider supporting in-principle the development of a Modern Slavery Act in Australia, including:
- supply chain reporting requirements for companies, businesses, organisations and governments in Australia, and
 - an Independent Anti-Slavery Commissioner, subject to reviewing the recommendations of the Committee's final report.²⁴⁴

Recommendation 43: That the Australian Government legislate a Modern Slavery Act in Australia.

12.3 Procurement

202. The Commonwealth Procurement Rules do not explicitly refer to human rights. The Commission notes that the Australian regulatory framework is insufficient to prevent human rights abuses from occurring in Commonwealth procurement.²⁴⁵
203. A parliamentary committee has recommended that the Australian Government develop a procurement policy requiring Commonwealth agencies to evaluate suppliers' compliance with human rights regulation.²⁴⁶ Another parliamentary committee has noted that consideration of modern slavery risks should be included in this procurement policy.²⁴⁷

Recommendation 44: That the Australian Government amend the Commonwealth Procurement Rules to align with the UN Guiding Principles on Business and Human Rights, including in regard to human rights due diligence in procurement.

Attachment 1: Compilation of Recommendations

Priority Areas

In addition to the recommendations below, the Commission recommends that the Committee request an update from the Australian Government on progress in relation to the following priority areas in 12 months time under article 9(1) of CERD and rule 65 of the Rules of procedure:

- i. The collection of comprehensive data in relation to racial discrimination, cultural diversity, racially motivated crimes and multiculturalism generally (see Recommendation 18).
- ii. Consideration and implementation of relevant recommendations, once released, of the Northern Territory Royal Commission into Children in Detention (see Recommendation 22).
- iii. Training of police in cultural competency and anti-racism; compliance of police practices with international human rights law (including those rights enshrined in CERD and given expression in the *Racial Discrimination Act 1975* (Cth)); and the response of the Queensland Government to *Wotton v State of Queensland (No 5)* [2016] FCA 1457 (see Recommendation 37).

Human rights framework

Recommendation 1: That the Australian Government ensure that concerns raised by the Parliamentary Joint Committee on Human Rights are fully considered in the legislative process.

Recommendation 2: That the Australian Government ensure that all statements of compatibility are consistently of a high standard and are supported by evidence and analysis.

Recommendation 3: That the Australian Government:

- fully incorporate CERD into Australian law
- ensure that federal laws do not undermine the protections in the *Racial Discrimination Act 1975* (Cth), and
- explore options to remove any potential for racially discriminatory laws to be passed under the Australian Constitution. The Commission notes that this is a separate issue to developing with Aboriginal and Torres Strait Islander peoples a model for their recognition in the Australian Constitution and negotiating in good faith with Aboriginal and Torres Strait Islander peoples about national representative mechanisms.

Recommendation 4: That the Australian Government introduce formal mechanisms to consider and implement recommendations of treaty

committees, including the concluding observations of the Committee in relation to Australia's 18th to 20th periodic report under CERD.

Recommendation 5: That the Australian Government fulfil its commitment to ratify *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) by December 2017 and commence its progressive implementation immediately thereafter.

Recommendation 6: That the Australian Government consider ratification of the *Convention on Protection of the Rights of All Migrant Workers and Members of Their Families* and other international instruments relating to issues of racial discrimination.

Recommendation 7: That the Australian Government incorporate more comprehensive human rights education (including in relation to racial discrimination and CERD) in the national school curriculum.

Recommendation 8: That the Australian Government strengthen public education about multiculturalism, including through the national school curriculum.

Recommendation 9: That the Australian Government support human rights education for all areas of the public sector, particularly in the administration of justice and places of detention, including targeted initiatives for public officials.

Recommendation 10: That the Australian Government continue to support the anti-racism and other educative work of the Commission, including the National Anti-Racism Partnership and Strategy.

Racial discrimination in Australia

Recommendation 11: That the Australian Government recognise the importance of maintaining effective legal protections against racial discrimination and hatred in setting a standard for public conduct in a multicultural society.

Recommendation 12: That the Australian Government continue to support a policy of multiculturalism as a means of promoting social cohesion, cultural harmony and national unity.

Recommendation 13: That the Australian Parliament consider further public recognition of Australian multiculturalism, including periodic public statements affirming parliamentarians' support of a multicultural Australia.

Recommendation 14: That the Australian Government strengthen the policy machinery of Australian multiculturalism, including through the re-establishment of an Office of Multicultural Affairs.

Recommendation 15: That the Australian Parliament not pass the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 in its current form.

Recommendation 16: That the Australian Government ensure that any amendment to Australia's visa system comply with international human rights law (including rights enshrined in CERD).

Recommendation 17: That the Australian Government consider the recommendations of the Select Committee on Strengthening Multiculturalism and investigate pathways to improve cultural diversity in Australian institutions and organisations.

Recommendation 18: That the Australian Government collect more comprehensive data on racial discrimination, racially motivated crimes, cultural diversity and multiculturalism generally. *The Commission considers this to be of such importance that the Committee should request an update from the Australian Government on progress in 12 months.*

Aboriginal and Torres Strait Islander Peoples

Recommendation 19: That the Australian Government, in partnership with Aboriginal and Torres Strait Islander peoples, develop a National Strategy to give effect to the *UN Declaration on the Rights of Indigenous Peoples*. Further, that the Declaration be included in the definition of 'human rights' in the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) to ensure that legislation is regularly assessed for conformity with the Declaration.

Recommendation 20: That the Australian Government develop with Aboriginal and Torres Strait Islander peoples a model for constitutional recognition and negotiate in good faith with Aboriginal and Torres Strait Islander peoples about national representative mechanisms.

Recommendation 21: That all Australian governments commit to national justice targets to reduce the rates of imprisonment of Aboriginal and Torres Strait Islander adults and juveniles and that these targets be introduced into the Closing the Gap Strategy.

Recommendation 22: That the Australian Government, with the Northern Territory Government, swiftly consider the implementation of its response to the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory once its final report is delivered. *The Commission considers this issue to be of such importance that the Committee should request an update from the Australian Government on progress in 12 months time.*

Recommendation 23: That all Australian governments:

- **implement policies to reduce disproportionate rates of violence against Aboriginal and Torres Strait Islander people to close the gap by 2040, with priority strategies for women and children, and**
- **prioritise early intervention and prevention initiatives that provide comprehensive support and protection from violence to vulnerable Indigenous populations, including women, children and the elderly.**

Recommendation 24: That the Australian Government provide adequate ongoing funding of the Aboriginal and Torres Strait Islander peak organisations and for Indigenous legal assistance.

Recommendation 25: That the Australian Government ensure that any reforms that affect Aboriginal and Torres Strait Islander peoples' lands are undertaken with their participation and free, prior and informed consent.

Recommendation 26: That the Australian Government implement the recommendations of the ALRC's Connection to Country Review of the *Native Title Act 1993* (Cth) and the Council of Australian Governments' Investigation into Indigenous Land Administration and Use in order to better recognise and protect Aboriginal and Torres Strait Islander peoples' native title rights and interests.

Recommendation 27: That the Australian Government ensure that Aboriginal and Torres Strait Islander peoples' rights to their traditional estates are not negatively affected by the development of northern Australia.

Recommendation 28: That all Australian governments increase their efforts to achieve the Closing the Gap targets.

Recommendation 29: That the Australian Government ensure that current models of income management schemes be discontinued or redesigned on a voluntary, opt-in basis with appropriate oversight of decision making and monitoring.

Migrants, ethnic minorities and culturally and linguistically diverse (CALD) peoples

Recommendation 30: That the Australian Government support measures to address discrimination faced by African people and communities, including by ensuring targeted settlement services.

Recommendation 31: That all Australian governments provide targeted services to protect international students from discrimination. Further, that the Australian Government ensure appropriate data is compiled on the experience of international students in Australia, particularly in relation to income and expenditure, housing experiences, employment discrimination and experiences of violence and sexual harassment.

Recommendation 32: That the Australian Government consider how Australian law could better reflect international human rights law relating to religious belief and observance.

Recommendation 33: That the Australian Government maintain a migration policy and program that does not discriminate against visa applicants on the basis of their race, colour, descent, religion or national or ethnic origin.

Recommendation 34: That the Australian Government continue to fund and support initiatives to address racism and racial discrimination as a complementary measure to settlement services.

Recommendation 35: That the Australian Government revise policies that discriminate against refugees and asylum seekers on the basis of their mode of arrival.

Recommendation 36: That the Australian Government put in place transparent decision-making and external review processes to ensure the exercise of discretionary power in s 501 of the Migration Act complies with international human rights law (including CERD).

Police Practices

Recommendation 37: That:

- all Australian governments ensure police are trained in cultural competency and anti-racism
- all Australian governments implement independent review mechanisms to monitor compliance of police practices with international human rights law (including CERD and the *Racial Discrimination Act 1975* (Cth)), and
- the Queensland Government respond appropriately to the Federal Court of Australia's decision in *Wotton v State of Queensland (No 5)* [2016] FCA 1457.

The Commission considers these issues to be of such importance that the Committee should request an update from the Australian Government on progress in 12 months time.

Counterterrorism

Recommendation 38: That the Australian Government ensures that counterterrorism measures do not unnecessarily limit human rights (including rights enshrined in CERD) and considers the concerns raised by the Independent National Security Legislation Monitor in that process.

Cyber-racism

Recommendation 39: That the Australian Government continue to support evidence-based strategies to address cyber-racism as part of a coordinated approach to address racism.

Freedom of expression

Recommendation 40: That the Australian Government recognise that Australian race relations and community harmony can be profoundly influenced by the tone of public debate about immigration, multiculturalism and national security.

Recommendation 41: That the Australian Government commission an independent, broadly focused inquiry into freedom of expression in Australia.

Business and human rights

Recommendation 42: That the Australian Government, in consultation with the business sector, take measures to implement Australia's international law obligations in the area of business and human rights and to enhance protections for those harmed by Australian business activities.

Recommendation 43: That the Australian Government legislate a Modern Slavery Act in Australia.

Recommendation 44: That the Australian Government amend the Commonwealth Procurement Rules to align with the UN Guiding Principles on Business and Human Rights, including in regard to human rights due diligence in procurement.

Endnotes

- ¹ United Nations Committee on the Elimination of Racial Discrimination, *Rules of procedure of the Committee on the Elimination of Racial Discrimination*, UN Doc CERD/C/35/Rev.3 (11 January 2012). At http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2f35%2fRev.3&Lang=en (viewed 11 October 2017); *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969), art 9(1).
- ² Since the beginning of 2016, the Parliamentary Joint Committee on Human Rights has reviewed over 74 other legislative instruments. Parliamentary Joint Committee on Human Rights, *Index of Bills and Legislative Instruments*. At http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Index_of_bills_and_instruments (viewed 11 September 2017).
- ³ *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), ss 8, 9. At <https://www.legislation.gov.au/Details/C2011A00186> (viewed 11 September 2017).
- ⁴ George Williams and Daniel Reynolds, 'The Operation and Impact of Australia's Parliamentary Scrutiny Regime for Human Rights' (2015) 41(2) *Monash University Law Review* 469, 477, 506–7. At <http://www.austlii.edu.au/au/journals/MonashULawRw/2015/17.html> (viewed 11 September 2017).
- ⁵ George Williams and Daniel Reynolds, 'The Operation and Impact of Australia's Parliamentary Scrutiny Regime for Human Rights' (2015) 41(2) *Monash University Law Review* 469, 474–5. At <http://www.austlii.edu.au/au/journals/MonashULawRw/2015/17.html> (viewed 11 September 2017).
- ⁶ Shawn Rajanayagam, 'Does Parliament Do Enough? Evaluating Statements of Compatibility under the *Human Rights (Parliamentary Scrutiny) Act*' (2015) 38(3) *University of New South Wales Law Journal* 1046, 1069–1070. At <http://www.austlii.edu.au/cgi-bin/download.cgi/cgi-bin/download.cgi/download/au/journals/UNSWLJ/2015/37.pdf> (viewed 11 September 2017).
- ⁷ Parliamentary scrutiny processes include the Senate Standing Committee on Regulations and Ordinances, Senate Standing Committee for the Scrutiny of Bills, Parliamentary Joint Committee on Human Rights, Senate Standing Committee on Legal and Constitutional Affairs, Parliamentary Joint Committee on Intelligence and Security and Parliamentary Joint Committee on Law Enforcement. Other review mechanisms include the Australian Human Rights Commission, Independent National Security Legislation Monitor and Australian Law Reform Commission. See Australian Law Reform Commission, *Traditional Rights and Freedoms — Encroachments by Commonwealth Laws (Final Report)* (2016) Ch 3. At https://www.alrc.gov.au/sites/default/files/pdfs/publications/alrc_129_final_report_.pdf (viewed 11 September 2017).
- ⁸ Australian Law Reform Commission, *Traditional Rights and Freedoms — Encroachments by Commonwealth Laws (Final Report)* (2016) 75–76 [3.95]. At https://www.alrc.gov.au/sites/default/files/pdfs/publications/alrc_129_final_report_.pdf (viewed 11 September 2017). The ALRC's suggestions include additional guidance to policy makers during policy development and legislative drafting stages; improving quality of explanatory material and statements of compatibility; effective and appropriate streamlining of overlapping work across scrutiny committees; increasing time available to conduct scrutiny; and improving extent to which Parliament considers the scrutiny reports.
- ⁹ Australia's states and territories also have a variety of anti-discrimination and human rights legislation. For an overview of the Racial Discrimination Act and its history in Australia, see Tim Soutphommasane, *I'm Not Racist But ... 40 Years of the Racial Discrimination Act* (NewSouth, 2015).
- ¹⁰ See, eg, *Discrimination Act 1991* (ACT), *Anti-Discrimination Act 1996* (NT), *Anti-Discrimination Act 1977* (NSW), *Equal Opportunity Act 2010* (Vic), *Racial and Religious Tolerance Act 2001* (Vic), *Anti-Discrimination Act 1991* (Qld), *Equal Opportunity Act 1984* (SA), *Equal Opportunity Act 1984* (WA). See Mutuma Ruteere, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Australia*, UN Doc A/HRC/35/41/Add.2 (9 June 2017) 6. At http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A_HRC_35_41_Add_2_EN.docx (viewed 10 October 2017).

¹¹ George Williams and Daniel Reynolds, 'The Racial Discrimination Act and Inconsistency under the Australian Constitution' (2015) 36 *Adelaide Law Review* 241, 249–250. See also *New South Wales v Commonwealth* (2006) 229 CLR 1, 151 [307] (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ) ('*Work Choices Case*').

¹² *Northern Territory National Emergency Response Act 2007* (Cth), s 132(2) provided that: 'The provisions of this Act, and any acts done under or for the purposes of those provisions, are excluded from the operation of Part II of the *Racial Discrimination Act 1975*'. Another example was the *Native Title Amendment Act 1998* (Cth), which introduced a new s 7 into the *Native Title Act 1993* (Cth) (NTA), which provides that the NTA is intended to be read and construed subject to the provisions of the RDA only to the extent of any ambiguous terms in the NTA.

¹³ UN Committee on the Elimination of Racial Discrimination, *General Recommendation No 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of Racial Discrimination*, 75th sess, (24 September 2009) UN Doc CERD/C/GC/32. At http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fGC%2f32&Lang=en (viewed 23 October 2017).

¹⁴ UN Committee on the Elimination of Racial Discrimination, *General Recommendation No 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of Racial Discrimination*, 75th sess, (24 September 2009) UN Doc CERD/C/GC/32, [18], [22]. At http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fGC%2f32&Lang=en (viewed 23 October 2017). Special measures in Australia also fall short of the Committee's recommendations in [16], [17] and [34].

¹⁵ Australian Human Rights Commission, *Information concerning Australia and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*, *Shadow Report to the CERD Committee* (8 July 2010) 17–20 [61]–[64]. At http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fAUS%2f77%2f8048&Lang=en (viewed 23 October 2017).

¹⁶ The reservation provides: 'The Government of Australia ... declares that Australia is not at present in a position specifically to treat as offences all the matters covered by article 4(a) of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing criminal law dealing with such matters as the maintenance of public order, public mischief, assault, riot, criminal libel, conspiracy and attempts. It is the intention of the Australian Government, at the first suitable moment, to seek from Parliament legislation specifically implementing the terms of article 4(a).'

¹⁷ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Australia, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 35th sess, Agenda item 6, UN Doc A/HRC/31/14/Add.1 (29 February 2016) [7].

¹⁸ *The Commonwealth v Tasmania* ('*The Tasmanian Dam Case*') (1983) 158 CLR 1.

¹⁹ *Australian Constitution*, s 51(xxvi).

²⁰ *Kartinyeri v Commonwealth* (1998) 152 ALR 540.

²¹ In 2012, the Expert Panel on Constitutional Recognition of Indigenous Australians relevantly recommended that ss 25 and 51(xxvi) be repealed and that provisions on the constitutional recognition of Aboriginal and Torres Strait Islander peoples and a prohibition of racial discrimination be introduced. See Expert Panel on Constitutional Recognition of Indigenous Australians, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution — Report of the Expert Panel* (2012) xviii (Recommendations 3–5). At https://www.pmc.gov.au/sites/default/files/publications/Recognising-Aboriginal-and-Torres-Strait-Islander-Peoples-in-the-constitution-report-of-the-expert-panel_0.pdf (viewed 23 October 2017). In 2015, the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples offered similar recommendations. See Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, *Final Report* (2015) xiii (Recommendations 3–5). At https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Constitutional_Recognition_of_Aboriginal_and_Torres_Strait_Islander_Peoples/Constitutional_Recognition/Final_Report (viewed 23 October 2017).

²² Referendum Council, *Final Report of the Referendum Council* (30 June 2017) 2 (Recommendation 1). At https://www.referendumcouncil.org.au/sites/default/files/report_attachments/Referendum_Council_Final_Report.pdf (viewed 23 October 2017).

²³ Referendum Council, *Final Report of the Referendum Council*, 5, 12–13, 23–24. At https://www.referendumcouncil.org.au/sites/default/files/report_attachments/Referendum_Council_Final_Report.pdf (viewed 23 October 2017).

²⁴ Australian Human Rights Commission, *Constitutional reform: Creating a nation for all of us* (2011) 15. At <https://www.humanrights.gov.au/publications/constitutional-reform-creating-nation-all-us-2011> (viewed 23 October 2017). See also Australian Human Rights Commission, *Social Justice Report 2008* (2009) 62–76. At http://www.humanrights.gov.au/social_justice/sj_report/sjreport08/index.html (viewed 23 October 2017).

²⁵ Mutuma Ruteere, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Australia*, UN Doc A/HRC/35/41/Add.2 (9 June 2017) 17 [71]. At

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A_HRC_35_41_Add_2_EN.docx (viewed 10 October 2017); Felipe González Morales, *Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru*, UN Doc A/HRC/35/25/Add.3 (24 April 2017) 19. At http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/25/Add.3 (viewed 10 October 2017); Victoria Tauli-Corpuz, *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*, UN Doc A/HRC/36/46/Add.2 (8 August 2017) 17 [107]. At

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/46/Add.2 (viewed 10 October 2017).

²⁶ Minister for Foreign Affairs, The Hon Julie Bishop MP and Attorney General (Cth), Senator the Hon George Brandis QC, 'Improving oversight and conditions in detention' (Media Release, 9 February 2017). At <https://www.attorneygeneral.gov.au/Mediareleases/Pages/2017/FirstQuarter/Improving-oversight-and-conditions-in-detention.aspx> (viewed 11 September 2017).

²⁷ The Special Rapporteur on racial discrimination has recommended that the Australian Government expedite ratification of the ICRMW and the ILO Conventions on the protection of migrant workers and on Indigenous rights: see Mutuma Ruteere, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Australia*, Human Rights Council, 35th sess, UN Doc A/HRC/35/41/Add.2 (9 June 2017) 17 [71].

²⁸ Victoria Tauli-Corpuz, *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*, UN Doc A/HRC/36/46/Add.2 (8 August 2017) 7 [31]. At

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/46/Add.2 (viewed 10 October 2017).

²⁹ Mutuma Ruteere, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Australia*, UN Doc A/HRC/35/41/Add.2 (9 June 2017) 13 [50]. At

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A_HRC_35_41_Add_2_EN.docx (viewed 10 October 2017).

³⁰ *Aboriginal Languages Act 2017 No 51* (NSW), ss 4–6. At

<https://www.legislation.nsw.gov.au/#/view/act/2017/51> (viewed 20 October 2017).

³¹ See the concerns of the NSW Aboriginal Land Council in Bridget Brennan, 'NSW introduces nation's first laws to recognise and revive Indigenous languages' *ABC News* (online) 11 October 2017. At <http://www.abc.net.au/news/2017-10-11/nsw-passes-unprecedented-laws-to-revive-indigenous-languages/9039746> (viewed 30 October 2017).

³² See, eg, Andrew Markus, *Mapping Social Cohesion: The Scanlon Foundation surveys 2016* (Monash University, 2016). At <http://scanlonfoundation.org.au/research/surveys> (viewed 27 April 2017).

³³ Ian McAllister, *The Australian Voter* (UNSW Press, 2011) 66.

³⁴ Senate Select Committee on Strengthening Multiculturalism, Parliament of Australia, *Ways of protecting and strengthening Australia's multiculturalism and social inclusion* (2017). At

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Strengthening_Multiculturalism/Multiculturalism/Final_report (viewed 11 October 2017).

³⁵ Senate Select Committee on Strengthening Multiculturalism, Parliament of Australia, *Ways of protecting and strengthening Australia's multiculturalism and social inclusion* (2017) 70–71 [4.51] (Recommendation 7). At

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Strengthening_Multiculturalism/Multiculturalism/Final_report (viewed 11 October 2017).

³⁶ Australian Human Rights Commission, *National Anti-Racism Strategy and Racism. It Stops with Me Campaign*. At <https://www.humanrights.gov.au/our-work/race-discrimination/projects/national-anti-racism-strategy-and-racism-it-stops-me-campaign> (viewed 8 December 2016).

³⁷ Australian Human Rights Commission, *National Anti-Racism Strategy and Racism. It Stops with Me: Summary Evaluation and Future Direction*, June 2015, 45. At <https://www.humanrights.gov.au/our-work/race-discrimination/publications/national-anti-racism-strategy-and-racism-it-stops-me> (viewed 10 October 2017).

³⁸ Australian Human Rights Commission, *Racism. It Stops with Me Campaign*, at <https://itstopswithme.humanrights.gov.au/> (viewed 30 October 2017).

³⁹ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Australia, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 35th sess, Agenda item 6, UN Doc A/HRC/31/14/Add.1 (29 February 2016) [19].

⁴⁰ Senate Select Committee on Strengthening Multiculturalism, Parliament of Australia, *Ways of protecting and strengthening Australia's multiculturalism and social inclusion* (2017) 71 [4.53] (Recommendation 8). At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Strengthening_Multiculturalism/Multiculturalism/Final_report (viewed 11 October 2017).

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⁵⁷ See, eg, Federation of Ethnic Communities Councils of Australia, Submission No 100 to Joint Standing Committee on Migration, *Migrant Settlement Outcomes*, 19 February 2017, 2–3.

⁵⁸ Prime Minister of Australia, The Hon Malcolm Turnbull MP, *Racial Tolerance Motion — Address to Parliament* (10 October 2016). At <https://www.pm.gov.au/media/2016-10-10/racial-tolerance-motion-address-parliament> (viewed 30 October 2017).

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⁶⁰ The proposed additional requirements include increasing residency requirements to four years permanent residency; increasing the language requirements of the English language from 'basic knowledge' to 'competent English'; a new requirement that a person 'has integrated into the Australian community', amongst others.

⁶¹ Groups include: children born in Australia to asylum seeker or refugee parents, even after those children have been lawfully in Australia for up to 10 years; children born in Australia to parents who had a valid visa but overstayed the visa before the child's 10th birthday; children who are found abandoned in Australia; children as young as 10 years old that the Minister considers are not of good character; people with mental illness or cognitive impairment who come into contact with the criminal justice system.

⁶² Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017* (5 September 2017) 46 [3.122]–[3.125]. At

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⁷² Senate Select Committee on Strengthening Multiculturalism, Parliament of Australia, *Ways of protecting and strengthening Australia's multiculturalism and social inclusion* (2017) 56 [3.86]–[3.88] (Recommendation 5). At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Strengthening_Multiculturalism/Multiculturalism/Final_report (viewed 11 October 2017).

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¹⁰⁸ Australian Law Reform Commission, *Incarceration rates of Aboriginal and Torres Strait Islander peoples*. At <https://www.alrc.gov.au/inquiries/indigenous-incarceration> (viewed 11 September 2017).

¹⁰⁹ Justice targets refer to targets to address the overrepresentation of Aboriginal and Torres Strait Islander peoples as both offenders and victims in the criminal justice system. It has been recommended by the National Congress of Australia's First Peoples that targets be set to halve the gap in rates of incarceration for Aboriginal and Torres Strait Islander peoples. Proposed justice targets could be included in the existing Close the Gap framework. The Australian Government has stated that it rejects the adoption of justice-related targets. See Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2014* (2014), 117–123. At <https://www.humanrights.gov.au/publications/social-justice-and-native-title-report-2014> (viewed 11 September 2017).

¹¹⁰ Senate Legal and Constitutional Affairs Committee, *Value of a justice reinvestment approach to criminal justice in Australia* (2013), 124. At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/index (viewed 11 September 2017). The Aboriginal and Torres Strait Islander Social Justice Commissioner has advocated for justice reinvestment over the past five years. The 2014 Social Justice and Native Title Report recommends that, 'the Australian Government take a leadership role on justice reinvestment and works with states, territories and Aboriginal and Torres Strait Islander communities to identify further trial sites.' Australian Human Rights Commission, *Social Justice and Native Title Report 2014* (2014), 12. At <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/social-justice-and-nati-0> (viewed 11 September 2017).

¹¹¹ Australian Government, *Australian Government response to the Senate Legal and Constitutional Affairs References Committee report: Value of a justice reinvestment approach to criminal justice in* 53

Australia (October 2017) 3. At

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2F2b5f4c0e-443f-496f-9c94-d162fc1d1dec%22> (viewed 24 October 2017). The Australian Government has indicated that it supports in-principle recommendations that the Commonwealth take a leading role in identifying the data required to implement a justice reinvestment approach and establish a national approach to the data collection of justice indicators (Recommendation 1); make a commitment to sharing relevant data held by Commonwealth line agencies with justice reinvestment initiatives in other jurisdictions (Recommendation 2); commit to the establishment of a trial of justice reinvestment in Australia in conjunction with the relevant states and territories, using a place-based approach, and that at least one remote Indigenous community be included as a site. Further, the committee recommends that any trial actively involve local communities in the process, is conducted on the basis of rigorous justice mapping over a minimum time frame beyond the electoral cycle and be subject to a robust evaluation process. (Recommendation 6); and provide funding for the trial of justice reinvestment in Australia (Recommendation 7). See Australian Government, *Australian Government response to the Senate Legal and Constitutional Affairs References Committee report: Value of a justice reinvestment approach to criminal justice in Australia* (October 2017) 4, 7. At

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¹¹⁷ Productivity Commission, *Report on Government Services 2017*, Vol C: Justice, Steering Committee for the Review of Government Service Provision (2017) 6.13; First Peoples Disability Justice Consortium, Submission 39 to the Senate Standing Committee on Community Affairs, Parliament of Australia, *Inquiry on the Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia*.

¹¹⁸ *Police Administration Act* (NT), Div 4AA.

¹¹⁹ In particular, the Commission notes that recommendation 87(c) included that 'Administrators of Police Services should take a more active role in ensuring police compliance with directives, guidelines and rules aimed at reducing unnecessary custodies and should review practices and procedures relevant to the use of arrest or process by summons'. See *Royal Commission into Aboriginal Deaths in Custody*, Vol 5 (1998). At <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol5/5.html#Heading5> (viewed 30 October 2017).

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¹⁴⁴ *Criminal Code 1995* (Cth), cl 80.2A.

¹⁴⁵ Andrew Markus, *Mapping Social Cohesion: The Scanlon Foundation surveys 2016* (Monash University, 2016) 3–4, 41–44. At <http://scanlonfoundation.org.au/research/surveys> (viewed 30 October 2017).

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¹⁴⁷ Surveyed Muslims who stated they considered religion to be 'very important' in daily life agreed that there is racial prejudice in Australia, at slightly higher rates than the total surveyed Muslim population. Those who agreed that Islam is consistent with Australian norms and society also agreed that there is racial prejudice at slightly higher rates than the total sample. Kevin Dunn et al, 'The resilience and ordinariness of Australian Muslims: Attitudes and experiences of Muslims Report' (Western Sydney University, Islamic Sciences and Research Academy, Charles Sturt University, Sydney) 27–28, 32. At https://www.westernsydney.edu.au/_data/assets/pdf_file/0008/988793/12441_text_challenging_racism_WEB.pdf (viewed 30 October 2017).

¹⁴⁸ From September 2014 to September 2015, 280 reported incidents were logged with Islamophobia Register Australia, of which 12% were 'physical incidents' and 33% were 'verbal incidents'. See: Islamophobia Register Australia, 'Preliminary Findings Report 01/12/15' (2015) At <https://www.facebook.com/islamophobiaregisteraustralia/posts/812147742241503> (viewed 30 October 2017).

¹⁴⁹ Australian Human Rights Commission, *Freedom from Discrimination: Report on the 40th anniversary of the Racial Discrimination Act* (2015) 61. At <https://www.humanrights.gov.au/our-work/race-discrimination/publications/freedom-discrimination-report-40th-anniversary-racial> (viewed 3 May 2017).

¹⁵⁰ Kevin Dunn et al, 'The resilience and ordinariness of Australian Muslims: Attitudes and experiences of Muslims Report' (Western Sydney University, Islamic Sciences and Research Academy, Charles Sturt University, Sydney) 32. At https://www.westernsydney.edu.au/_data/assets/pdf_file/0008/988793/12441_text_challenging_racism_WEB.pdf (viewed 30 October 2017).

¹⁵¹ For example, a participant in Darwin stated that anti-Muslim abuse had led Muslim women to 'change where they shop, how they shop, their participation in public life'. At the Melbourne consultation, one participant reported that a group of Muslim musicians cancelled a public music performance due to fear they would be attacked or abused on public transport on their way to the event. See Australian Human Rights Commission, *Freedom from Discrimination: Report on the 40th anniversary of the Racial Discrimination Act* (2015) 42. At <https://www.humanrights.gov.au/our-work/race-discrimination/publications/freedom-discrimination-report-40th-anniversary-racial> (viewed 10 October 2017).

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¹⁵³ See, for example, Arnold Bloch Leibler, 'Racial discrimination action settles' (Media Release, 18 February 2013). At http://www.smartjustice.org.au/cb_pages/files/Media%20Release%20-%20FKCLC%20%26%20ABL%20Feb%202013.pdf (viewed 15 December 2016); Sarah Farnsworth, 'Young South Sudanese 'constantly stopped' by police, as community grapples with Apex stigma', *ABC News* (4 December 2016). At <http://www.abc.net.au/news/2016-12-04/young-south-sudanese-constantly-stopped-by-police/8078642> (viewed 15 December 2016).

¹⁵⁴ Mutuma Ruteere, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Australia*, UN Doc A/HRC/35/41/Add.2 (9 June 2017) 14 [54]. At http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A_HRC_35_41_Add_2_EN.docx (viewed 10 October 2017).

¹⁵⁵ Australian Human Rights Commission, *In our own words — African Australians: A review of human rights and social inclusion issues* (2010). At <https://www.humanrights.gov.au/our-work/race-discrimination/projects/our-own-words-african-australians-review-human-rights-and> (viewed 10 October 2017).

¹⁵⁶ Australian Human Rights Commission, *Principles to promote and protect the human rights of international students* (2012). At <http://www.humanrights.gov.au/publications/book-principles-promote-and-protect-human-rights-international-students> (viewed 30 October 2017). The Principles were circulated widely to a broad range of stakeholders, including federal, state and territory education ministers, shadow federal education minister and federal, state and territory Departments of Education. See Australian Human Rights Commission, *International Students' Human Rights: a review of the Principles and the issues* (2015) 7–11. At <https://www.humanrights.gov.au/our-work/race-discrimination/publications/international-students-human-rights-review-principles-and> (viewed 29 September 2017).

¹⁵⁷ International students struggle to find employment. Sometimes this is because employers specifically state employment is for Australian citizens or permanent residents only. Some international students have problems getting past the screening process for a job, possibly due to foreign sounding names. As a result, some try to adopt Western sounding names to get a job interview. Exploitation in employment was also noted by respondents, as occurring in a number of ways including underpayment, no payment for trials, work hours, and pregnancy rights. See Australian Human Rights Commission, *International Students' Human Rights: a review of the Principles and the issues* (2015) 10. At <https://www.humanrights.gov.au/our-work/race-discrimination/publications/international-students-human-rights-review-principles-and> (viewed 29 September 2017).

¹⁵⁸ Issues relating to accommodation were lack of safety, affordability, overcrowding, lack of proper tenancy, living in accommodation where there are drugs in the property, and living in poor conditions such as not being able to cook, lock doors or use a 'proper toilet'. See Australian Human Rights Commission, *International Students' Human Rights: a review of the Principles and the issues* (2015) 10. At <https://www.humanrights.gov.au/our-work/race-discrimination/publications/international-students-human-rights-review-principles-and> (viewed 29 September 2017).

¹⁵⁹ Racism was not always the sole or dominant reason for complaints or incidents, but mostly played some part. The coverage in the mainstream press of international students taking local jobs and accommodation, and contributing to overcrowding in cities was identified as ostracising this group from the larger community and leading to social isolation. See Australian Human Rights Commission, *International Students' Human Rights: a review of the Principles and the issues* (2015) 10. At <https://www.humanrights.gov.au/our-work/race-discrimination/publications/international-students-human-rights-review-principles-and> (viewed 29 September 2017).

¹⁶⁰ Australian Human Rights Commission, *Change The Course: National Report on Sexual Assault and Sexual Harassment at Australia Universities* (2017) 67. At https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_2017_ChangeTheCourse_UniversityReport.pdf (viewed 11 September 2017).

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¹⁶² See Laura Aubusson, 'Police investigate swastika graffiti on Jewish synagogue' (Daily Telegraph, 14 April 2016). At <http://www.dailytelegraph.com.au/newslocal/city-east/police-investigate-swastika-graffiti-on-jewish-synagogue/news-story/6b2fd822f1f7853699ced9fcd649dfdb> (viewed 11 September 2017); Henry Benjamin, 'Broken Hill synagogue defaced' (J-Wire, 1 December 2015). At <http://www.jwire.com.au/broken-hill/> (viewed 11 September 2017).

¹⁶³ ABC News, 'Graffiti vandals spray swastikas and hate messages on Ukrainian Catholic church in Lidcombe' (ABC News, 22 June 2014). At <http://www.abc.net.au/news/2014-06-21/swastikas-graffitied-on-side-of-ukranian-church-in-sydney/5540968> (viewed 11 September 2017); Tracey Prisk, 'Orange church attacked by vandals: police investigating arson and graffiti' (Central Western Daily, 23 November 2015) At <http://www.centralwesterndaily.com.au/story/3509341/orange-church-attacked-by-vandals-police-investigating-arson-and-graffiti/> (viewed 11 September 2017).

¹⁶⁴ See Beau Donnelly, 'Muslims on what it's like to live in Australia' (Sydney Morning Herald, 26 May 2016). At <http://www.smh.com.au/national/muslims-on-what-its-like-to-live-in-australia-20160429-goi953.html> (viewed 11 September 2017); Heath Aston, 'Dozens of anti-Muslim attacks as Islamic leaders warn of community fear' (Sydney Morning Herald, 9 October 2014). At <http://www.smh.com.au/national/dozens-of-antimuslim-attacks-as-islamic-leaders-warn-of-community-fear-20141009-113tmk.html> (viewed 11 September 2017).

¹⁶⁵ See Megan Levy, 'Teens arrested over racist attack on bus full of Jewish school students' (Sydney Morning Herald, 7 August 2014). At <http://www.smh.com.au/nsw/teens-arrested-over-racist-attack-on-bus-full-of-jewish-school-students-20140806-101995.html> (viewed 11 September 2017); Tom Cowie, "'Go back to Israel': racial attack outside Melbourne synagogue posted online' (Age, 27 November 2015). At <http://www.theage.com.au/victoria/go-back-to-israel-racial-attack-outside-melbourne-synagogue-posted-online-20151126-gl9gw5.html> (viewed 11 September 2017).

¹⁶⁶ See Camille Bianchi, 'Sikh teen shaken after alleged turban attack on bus' (SBS News, 4 March 2016). At <http://www.sbs.com.au/news/article/2016/03/03/sikh-teen-shaken-after-alleged-turban-attack-bus> (viewed 11 September 2017).

¹⁶⁷ Australian Human Rights Commission, *Freedom from Discrimination: Report on the 40th anniversary of the Racial Discrimination Act* (2015) 60-61. At <https://www.humanrights.gov.au/our-work/race-discrimination/publications/freedom-discrimination-report-40th-anniversary-racial> (viewed 11 September 2017).

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¹⁶⁹ Executive Council of Australian Jewry, *Report on Anti-Semitism in Australia 2016* (2016) 24. At <http://www.ecaj.org.au/wp-content/uploads/2012/08/ECAJ-Antisemitism-Report-2016d-WEB.pdf> (viewed 30 October 2017).

¹⁷⁰ Executive Council of Australian Jewry, *Report on Anti-Semitism in Australia 2016* (2016) 23. At <http://www.ecaj.org.au/wp-content/uploads/2012/08/ECAJ-Antisemitism-Report-2016d-WEB.pdf> (viewed 30 October 2017).

¹⁷¹ *Miller v Wertheim* [2002] FCAFC 156, *King-Ansell v Police* [1979] 2 NZLR.

¹⁷² Australian Human Rights Commission, *Freedom from Discrimination: Report on the 40th anniversary of the Racial Discrimination Act* (2015) 44. At <https://www.humanrights.gov.au/our-work/race-discrimination/publications/freedom-discrimination-report-40th-anniversary-racial> (viewed 10 October 2017)

¹⁷³ The Commission has made a submission to the parliamentary inquiry. See Australian Human Rights Commission, Submission No 12 to the Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into the status of the human right to freedom of religion or belief*, 28 February 2017. At <http://www.aph.gov.au/DocumentStore.ashx?id=23c02ad6-1904-478a-adf0-2da8495c28b4&subId=464627> (viewed 11 September 2017).

¹⁷⁴ The 2016 Scanlon Survey found that 59% of Australians considered that the immigration intake was 'about right' or 'too low'. Similarly, 57% of respondents to a 2016 Lowy Institute survey disagreed with the statement that there is 'too much' immigration to Australia.

¹⁷⁵ Australian Human Rights Commission, *Freedom from Discrimination: Report on the 40th Anniversary of the Racial Discrimination Act* (2015) 38. At <https://www.humanrights.gov.au/our-work/race-discrimination/publications/freedom-discrimination-report-40th-anniversary-racial> (viewed 30 October 2017).

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¹⁸⁵ Mulrunji was arrested by Senior Sergeant Christopher Hurley for yelling out alleged abuse towards the police. Mulrunji was affected by alcohol, protesting and struggling. He was brought into the Palm Island Police Station, where he had an altercation with Senior Sergeant Hurley. Mulrunji was then dragged limp and unresponsive into a cell. Within an hour, Mulrunji was dead.

¹⁸⁶ *Wotton v State of Queensland (No 5)* [2016] FCA 1457. At <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2016/2016fca1457> (viewed 12 October 2017). See also a summary of the reasons for judgment at <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2016/2016fca1457/summary/2016fca1457-summary> (viewed 12 October 2017).

¹⁸⁷ Contrary to what would have occurred in an impartial, independent and effective investigation, Senior Sergeant Hurley picked up the investigators from the airport when they arrived and had a meal with them at his house that evening. He was never treated as a suspect, nor promptly removed from the island. The police officers discounted and ignored accounts from Aboriginal witnesses implicating Senior Sergeant Hurley. Incorrect and stereotypical information about Mulrunji and the circumstances of his death was passed to the coroner, while relevant information from Aboriginal witnesses was not passed on.

¹⁸⁸ For example, by not proactively participating in community meetings and by not providing timely and accurate information about the cause of Mulrunji's death and the progress of the investigation, which the community was waiting to hear.

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¹⁹⁶ Heather McNeill, 'Kalgoorlie riot accused walks free after winning appeal', *WA Today* (online) (6 October 2017). At <http://www.watoday.com.au/wa-news/kalgoorlie-riot-accused-walks-free-after-winning-appeal-20171005-gyv5n5.html> (viewed 12 October 2017).

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²⁰⁴ The first INSLM, Bret Walker SC, recommended that the preventative detention regime be repealed because there is 'no demonstrated necessity for these extraordinary powers'. In 2013, the Council of Australian Governments (COAG) Review of Counter-Terrorism Legislation also recommended that the PDO regime be repealed, finding that the provisions were unlikely to be used, and that the purposes of the PDO regime could be achieved 'by traditional methods of arrest, interrogation and charge'. Despite these recommendations, in 2016, the threshold for applying for a PDO was reduced. See Independent National Security Legislation Monitor, *Declassified Annual Report* (2012), Chapter III, Recommendation III/4. At <https://www.inslm.gov.au/reviews-reports/annual-reports> (viewed 11 September 2017); *Council of Australian Governments Review of Counter-Terrorism Legislation* (2013) 67, 69–71 [269]–[276]. At <https://www.ag.gov.au/Consultations/Pages/COAGReviewofCounter-TerrorismLegislation.aspx> (viewed 11 September 2017).

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- ²³³ *Migration Act 1958* (Cth) ss 189, 196.
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Factsheet: National Anti-Racism Strategy

1. This factsheet expands on section 3.3(d) of the Commission's submission of information concerning Australia's compliance with the Convention on the Elimination of All Forms of Racial Discrimination, transmitted to the Committee on 30 October 2017.
2. In 2011, the Australian Government made a commitment to a comprehensive National Anti-Racism Strategy (the Strategy). The Strategy is a partnership-based strategy with a focus on public awareness, education resources and youth engagement. The Strategy was launched in August 2012.
3. The aim of the Strategy is 'to promote a clear understanding in the Australian community of what racism is, and how it can be prevented and reduced'.¹ Its objectives are to:
 - create awareness of racism and its effects on individuals and the broader community
 - identify, promote and build on good practice initiatives to prevent and reduce racism, and
 - empower communities and individuals to take action to prevent and reduce racism and to seek redress when it occurs.
4. Six strategic projects have been developed and delivered to date, targeting priority areas identified in the Strategy. The projects are:
 - What You Say Matters, an online anti-racism resource for young people.
 - Strengthening Connections, a training resource addressing systemic racism against Aboriginal and Torres Strait Islander people using government services.
 - The Workplace Cultural Diversity Tool, an audit tool for employers.
 - RightsED, education resources for schools on racism and race relations curriculum.
 - A National Forum on Diversity Training for police.
 - Building Social Cohesion in Our Communities, a resource for local government.
5. A key component of the Strategy is a national anti-racism campaign, *Racism. It Stops with Me.*² The campaign has three objectives - to:
 - ensure more Australians recognise that racism is unacceptable in our community

- create tools and resources to support practical action against racism, and
 - empower individuals and organisations to prevent and respond effectively to racism.
6. The campaign now has more than 360 organisational supporters, from across local and state governments, business, education, sporting organisations, the arts and civil society.
 7. The Strategy has played a vital role in supporting the maintenance of racial tolerance. The Commission conducted an evaluation of the Strategy in 2015 and concluded that it has been effective in raising awareness of racism and how best to respond to it.³
 8. The Australian Government has maintained its commitment to support the Strategy and the *Racism. It Stops with Me* campaign.⁴ The Commission notes that the Select Committee on Strengthening Multiculturalism has recommended that the Australian Government continue to provide ongoing support for the Strategy, through continuing to fund activities that raise public awareness and empower individuals and communities to prevent and reduce the incidence of racism, and promoting the Strategy at relevant opportunities.⁵

Recommendation 10: That the Australian Government continue to support the anti-racism and other educative work of the Commission, including the National Anti-Racism Partnership and Strategy.

¹ Australian Human Rights Commission, *National Anti-Racism Strategy and Racism. It Stops with Me Campaign*. At <https://www.humanrights.gov.au/our-work/race-discrimination/projects/national-anti-racism-strategy-and-racism-it-stops-me-campaign> (viewed 8 December 2016).

² Australian Human Rights Commission, *Racism. It Stops with Me Campaign*, at <https://itstopswithme.humanrights.gov.au/> (viewed 30 October 2017).

³ Australian Human Rights Commission, *National Anti-Racism Strategy and Racism. It Stops with Me: Summary Evaluation and Future Direction*, June 2015, 45. At <https://www.humanrights.gov.au/our-work/race-discrimination/publications/national-anti-racism-strategy-and-racism-it-stops-me> (viewed 10 October 2017).

⁴ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Australia, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 35th sess, Agenda item 6, UN Doc A/HRC/31/14/Add.1 (29 February 2016) [19].

⁵ Senate Select Committee on Strengthening Multiculturalism, Parliament of Australia, *Ways of protecting and strengthening Australia's multiculturalism and social inclusion* (2017) 71 [4.53] (Recommendation 8). At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Strengthening_Multiculturalism/Multiculturalism/Final_report (viewed 11 October 2017).

Factsheet: Multiculturalism & Racial Discrimination

1. This factsheet expands on section 4 of the Commission's submission of information concerning Australia's compliance with the Convention on the Elimination of All Forms of Racial Discrimination, transmitted to the Committee on 30 October 2017.

(a) Racial discrimination in Australia

2. Australia is a successful multicultural nation. Despite this, racial discrimination continues to be present in Australian society. According to the 2016 'Mapping Social Cohesion' Survey report, 20% of respondents indicated experience of discrimination based on skin colour, ethnicity or religion.¹ This is an increase of 5% from the 2015 report and is the highest level recorded in the history of the Scanlon Foundation Surveys.² Those of non-English speaking backgrounds in the Australian population reported the highest experience of discrimination, 27% compared to 17% of those born in Australia and 19% of those born overseas in English speaking countries.³
3. In its national consultations in 2015, the Commission found the persistence of the following forms of racial discrimination: discrimination in employment; racial vilification and bigotry; and social exclusion.⁴ It also found strong community support for existing legislative protections against racial discrimination and hatred (particularly s 18C of the *Racial Discrimination Act 1975* (Cth), which makes it unlawful to 'offend', 'insult', 'humiliate' or 'intimidate' another person or a group of people on the basis of race, colour or national or ethnic origin).⁵
4. This is a finding supported by survey evidence. For example, the Cyber Racism and Community Resilience Research Project found that only 10% of Australians believe people should have the freedom to 'insult' and 'offend' people on the basis of race, culture or religion and that over 75% are opposed.⁶
5. In March 2017, a Fairfax-Ipsos poll of 1400 voters found that 78% of Australians believe it should be unlawful to offend, insult or humiliate someone on the basis of their race or ethnicity. When the same question was asked in 2014, 88% of respondents said it should be unlawful to offend, insult or humiliate someone on the basis of race.⁷
6. In carrying out its conciliation function, the Commission records statistics relating to complaints of discrimination, harassment and vilification. In the 2016–17 reporting year, 409 complaints received by the Commission were received under the *Racial Discrimination Act 1975* (Cth) (RDA). Of those complaints, 26% related to employment, 20% related to the provision of goods and services, and 34% related to racial hatred.⁸

7. Australia appeared before the UN Human Rights Committee for its periodic review of compliance with the ICCPR in September 2017. The Human Rights Committee recommended that the Australian Government:
- enhance funding and support initiatives aimed at promoting tolerance for diversity and countering racism
 - provide training to police, judges, prosecutors on diversity and inadmissibility of racial profiling
 - properly investigate, prosecute and punish perpetrators of hate crime and provide victims with adequate remedies, and
 - ensure there are adequate measures of responses to instances of incitement to discrimination or violence on racial, ethnic or religious grounds.⁹
8. The UN Human Rights Committee also noted particular concern of reports of discriminatory treatment and racial profiling of migrants from African countries; attacks on places of religion; and inconsistencies in anti-vilification laws across states and territories.¹⁰

Recommendation 11: That the Australian Government recognise the importance of maintaining effective legal protections against racial discrimination and hatred in setting a standard for public conduct in a multicultural society.

(b) Strengthening multiculturalism

9. Strengthening multiculturalism is an important aspect of protecting persons from racial discrimination, improving cultural diversity in institutions and organisations and promoting CERD rights.

(a) Multiculturalism policy

10. The Commission commends the Australian Government's 2017 multicultural policy statement, 'Multicultural Australia: United, Strong, Successful'. The statement rejects racism, affirms the value of mutual respect, and emphasises the safety and productivity of Australia.¹¹

Recommendation 12: That the Australian Government continue to support a policy of multiculturalism as a means of promoting social cohesion, cultural harmony and national unity.

(b) Multiculturalism legislation

11. The Commission considers that public recognition of Australian multiculturalism is important.
12. The Select Committee on Strengthening Multiculturalism recommended that the Australian Government consider developing and implementing a federal Multicultural Act to enshrine agreed principles of multiculturalism to support

and frame multiculturalism in Australia.¹² Others have also advocated for the introduction of a federal Multicultural Act.¹³

13. Parliament may be well positioned to clarify the meaning of multiculturalism in Australia and an annual parliamentary statement of multicultural principles may be an appropriate mechanism for a regular re-commitment to multicultural values and cultural diversity. In 2016 Parliament reiterated its 'commitment to maintaining Australia as a culturally diverse, tolerant and open society, united by an overriding commitment to our nation, and its democratic institutions and values'.¹⁴

Recommendation 13: That the Australian Parliament consider further public recognition of Australian multiculturalism, including periodic public statements affirming parliamentarians' support of a multicultural Australia.

(c) *Policy machinery*

14. The Commission considers that the Australian Government can strengthen the policy machinery for multiculturalism. An Office of Multicultural Affairs functioned in the 1980s and 1990s. Such an office would ensure coordinated leadership on multicultural affairs and, if established in an appropriate departmental home (such as the Department of Prime Minister and Cabinet), would send a strong message about multiculturalism being a policy priority.
15. The Select Committee on Strengthening Multiculturalism recommended that the Australian Government, in consultation with relevant government, non-government and community bodies, consider developing and implementing federal legislation to establish an ongoing Multicultural Commission that is sufficiently resourced to promote and protect multiculturalism throughout Australia, ensuring that all Australians recognise that multiculturalism is essential to the fabric of the Australian nation.¹⁵

Recommendation 14: That the Australian Government strengthen the policy machinery of Australian multiculturalism, including through the re-establishment of an Office of Multicultural Affairs.

(c) **Cultural diversity in Australian organisations and institutions**

(a) *Leadership*

16. There is currently a limited level of cultural diversity represented in the leadership of Australian organisations and institutions.¹⁶
17. The Commission convened a Working Group on Cultural Diversity and Inclusive Leadership, consisting of the Commission, the University of Sydney Business School, Westpac, PwC Australia and Telstra. In 2016, the Working Group released *Leading for Change*, a blueprint for cultural diversity and inclusive leadership.
18. *Leading for Change* provides a snapshot of the cultural composition of senior leaders in Australian business, politics, government and civil society.¹⁷

19. *Leading for Change* found that, given 32% of the Australian population had a 'non-Anglo-Celtic' background, there was an 'under-representation' of cultural diversity in leadership positions in Australia. It notes that:
- of CEOs in ASX 200 companies, 76.62% had an 'Anglo-Celtic' background, 18.41% had a 'European' background, 4.98% had a 'non-European' background and none had an 'Indigenous' background
 - of federal parliamentarians, 78.76% had an 'Anglo-Celtic' background, 15.93% had a 'European' background, 3.54% had a 'non-European' background and 1.77% had an 'Indigenous' background
 - of federal Ministers and Assistant Ministers, 85.71% had an 'Anglo-Celtic' background, 11.90% had a 'European' background, 2.38% had an 'Indigenous' background and none had a 'non-European' background
 - of federal and state public service leaders (Secretaries and heads of departments), 82.26% had an 'Anglo-Celtic' background, 15.32% had a 'European' background, 1.61% had a 'non-European' background and 0.81% had an 'Indigenous' background
 - of university Vice-Chancellors, 85% had an 'Anglo-Celtic' background, 15% had a 'European' background, and none had a 'non-European' or 'Indigenous' background.¹⁸

(b) *Media*

20. A Screen Australia study on diversity in Australian TV drama in 2016 found an underrepresentation of culturally diverse, 'non-Anglo-Celtic' groups on Australian television. The study notes that people of 'non-European' backgrounds were particularly underrepresented.¹⁹
21. The Commission conducted a review in 2010 of human rights and social inclusion issues affecting African Australians (*In Our Own Words* report).²⁰ In that review, African Australians expressed concern about the negative coverage of their communities in the mainstream media, often triggered by comments from public figures, which influenced overall perceptions of their communities and undermined their relationships with the broader Australian community.²¹
22. The Select Committee on Strengthening Multiculturalism concluded that the evidence presented throughout its inquiry into multiculturalism demonstrated a lack of diversity in on-screen media content, which is in part due to systemic barriers to participation by, and representation of, culturally and linguistically diverse communities. The Select Committee recommended that all media broadcasters seek to improve pathways for culturally and linguistically diverse individuals and communities to participate in broadcast media.²²

(c) *Law enforcement*

23. The Special Rapporteur on racial discrimination, in the report of his recent country visit to Australia, has recommended that the Australian Government ensure that law enforcement agencies, in particular police forces, reflect the

diversity of Australian society and the communities they serve and increase their intake of recruits from Indigenous and minority communities.²³

Recommendation 17: That the Australian Government consider the recommendations of the Select Committee on Strengthening Multiculturalism and investigate pathways to improve cultural diversity in Australian institutions and organisations.

(d) Data collection

24. The Commission collects data relating to complaints of discrimination, harassment and vilification.²⁴
25. There is currently no comprehensive process in Australia for collecting data on crimes motivated by racial hatred or prejudice.²⁵ The Select Committee on Strengthening Multiculturalism recommended that the Australian Government consider developing options for collecting more comprehensive data on issues concerning multiculturalism and racially motivated crimes.²⁶ The Commission strongly considers that there is a need for the Australian Government to collect better data on cultural diversity in Australian organisations and institutions.
26. The Commission draws the Committee's attention to the UK Race Disparity Audit, a governmental audit into racial disparities performed across Britain to examine how people of different backgrounds are treated across areas including health, education, employment and the criminal justice system.²⁷ The Prime Minister of the United Kingdom, Theresa May, has said that the audit data may be 'uncomfortable', but will also be 'regarded as the central resource in the battle to defeat ethnic injustice'.²⁸ The Commission encourages the Australian Government to commission a comprehensive audit into racial disparity in Australia.

Recommendation 18: That the Australian Government collect more comprehensive data on racial discrimination, racially motivated crimes, cultural diversity and multiculturalism generally. *The Commission considers this to be of such importance that the Committee should request an update from the Australian Government on progress in 12 months.*

¹ Andrew Markus, *Mapping Social Cohesion: The Scanlon Foundation surveys 2016* (Monash University, 2016) 4. At <http://scanlonfoundation.org.au/research/surveys> (viewed 30 October 2017).

² Andrew Markus, *Mapping Social Cohesion: The Scanlon Foundation surveys 2016* (Monash University, 2016) 4. At <http://scanlonfoundation.org.au/research/surveys> (viewed 30 October 2017).

³ Andrew Markus, *Mapping Social Cohesion: The Scanlon Foundation surveys 2016* (Monash University, 2016) 26. At <http://scanlonfoundation.org.au/research/surveys> (viewed 30 October 2017).

⁴ Australian Human Rights Commission, *Freedom from Discrimination: Report on the 40th Anniversary of the Racial Discrimination Act* (2015), 34–41.

⁵ Australian Human Rights Commission, *Freedom from Discrimination: Report on the 40th Anniversary of the Racial Discrimination Act* (2015), 47–49.

⁶ See Andrew Jakubowicz, Kevin Dunn and Rachel Sharples, 'Australians believe 18C protections should stay', *The Conversation* (online) 17 February 2017. At <https://theconversation.com/australians-believe-18c-protections-should-stay-73049> (viewed 23 October 2017); Andrew Jakubowicz, Kevin Dunn and Rachel Sharples, 'What do Australian internet users think about racial vilification?' *The Conversation* (online) 17 March 2014. At <https://theconversation.com/what-do-australian-internet-users-think-about-racial-vilification-24280> (viewed 23 October 2017); Cyber Racism and Community

Resilience Research Project (CRaCR), *An inquiry into freedom of speech in Australia*, Submission No 54 to the Parliamentary Joint Committee on Human Rights (9 December 2016). At https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights_inquiries/Freedom_speechAustralia/Submissions (viewed 23 October 2017); Cyber Racism and Community Resilience Research Project (CRaCR), *An inquiry into freedom of speech in Australia*, Submission No 54.1 to the Parliamentary Joint Committee on Human Rights (9 December 2016). At https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights_inquiries/Freedom_speechAustralia/Submissions (viewed 23 October 2017).

⁷ See Matthew Knott, 'Fairfax-Ipsos poll: Eight in 10 voters oppose Turnbull government's 18C race hate law changes', *The Sydney Morning Herald* (online) 28 March 2017. At <http://www.smh.com.au/federal-politics/political-news/fairfaxipsos-poll-eight-in-10-voters-oppose-turnbull-governments-18c-race-hate-law-changes-20170327-gv7dlq.html> (viewed 23 October 2017).

⁸ Australian Human Rights Commission, *2016–2017 Complaint Statistics* (2017). At <https://www.humanrights.gov.au/our-work/commission-general/publications/annual-report-2016-2017> (viewed 26 October 2017).

⁹ UN Human Rights Committee, *Concluding observations on the sixth periodic report of Australia*, 121st sess, Agenda item 5, Consideration of reports submitted by States parties under article 40 of the Covenant, UN Doc CCPR/C/AUS/CO/6 (9 November 2017) 4 [19]–[20]. At http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fC_OC%2fAUS%2f29445&Lang=en (viewed 22 November 2017).

¹⁰ UN Human Rights Committee, *Concluding observations on the sixth periodic report of Australia*, 121st sess, Agenda item 5, Consideration of reports submitted by States parties under article 40 of the Covenant, UN Doc CCPR/C/AUS/CO/6 (9 November 2017) 4 [19]–[20]. At http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fC_OC%2fAUS%2f29445&Lang=en (viewed 22 November 2017).

¹¹ Australian Government, 'Australian Government's Multicultural Statement' (March 2017). At <https://www.dss.gov.au/settlement-and-multicultural-affairs/australian-governments-multicultural-statement/australian-governments-multicultural-statement> (viewed 30 October 2017).

¹² Senate Select Committee on Strengthening Multiculturalism, Parliament of Australia, *Ways of protecting and strengthening Australia's multiculturalism and social inclusion* (2017) 80 [5.25] (Recommendation 9). At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Strengthening_Multiculturalism/Multiculturalism/Final_report (viewed 11 October 2017).

¹³ See, eg, Federation of Ethnic Communities Councils of Australia, Submission No 100 to Joint Standing Committee on Migration, *Migrant Settlement Outcomes*, 19 February 2017, 2–3.

¹⁴ Prime Minister of Australia, The Hon Malcolm Turnbull MP, *Racial Tolerance Motion — Address to Parliament* (10 October 2016). At <https://www.pm.gov.au/media/2016-10-10/racial-tolerance-motion-address-parliament> (viewed 30 October 2017).

¹⁵ Senate Select Committee on Strengthening Multiculturalism, Parliament of Australia, *Ways of protecting and strengthening Australia's multiculturalism and social inclusion* (2017) [5.38] (Recommendation). At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Strengthening_Multiculturalism/Multiculturalism/Final_report (viewed 11 October 2017).

¹⁶ Australian Human Rights Commission, *Leading for Change: A blueprint for cultural diversity and inclusive leadership* (2016). At https://www.humanrights.gov.au/sites/default/files/document/publication/2016_AHRC%20Leading%20for%20change.pdf (viewed 30 October 2017).

¹⁷ Australian Human Rights Commission, Westpac Group, PWC, University of Sydney, and Telstra, *Leading for Change: A blueprint for cultural diversity and inclusive leadership* (July 2016) 2. At <http://www.pwc.com.au/publications/diversity-leading-for-change-jul16.html> (viewed 10 October 2017).

¹⁸ Australian Human Rights Commission, Westpac Group, PWC, University of Sydney, and Telstra, *Leading for Change: A blueprint for cultural diversity and inclusive leadership* (July 2016) 2. At <http://www.pwc.com.au/publications/diversity-leading-for-change-jul16.html> (viewed 10 October 2017).

¹⁹ Screen Australia, *Seeing ourselves: reflections on diversity in Australian TV drama* (2016) At <https://www.screenaustralia.gov.au/fact-finders/reports-and-key-issues/reports-and-discussion-papers/seeing-ourselves> (viewed 3 May 2017).

²⁰ Australian Human Rights Commission, *In our own words — African Australians: A review of human rights and social inclusion issues* (2010). At <https://www.humanrights.gov.au/our-work/race-discrimination/projects/our-own-words-african-australians-review-human-rights-and> (viewed 10 October 2017).

²¹ Australian Human Rights Commission, *In our own words — African Australians: A review of human rights and social inclusion issues* (2010). At <https://www.humanrights.gov.au/our-work/race->

[discrimination/projects/our-own-words-african-australians-review-human-rights-and](#) (viewed 10 October 2017).

²² Senate Select Committee on Strengthening Multiculturalism, Parliament of Australia, *Ways of protecting and strengthening Australia's multiculturalism and social inclusion* (2017) 56 [3.86]–[3.88] (Recommendation 5). At

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Strengthening_Multiculturalism/Multiculturalism/Final_report (viewed 11 October 2017).

²³ Mutuma Ruteere, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Australia*, Human Rights Council, 35th sess, UN Doc A/HRC/35/41/Add.2 (9 June 2017) 17 [72].

²⁴ Australian Human Rights Commission, *2016–2017 Complaint Statistics* (2017). At <https://www.humanrights.gov.au/our-work/commission-general/publications/annual-report-2016-2017> (viewed 26 October 2017).

²⁵ Australian Human Rights Commission, *Agenda for Racial Equality (2012–2016)* (2012). At <https://www.humanrights.gov.au/our-work/race-discrimination/publications/agenda-racial-equality-2012-2016> (viewed 30 October 2017).

²⁶ Senate Select Committee on Strengthening Multiculturalism, Parliament of Australia, *Ways of protecting and strengthening Australia's multiculturalism and social inclusion* (2017) [5.57] (Recommendation 12). At

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Strengthening_Multiculturalism/Multiculturalism/Final_report (viewed 11 October 2017).

²⁷ UK Cabinet Office, *Race Disparity Audit — Summary Findings from the Ethnicity Facts and Figures Website* (October 2017). At <https://www.gov.uk/government/publications/race-disparity-audit> (viewed 12 October 2017).

²⁸ Prime Minister of the United Kingdom, The Rt Hon Theresa May MP, 'Speech of 10 October 2017', *Race Disparity Audit Launch: 10 October 2017, UK Government* (online) 10 October 2017. At <https://www.gov.uk/government/speeches/pm-words-at-race-disparity-audit-launch-10-october-2017> (viewed 12 October 2017).



Factsheet: Constitutional issues

1. This factsheet expands on sections 5.3 and 3.2(a) of the Commission's submission of information concerning Australia's compliance with the International Convention on the Elimination of All Forms of Racial Discrimination, transmitted to the Committee on 30 October 2017.

(a) Incorporation of CERD and the Australian Constitution

2. Australia's constitutional arrangements do not fully protect against racial discrimination. In particular:
 - i. Section 25 of the Australian Constitution contemplates the ability of Australian state governments to disqualify a group of people from voting based on race.
 - ii. Under Australia's Constitution, the federal Parliament is permitted to make laws under enumerated 'heads of power' in s 51. Under s 51(xxix), the 'external affairs power', the federal Parliament may pass legislation that implements international treaty obligations.¹ However, under s 51(xxvi), the 'racies power', the federal Parliament may pass laws with respect to 'the people of any race for whom it is deemed necessary to make special laws'.² Judicial interpretation of the 'racies power' suggests that it is not limited to matters that are beneficial in nature and could validly support the passage of adverse racially discriminatory laws.³
3. These provisions have been the subject of numerous consultations.
 - a) In 2012, the Expert Panel on Constitutional Recognition of Indigenous Australians was tasked to report to the Australian Government on possible options for constitutional change to give effect to constitutional recognition of Aboriginal and Torres Strait Islander peoples. The Expert Panel relevantly recommended that:
 - i. section 25 be repealed,
 - ii. section 51(xxvi), or the 'racies power', be repealed, and
 - iii. new sections be introduced into the Australian Constitution to:
 - recognise Aboriginal and Torres Strait Islander peoples;
 - prohibit racial discrimination (except for the purpose of overcoming disadvantage, ameliorating the effects of past discrimination, or protecting the cultures, language or heritage of any group), and

- recognise that Aboriginal and Torres Strait Islander languages are the ‘original Australian languages’ and ‘part of our national heritage’.⁴

- b) In 2015, the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples was also asked to consider mechanisms for engagement on the topic of constitutional recognition. It also recommended that sections 25 and 51(xxvi) be repealed and for the retention of a ‘persons power’ so that the Australian Government may legislate for Indigenous peoples.⁵

The basis for the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples was the *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013* (Cth). This Act required a review to consider proposals for constitutional change to recognise Aboriginal and Torres Strait Islander peoples.⁶ Notably, the preamble of this Act made a strong commitment to constitutional recognition, noting that:

‘The Parliament is committed to placing before the Australian people at a referendum a proposal for constitutional recognition of Aboriginal and Torres Strait Islander peoples [and] to building the national consensus needed for the recognition of Aboriginal and Torres Strait Islander peoples in our Constitution.’

- c) In 2017, the Referendum Council, a body comprising Aboriginal and Torres Strait Islander members and non-Indigenous members from a range of expert fields and backgrounds, was asked to report on these constitutional issues. The Referendum Council recommended:
- i. That a referendum be held to provide in the Australian Constitution for a representative body that gives Aboriginal and Torres Strait Islander First Nations a Voice to the Commonwealth Parliament. One of the specific functions of such a body, to be set out in legislation outside the Constitution, should include the function of monitoring the use of the heads of power in section 51 (xxvi) and section 122. The body will recognise the status of Aboriginal and Torres Strait Islander peoples as the first peoples of Australia.
 - ii. That an extra-constitutional Declaration of Recognition be enacted by legislation passed by all Australian Parliaments, ideally on the same day, to articulate a symbolic statement of recognition to unify Australians.⁷

Notably, the Referendum Council recommended in 2017 the monitoring of the use of the ‘racism power’.⁸ It did not otherwise recommend the repeal or amendment of the ‘racism power’ or s 25, noting that it ‘does not go far enough and would not be acceptable to Aboriginal and Torres Strait Islander peoples’.⁹

4. To our knowledge, the Australian Government has not articulated a position on constitutional reform of s 25 and the ‘racism power’. In relation to these constitutional issues, the Commission has previously suggested the:

- i. removal of s 25, and
- ii. insertion of a provision guaranteeing, for all Australians, equality before the law and freedom from discrimination, with such a protection drafted in a way that would guide the operation of the 'racism power' to ensure that 'special laws' for the people of a particular race could not be made if they were (adversely) discriminatory.¹⁰

Recommendation 3: That the Australian Government:

- **fully incorporate CERD into Australian law**
- **ensure that federal laws do not undermine the protections in the *Racial Discrimination Act 1975 (Cth)*, and**
- **explore options to remove any potential for racially discriminatory laws to be passed under the Australian Constitution. The Commission notes that this is a separate issue to developing with Aboriginal and Torres Strait Islander peoples a model for their recognition in the Australian Constitution and negotiating in good faith with Aboriginal and Torres Strait Islander peoples about national representative mechanisms.**

(b) Constitutional recognition

5. The First Nations National Constitutional Convention (the Convention) to discuss constitutional recognition of Aboriginal and Torres Strait Islander Peoples was held on 23–26 May 2017. The Uluru Statement from the Heart (Uluru Statement) was adopted at the Convention. The Uluru Statement calls for the establishment of a First Nations' Voice enshrined in the Constitution and of a Makarrata Commission to supervise a process of agreement making between governments and First Nations that includes truth telling about Aboriginal and Torres Strait Islander peoples' history.¹¹
6. The Australian Government's recently announced that it rejects the proposal for the establishment of a constitutionally enshrined First Nations' Voice to Parliament.¹² The Australian Government has suggested that a parliamentary Joint Select Committee will consider the question of constitutional recognition of Aboriginal and Torres Strait Islander peoples.¹³ This parliamentary Committee will give consideration to the recommendations of the existing bodies of work discussed above.¹⁴
7. Australia appeared before the UN Human Rights Committee for its periodic review of compliance with the ICCPR in September 2017. The Human Rights Committee recommended that the Australian Government consider revising the Australian Constitution to recognise the special status and fully protect the equal rights of Aboriginal and Torres Strait Islander peoples.¹⁵
8. The Special Rapporteur on racial discrimination has recommended that the Australian Government finalise a constitutional amendment in order to recognise the inherent rights and culture of Aboriginal and Torres Strait Islander peoples and set up constitutionally protected institutions to protect their ancestral rights and promote their culture and identity.¹⁶

9. The Special Rapporteur on the rights of indigenous peoples has encouraged the Australian Government to explore the possibility of a national ‘treaty’ with Aboriginal and Torres Strait Islander peoples.¹⁷ While there are discussions about a Makarrata Commission at the national level, ‘treaty’ negotiations are more likely to take place at the state level. ‘Treaty’ discussions have commenced in Victoria and South Australia.¹⁸

Recommendation 20: That the Australian Government develop with Aboriginal and Torres Strait Islander peoples a model for constitutional recognition and negotiate in good faith with Aboriginal and Torres Strait Islander peoples about national representative mechanisms.

¹ *The Commonwealth v Tasmania* (‘*The Tasmanian Dam Case*’) (1983) 158 CLR 1.

² *Australian Constitution*, s 51(xxvi).

³ *Kartinyeri v Commonwealth* (1998) 152 ALR 540.

⁴ Expert Panel on Constitutional Recognition of Indigenous Australians, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution — Report of the Expert Panel* (2012). At https://www.pmc.gov.au/sites/default/files/publications/Recognising-Aboriginal-and-Torres-Strait-Islander-Peoples-in-the-constitution-report-of-the-expert-panel_0.pdf (viewed 23 October 2017).

⁵ Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, *Final Report* (2015). At https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Constitutional_Recognition_of_Aboriginal_and_Torres_Strait_Islander_Peoples/Constitutional_Recognition/Final_Report (viewed 23 October 2017).

⁶ *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013* (Cth), s 4. At <https://www.legislation.gov.au/Details/C2013A00018> (viewed 23 November 2017).

⁷ Referendum Council, *Final Report of the Referendum Council* (30 June 2017). At https://www.referendumcouncil.org.au/sites/default/files/report_attachments/Referendum_Council_Final_Report.pdf (viewed 23 October 2017).

⁸ Referendum Council, *Final Report of the Referendum Council* (30 June 2017) 2 (Recommendation 1). At https://www.referendumcouncil.org.au/sites/default/files/report_attachments/Referendum_Council_Final_Report.pdf (viewed 23 October 2017).

⁹ Referendum Council, *Final Report of the Referendum Council*, 5, 12–13, 23–24. At https://www.referendumcouncil.org.au/sites/default/files/report_attachments/Referendum_Council_Final_Report.pdf (viewed 23 October 2017).

¹⁰ Australian Human Rights Commission, *Constitutional reform: Creating a nation for all of us* (2011) 15. At <https://www.humanrights.gov.au/publications/constitutional-reform-creating-nation-all-us-2011> (viewed 23 October 2017). See also Australian Human Rights Commission, *Social Justice Report 2008* (2009) 62–76. At http://www.humanrights.gov.au/social_justice/sj_report/sjreport08/index.html (viewed 23 October 2017).

¹¹ First Nations National Constitutional Convention, ‘Uluru Statement From The Heart’ (Group statement, 26 May 2017). At https://www.referendumcouncil.org.au/sites/default/files/2017-05/Uluru_Statement_From_The_Heart_0.PDF (viewed 11 September 2017).

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¹⁵ UN Human Rights Committee, *Concluding observations on the sixth periodic report of Australia*, 121st sess, Agenda item 5, Consideration of reports submitted by States parties under article 40 of the Covenant, UN Doc CCPR/C/AUS/CO/6 (9 November 2017) 8 [49]-[54]. At

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Factsheet: Incarceration of Aboriginal and Torres Strait Islander People

1. This factsheet expands on section 5.4 of the Commission's submission of information concerning Australia's compliance with the Convention on the Elimination of All Forms of Racial Discrimination, transmitted to the Committee on 30 October 2017.

(a) Generally

2. Aboriginal and Torres Strait Islander people are significantly overrepresented in Australia's prison population. Despite currently being only 2% of the total Australian population aged over 18 years, Aboriginal and Torres Strait Islander prisoners represent over a quarter (27%) of all prisoners in Australia.¹

(b) Children

3. Aboriginal and Torres Strait Islander children are imprisoned at 24 times the rate of non-Indigenous young people.² Aboriginal and Torres Strait Islander youth aged between 10-17 years make up more than half (55%) of all children in juvenile detention.³ In 2016, Indigenous children aged 10–17 were, on average, 17 times as likely to be under community-based supervision as compared with non-Indigenous young people and 25 times as likely to be in juvenile detention.⁴
4. In 2017, the Special Rapporteur for the rights of indigenous peoples noted that in some detention facilities, such as in the Northern Territory and in the Cleveland Youth Detention Centre in Queensland, 'indigenous children constitute an astonishing 90 per cent of the detainees'.⁵ Most recent statistics show that 94% of the children and young people in detention in the Northern Territory are Aboriginal.⁶
5. The Australian Government established the Royal Commission into the Protection and Detention of Children in the Northern Territory.⁷ The Royal Commission delivered its final report on 17 November 2017.⁸ The Royal Commission made many findings, including that:
 - youth detention centres were not fit for accommodating, let alone rehabilitating, children and young people⁹
 - children were frequently subjected to verbal abuse and racist remarks¹⁰
 - children were subjected to physical control and humiliation, including being denied access to basic human needs such as water, food and the use of toilets¹¹
 - children and young people were transferred to, and held in, adult correctional centres,¹² and

- children were dared or bribed to carry out degrading and humiliating acts, or to commit acts of violence on each other¹³
6. The Royal Commission also found that the Northern Territory Government has failed to comply with the statutory requirements that all children in out of home care have timely care plans.¹⁴
 7. The Royal Commission recommended a large number of reforms to address the failed child protection, youth justice and detention systems, including:
 - closing the current Don Dale Youth Detention Centre and High Security Unit,¹⁵
 - raising the age of criminal responsibility to 12 and only allowing children under 14 years to be detained for serious crimes,¹⁶
 - developing a 10 year Generational Strategy for Families and Children to address child protection and prevention of harm to children,¹⁷
 - developing a new model of bail and secure detention accommodation,¹⁸ and
 - increasing engagement with and involvement of Aboriginal Organisations in child protection, youth justice and detention.¹⁹

Recommendation 22: That the Australian Government, with the Northern Territory Government, swiftly consider the implementation of its response to the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory once its final report is delivered.

The Commission considers this issue to be of such importance that the Committee should request an update from the Australian Government on progress in 12 months time.

(c) Women

8. Rates of imprisonment of Indigenous women have risen substantially in the past decade. Aboriginal and Torres Strait Islander women account for 34% of the adult female prison population and only around 2% of the general female population.²⁰ It is also important to note that 80% of Aboriginal and Torres Strait Islander women in prison are mothers.²¹

(d) Intellectual and cognitive disabilities

9. The overrepresentation of Aboriginal and Torres Strait Islander people is especially notable with respect to those with mental health disorders or cognitive disability.²² In 2014, the Commission inquired into complaints by four Aboriginal men with intellectual and cognitive disabilities who had been incarcerated for a number of years despite being found unfit to stand trial or not guilty by reason of insanity.²³ The Aboriginal Disability Justice Campaign advocates for progress in relation to the indefinite incarceration of Aboriginal people with intellectual and cognitive disabilities.²⁴

(e) Laws and policies

10. Laws and policies disproportionately affecting Aboriginal and Torres Strait Islander people have contributed to these incarceration rates. In particular:
 - Imprisonment from fine default — often caused by small overdue fines for criminal offences that, on their own, do not carry an imprisonment penalty — is contributing to high incarceration rates.²⁵
 - Bail laws and policies have become more restrictive in Australia and have led to a significant increase in the number of Aboriginal and Torres Strait Islander people held on remand.²⁶ Research indicates that the length of time individuals spend on remand affects the likelihood of them receiving a custodial rather than non-custodial sentence.²⁷
 - The Special Rapporteur on the rights of Indigenous peoples has said that mandatory sentencing laws need to be reviewed.²⁸
 - The Commission has previously reported on several cases where Indigenous people are in prolonged detention due to being considered ‘unfit to plead’, resulting in them being detained for a period longer than the maximum sentence if they had been tried and found guilty.²⁹
11. An inquiry by the ALRC into the incarceration of Aboriginal and Torres Strait Islander peoples is ongoing. This inquiry will assist in identifying laws requiring amendment to reduce Indigenous incarceration.³⁰
12. Australia appeared before the UN Human Rights Committee for its periodic review of compliance with the ICCPR in September 2017. Relevantly, the Human Rights Committee recommended that the Australian Government:
 - take robust measures, identifying and revising regulations and policies leading to high incarceration rates, including a review of mandatory sentencing and imprisonment for fine default, taking into account of the ALRC inquiry and the Royal Commission’s forthcoming recommendations
 - enhance use of non-custodial measures and diversionary programmes, and
 - ensure there are adequate, culturally-appropriate and accessible legal services for Indigenous Australians.³¹

(f) Deaths in police custody

13. The issue of Aboriginal and Torres Strait Islander deaths in police custody and in prison has been cause for alarm for several decades. The 25 year anniversary of the recommendations of the Royal Commission into Aboriginal Deaths in Custody was in 2016.³² Even now, the issue of deaths in police custody remains a serious issue. Nationally in 2014–15, there were 11 deaths in police custody, of which five were Aboriginal and Torres Strait Islander deaths.³³

14. The Commission notes the death of Cameron Doomadgee (known posthumously as Mulrunji) in police custody in 2004 on Palm Island and its aftermath. Please see the factsheet relating to discriminatory police practices on Palm Island and section 7.1 of the Commission's submission, transmitted to the Committee on 30 October 2017.
15. 'Paperless arrest' laws in the Northern Territory provide police with the power to detain a person for up to four hours (or longer if the person is intoxicated) if they suspect the person has committed or is about to commit an 'infringement notice offence' (a minor offence).³⁴ These laws lead to the unnecessary locking up of Aboriginal and Torres Strait Islander people and are inconsistent with the recommendations of the Royal Commission into Aboriginal Deaths and Custody.³⁵

(g) Justice targets and reinvestment strategies

16. Justice targets refer to targets to address the overrepresentation of Aboriginal and Torres Strait Islander peoples as both offenders and victims in the criminal justice system. Justice targets should be set to halve the gap in rates of incarceration for Aboriginal and Torres Strait Islander peoples, as compared with non-Indigenous people, within the Close the Gap framework. This is supported by the National Congress of Australia's First Peoples.³⁶ The Government has stated it rejects the adoption of justice-related targets.³⁷
17. The Senate Legal and Constitutional Affairs Committee and successive Social Justice Commissioners have recommended justice reinvestment strategies, which involve diverting and reinvesting funds used for imprisonment to services that address underlying causes of crime in communities with high rates of offending.³⁸ The Aboriginal and Torres Strait Islander Social Justice Commissioner has advocated for justice reinvestment over the past five years. The 2014 Social Justice and Native Title Report recommends that 'the Australian Government take a leadership role on justice reinvestment and works with states, territories and Aboriginal and Torres Strait Islander communities to identify further trial sites.'³⁹
18. The Commission notes that the Australian Government recently expressed its support for states and territories to implement a justice reinvestment approach, but noted that it 'cannot effectively fund justice reinvestment projects because state and territory governments are solely responsible for managing corrections systems in Australia' and that 'the success of justice reinvestment ... ultimately rests with the states and territories'.⁴⁰
19. The Australian Government has indicated that it supports in-principle recommendations that the Commonwealth:
 - take a leading role in identifying the data required to implement a justice reinvestment approach and establish a national approach to the data collection of justice indicators
 - make a commitment to sharing relevant data held by Commonwealth line agencies with justice reinvestment initiatives in other jurisdictions, and

- commit to the establishment of a trial of justice reinvestment in Australia in conjunction with the relevant states and territories, using a place-based approach, and that at least one remote Indigenous community be included as a site.⁴¹

Recommendation 21: That all Australian governments commit to national justice targets to reduce the rates of imprisonment of Aboriginal and Torres Strait Islander adults and juveniles and that these targets be introduced into the Closing the Gap Strategy.

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² Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2014* (2014), 4. At <http://www.pc.gov.au/research/recurring/overcoming-indigenous-disadvantage/key-indicators-2014#report> (viewed 11 September 2017).

³ See Australian Institute of Health and Welfare, *Youth detention population in Australia* (2016). At <http://www.aihw.gov.au/publication-detail/?id=60129557387&tab=2> (viewed 11 September 2017).

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⁷ The Hon Malcolm Turnbull MP, Prime Minister, and the Hon Sen George Brandis QC, 'Royal Commission into the Child Protection and youth detention systems of the Northern Territory', (Media release, 28 July 2016). At <https://www.pm.gov.au/media/2016-07-28/royal-commission-child-protection-and-youth-detention-systems-northern-territory> (viewed 11 September 2017).

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¹⁰ Commonwealth and Northern Territory, Royal Commission into the Protection and Detention of Children in the Northern Territory, *Report, Volume 2A* (2017) 159. At <https://childdetentionnt.royalcommission.gov.au/Pages/Report.aspx> (viewed 20 November 2017).

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³³ Productivity Commission, *Report on Government Services 2017*, Vol C: Justice, Steering Committee for the Review of Government Service Provision (2017) 6.13; First Peoples Disability Justice Consortium, Submission 39 to the Senate Standing Committee on Community Affairs, Parliament of Australia, *Inquiry on the Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia*.

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Factsheet: Police Practices on Palm Island

1. This factsheet expands on section 7.1 of the Commission's submission of information concerning Australia's compliance with the Convention on the Elimination of All Forms of Racial Discrimination, transmitted to the Committee on 30 October 2017.
2. The Commission notes conduct of officers of the Queensland Police Service (QPS) following the death of 36-year-old Aboriginal man named Cameron Doomadgee (known posthumously as Mulrunji) in police custody on Palm Island. Mulrunji was arrested by Senior Sergeant Christopher Hurley for yelling out alleged abuse towards the police. Mulrunji was affected by alcohol, protesting and struggling. He was brought into the Palm Island Police Station, where he had an altercation with Senior Sergeant Hurley. Mulrunji was then dragged limp and unresponsive into a cell. Within an hour, Mulrunji was dead.
3. The way QPS officers dealt with the aftermath of Mulrunji's death led to numerous coronial inquests and reviews, a number of court cases and, most relevantly, a representative proceeding brought to the Federal Court of Australia in 2016 by a group of people on Palm Island alleging unlawful racial discrimination by QPS officers during that time.
4. A group proceeding was initiated on behalf of many residents of Palm Island against the State of Queensland. In *Wotton v State of Queensland (No 5)* [2016] FCA 1457 ('*Wotton (No 5)*'), the Federal Court was asked to decide whether, in the police investigation into Mulrunji's death, in the management of community concerns, tension and anger on Palm Island in the week after his death, and in the police responses to protests and fires that occurred in the aftermath (including a fire at the police station), officers of the QPS contravened s 9(1) of the RDA.
5. Section 9(1) of the RDA contains a prohibition on racial discrimination (and thereby implements CERD). It provides:

'It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.'
6. The Federal Court held that the State of Queensland, through the QPS officers, breached s 9 of the RDA.¹ The Federal Court found that:
 - The QPS officers with command and control of the investigation did not act impartially and independently. Senior Sergeant Hurley picked up the investigators from the airport when they arrived and had a meal with them at his house that evening. He was never treated as a suspect, nor promptly removed from the island. The police officers discounted and ignored accounts from Aboriginal witnesses implicating Senior

Sergeant Hurley. Incorrect and stereotypical information about Mulrunji and the circumstances of his death was passed to the coroner, while relevant information from Aboriginal witnesses was not passed on.

- There were substantial failures by QPS officers on the island to communicate with the Palm Island community and defuse tensions. For example, by not proactively participating in community meetings and by not providing timely and accurate information about the cause of Mulrunji's death and the progress of the investigation, which the community was waiting to hear.
 - An emergency declaration was issued which triggered the evacuation of non-Aboriginal people from the island. Only local Palm Islanders could not travel to and from the Island.
 - A special group of armed officers were used to arrest suspects and to conduct entries and searches of houses on Palm Island. They broke into houses with assault rifles raised and confronted unarmed men, women and children. The use of these officers to effect the arrests was unnecessary, disproportionate and undertaken as a show of force against local people who had protested about the conduct of police.
7. The Court found that QPS officers acted in these ways because they were dealing with an Aboriginal community. If the events took place in an isolated non-Aboriginal community in Queensland, the above conduct would not have occurred.² Declarations were made reflecting contraventions of section 9(1) of the RDA. Damages were awarded to the plaintiffs to a collective value of \$220,000.
8. The Court also noted that the conduct of the investigation, treatment of Aboriginal witnesses, failure to communicate with the community or defuse tensions, and various other aspects of police conduct violated the right to access public services under art 5(f) of CERD.³
9. The State of Queensland has decided not to proceed with an appeal of the decision in *Wotton (No 5)*.⁴
10. *Wotton (No 5)* dealt with the claims of three named applicants and a large number of common questions of law and fact arising in the group proceeding. The Federal Court is yet to deal with the claims of other group members. A trial to do so was initially set to commence on 29 November 2017. However, on 1 November 2017, the Federal Court vacated that trial and ordered that the parties attend mediation to try and settle the dispute in December 2017. If the matter is not resolved in December, a trial will commence on 4 June 2018.⁵

Recommendation 37: That:

- **all Australian governments ensure police are trained in cultural competency and anti-racism**
- **all Australian governments implement independent review mechanisms to monitor compliance of police practices with international human rights law (including CERD and the *Racial Discrimination Act 1975 (Cth)*), and**

- the Queensland Government respond appropriately to the Federal Court of Australia's decision in *Wotton v State of Queensland (No 5)* [2016] FCA 1457.

The Commission considers these issues to be of such importance that the Committee should request an update from the Australian Government on progress in 12 months time.

¹ *Wotton v State of Queensland (No 5)* [2016] FCA 1457. At <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2016/2016fca1457> (viewed 12 October 2017). See also a summary of the reasons for judgment at <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2016/2016fca1457/summary/2016fca1457-summary> (viewed 12 October 2017).

² *Wotton v State of Queensland (No 5)* [2016] FCA 1457. At <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2016/2016fca1457> (viewed 12 October 2017). See also a summary of the reasons for judgment at <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2016/2016fca1457/summary/2016fca1457-summary> (viewed 12 October 2017).

³ *Wotton v State of Queensland (No 5)* [2016] FCA 1457 at [582]–[634].

⁴ Chris O'Brien, 'Palm Island riots racism court ruling appeal dropped, Queensland Government says', ABC News (online) 28 February 2017. At <http://www.abc.net.au/news/2017-02-28/appeal-dropped-palm-island-riots-court-ruling-qld-government/8310044> (viewed 12 October 2017).

⁵ *Wotton v State of Queensland (No 9)* [2017] FCA 1315. At <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2017/2017fca1315> (viewed 22 November 2017).

From: s22
To: s22
Cc: s22
Subject: RE: CERD Committee info for NHRIs [SEC=UNCLASSIFIED]
Date: Tuesday, 25 July 2017 12:08:03 PM

Hi s22

Thanks for this.

Happy to chat in more detail later, but just flagging at the outset there may be other very recent Commission submissions relevant to the CERD sub.

Including (from my end):

- AHRC submission to Senate Select Committee on Strengthening Multiculturalism - <https://www.humanrights.gov.au/submissions/submission-inquiry-strengthening-multiculturalism-2017>
- AHRC submission to the Joint Standing Committee on Migration – Inquiry into Migrant Settlement Outcomes - <https://www.humanrights.gov.au/submissions/inquiry-migrant-settlement-outcomes-2017>

There's also our submission to the Committee examining the status of the right to freedom of religion, which may have some relevant aspects, as it relates to racial discrimination and religious/ethno-religious communities.

Thanks

s22

From: s22
Sent: Monday, 24 July 2017 2:34 PM
To: s22
Cc: s22
Subject: CERD Committee info for NHRIs [SEC=UNCLASSIFIED]

Dear All,

The NHRI info for the CERD constructive dialogue is [here](#). You will notice the submission is due 30 October 2017.

I have another team member starting next week – s22 – who will be working to me on the UN engagement and Parliamentary Scrutiny projects. I will get him on to drafting the ICCPR submission first (its due late September) and hopefully start the CERD submission around 18th September, if not before. We will be drawing upon the UPR submission, the CAT list of issues, the ICESCR submission and the ICCPR submission to initially to populate the sub. We will also meet with you to discuss other content before September 18th.

Happy to chat if you have any questions.

Best

s22

s22

Manager – Human Rights Scrutiny

Australian Human Rights Commission

Level 3, 175 Pitt Street, Sydney NSW 2000

GPO Box 5218, Sydney NSW 2001

s22

[W humanrights.gov.au](http://humanrights.gov.au)

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From: s22
To: [Requests for Approval](#)
Cc: [Darren Dick](#); s22; s22; s22; s22
Subject: Notification of submission preparation - no approval required [SEC=UNCLASSIFIED]
Date: Wednesday, 27 September 2017 12:55:23 PM

Dear Ros and Commissioners,

Submission to the UN Committee on the Elimination of Racial Discrimination on information concerning Australia's compliance with CERD

The 94th Session of the UN Committee on the Elimination of Racial Discrimination is taking place later this year in October. Tim Soutphommasane will be attending.

The Commission is making a submission to inform the Committee's consideration of Australia's 18th to 20th periodic reports on 27 and 28 November 2017. The submission is due on **30 October 2017**.

The Director – Policy and Programs has approved the preparation of a Commission submission. I will be responsible for drafting the submission.

The submission will draw on existing submissions and bring together previously approved information concerning racial discrimination. The submission will focus on issues relating to three key population groups (Aboriginal and Torres Strait Islander Peoples, refugees and asylum seekers, and migrants and ethnic minorities) and touch on other relevant thematic issues through the lens of CERD (including Australia's legal and institutional human rights framework, multiculturalism, freedom of expression, counterterrorism, and business and human rights).

Like the recent ICCPR submission to the Human Rights Committee, the information included will not involve new research and will provide a summary of existing Commission positions.

The draft will be circulated to the President and Commissioners for comment on or before Monday 23 October, **for approval by COB Friday 27 October**. Tim and June (and their respective advisers) will be engaged in the process well in advance of circulation.

Please let me know if you have any questions regarding the submission.

Kind Regards,

s22

s22

Research & Policy Officer – Human Rights Scrutiny

Australian Human Rights Commission

Level 3, 175 Pitt St, Sydney NSW 2000

GPO Box 5218, Sydney NSW 2001

s22

[W www.humanrights.gov.au](http://www.humanrights.gov.au)

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I acknowledge the traditional custodians of the land on which I live and work and pay my respects to the elders past, present and future

*We acknowledge the traditional custodians of this land,
the Gadigal peoples of the Eora Nation, and pay
our respects to their Elders, past, present and future*

From: [June Oscar](#)
To: s22
Cc: [Tim Soutphommasane](#); [Darren Dick](#); s22
Subject: Re: CERD Review (DD, TS and JO) [SEC=UNCLASSIFIED]
Date: Wednesday, 27 September 2017 1:48:51 PM

Thanks s22 I look forward to receiving and having a chat about it.
June

Sent from my iPad

> On 27 Sep 2017, at 1:25 pm, s22 @humanrights.gov.au> wrote:
>
> Hi June and Tim,
>
> As mentioned in the attached, I would be grateful for your early engagement in the CERD submission.
>
> I will be circulating a draft to your respective advisers next week for review. Following any changes suggested by them, I hope to send the submission to you on Wednesday, 11 October for your comments by Wednesday, 18 October. s22 and Darren will also review the submission at this time.
>
> I will aim to circulate the submission for formal approvals on or before Monday, 23 October. The submission is due on 30 October.
>
> Happy to discuss.
>
> Kind regards,
> s22
>
> <Notification of submission preparation - no approval required [SEC=UNCLASSIFIED].eml>
> <meeting.ics>

From: s22
To: s22
Cc: s22
Subject: RE: FOR ATTENTION: 17.09.26 ICERD Submission Draft 4.docx [SEC=UNCLASSIFIED]
Date: Friday, 6 October 2017 11:45:36 AM
Attachments: [17.09.26 ICERD Submission Draft 4 \(pw edits\).docx](#)

Hey s22

See attached with edits/comments from the Social Justice team.

We are happy to discuss

s22

s22

Executive Officer for Close the Gap Secretariat and National Health Leadership Forum
Monitoring and Reporting Team
Australian Human Rights Commission

Level 3, 175 Pitt St, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001

s22

[W www.humanrights.gov.au](http://www.humanrights.gov.au)

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*We acknowledge the traditional custodians of this land,
the Gadigal peoples of the Eora Nation, and pay
our respects to their Elders, past, present and future.*

From: s22
To: s22
Subject: RE: CERD Review s22 [SEC=UNCLASSIFIED]
Date: Monday, 9 October 2017 8:51:20 AM

Hi s22

Just letting you know I will likely only get to this tonight or tomo morning. I should have changes back to you by midday tomo though, hope that's ok. Been a very busy time for me.

From: s22
Sent: Wednesday, 4 October 2017 4:28 PM
To: s22 @humanrights.gov.au>; s22
s22 @humanrights.gov.au>; s22 @humanrights.gov.au>
Subject: RE: CERD Review (s22) [SEC=UNCLASSIFIED]

Hi s22

As promised, please find attached the current draft of the CERD submission.

I would be grateful if you could please review the sections relating to your areas of expertise and provide suggested amendments/comments in track by **COB on Monday, 9 October 2017**. This will allow me to implement changes and do a further review prior to circulation to June, Tim, Darren and s22 on Wednesday, 11 October.

Just a reminder – this submission is based on existing work and recommendations are consistent with what we have previously said on the record.

You will see that a few endnotes (in yellow) are still to be updated by me.

Happy to discuss. Looking forward to your suggestions!

Cheers,

s22

-----Original Appointment-----

From: s22
Sent: Monday, 25 September 2017 12:19 PM
To: s22 ; s22
Subject: CERD Review s22 [SEC=UNCLASSIFIED]
When: Wednesday, 4 October 2017 12:00 AM to Tuesday, 10 October 2017 12:00 AM
(UTC+10:00) Canberra, Melbourne, Sydney.
Where:

Hi all,

I would be grateful for your reviews of the CERD submission by Monday 9 October. I will then aim to send to June, Tim and Darren by COB on Wednesday 11 October.

My aim is to have the draft to you on or before Wednesday, 4 October.

Happy to discuss.

Cheers,

s22 .

From: s22
To: s22
Subject: RE: CERD Review s22 [SEC=UNCLASSIFIED]
Date: Tuesday, 10 October 2017 2:03:03 PM

Hi s22

I agree, the sub is looking really good. Our team provided comments to s22 on Friday last week.

Thanks,

s22

From: s22
Sent: Tuesday, 10 October 2017 1:39 PM
To: s22
s22
s22
s22
Subject: RE: CERD Review s22 [SEC=UNCLASSIFIED]

Hi All

I agree with s22 general comments around structure and would be happy to talk this through with you later today s22

Just made a few minor edits if appropriate and saved in the same folder s22 & s22 edits in the same doc.)

s22 if you haven't gotten to it yet, maybe best to add your edits to that doc too?

s22 I think the sub is generally looking great.

Cheers

s22

From: s22
Sent: Thursday, 5 October 2017 3:50 PM
To: s22
s22
s22
s22
Subject: RE: CERD Review s22) [SEC=UNCLASSIFIED]

Hi s22

I think the sub is looking great! Well done on pulling it together. I've saved a version with a few minor edits and suggestions [here](#).

Cheers,

s22

Kind regards,

s22

Specialist Adviser – Immigration

Human Rights Scrutiny Team

Australian Human Rights Commission

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GPO Box 5218, Sydney NSW 2001

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*We acknowledge the traditional custodians of this land,
the Gadigal peoples of the Eora Nation, and pay
our respects to their Elders, past, present and future.*

Part of Document 47

From: [Tim Soutphommasane](#)
To: s22 ; [June Oscar](#); [Darren Dick](#); s22
Cc: s22
Subject: RE: CERD Submission - review [SEC=UNCLASSIFIED]
Date: Monday, 16 October 2017 9:49:38 AM

Thanks s22 – will take a close look. Will probably have a few suggestions and comments.

Tim

From: s22
Sent: Thursday, 12 October 2017 3:11 PM
To: June Oscar <june.oscar@humanrights.gov.au>; Tim Soutphommasane <tim.soutphommasane@humanrights.gov.au>; Darren Dick <darren.dick@humanrights.gov.au>; s22 @humanrights.gov.au
Cc: s22
[Redacted]
[Redacted]
[Redacted]
Subject: CERD Submission - review [SEC=UNCLASSIFIED]

Dear June, Tim, Darren and s22

Please find attached the draft of the CERD submission for your review.

Apologies for the slight delay – I needed some extra time to put in the ‘priority areas’ decided by Tim and Darren yesterday.

This submission was drafted by me in consultation with s22 and the Social Justice Team. s22 and the SJT have already reviewed the submission and their comments have been incorporated.

I would be grateful for your comments by **COB on Wednesday, 18 October 2017**. This will allow me to make any required changes and circulate to Commissioners for formal approval by the close of next week.

Happy to discuss.

Kind regards,
s22

s22
Research & Policy Officer – Human Rights Scrutiny
Australian Human Rights Commission
Level 3, 175 Pitt St, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001
T s22 @humanrights.gov.au W www.humanrights.gov.au

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*We acknowledge the traditional custodians of this land,
the Gadigal peoples of the Eora Nation, and pay
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From: [Tim Soutphommasane](#)
To: s22
Subject: Fwd: CERD Submission - review [SEC=UNCLASSIFIED]
Date: Wednesday, 18 October 2017 10:05:23 AM
Attachments: [17.10.12 ICERD Submission Draft 7 TS.docx](#)
[ATT00001.htm](#)

Sorry for some reason you were left off!

Sent from my iPhone

Begin forwarded message:

From: "Tim Soutphommasane"
<tim.soutphommasane@humanrights.gov.au>
To: "Tim Soutphommasane" <tim.soutphommasane@humanrights.gov.au>, "Darren Dick" <darren.dick@humanrights.gov.au>, "s22"
s22
"June Oscar"
<june.oscar@humanrights.gov.au> s22
Subject: Re: CERD Submission - review [SEC=UNCLASSIFIED]

Hi s22

Thanks for your work on preparing this - and to others who have contributed.

I've attached a marked up version with a handful of additions. I didn't quite manage to get all the references so it might require further work - but nothing major.

Happy to talk through any of it. While I understand the reasons behind the drafting, s47C & s47E(d)

Tim

From: [Tim Soutphommasane](#)
To: s22
Cc: [June Oscar](#); [Darren Dick](#); s22
Subject: Re: CERD Submission - review [SEC=UNCLASSIFIED]
Date: Wednesday, 18 October 2017 10:06:07 AM

Sorry s22 - did email last night but inexplicably left your email out. Have forwarded my comments

Sent from my iPhone

On 18 Oct 2017, at 9:32 am, s22
s22 [@humanrights.gov.au](mailto:s22@humanrights.gov.au) wrote:

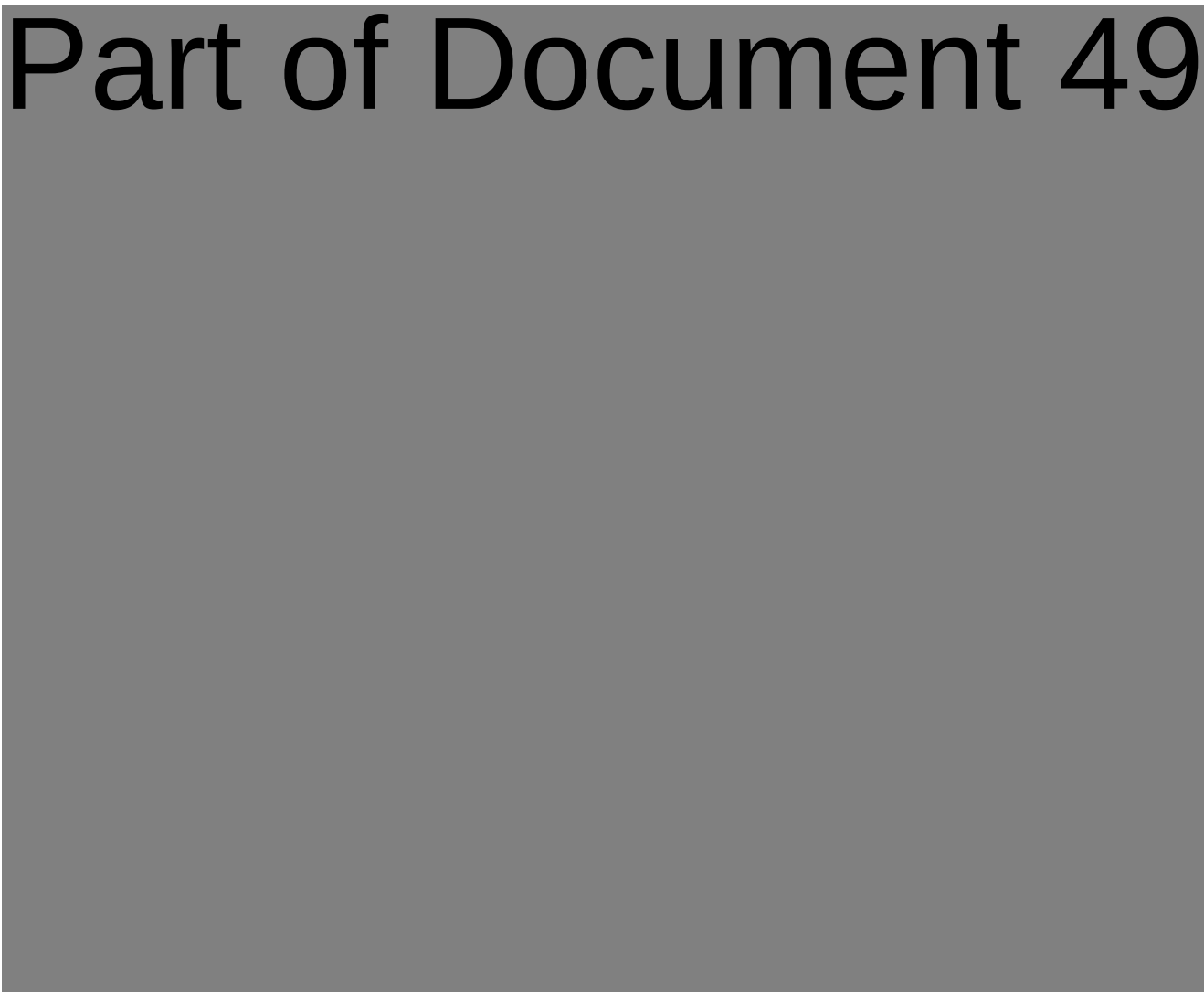
Dear June, Tim, and Darren,

As below – I would be very grateful for any comments you have on the CERD submission by the end of today, if possible.

Happy to discuss.

Kind regards,
s22

Part of Document 49



From: [June Oscar](#)
To: s22
Subject: RE: CERD Submission - review [SEC=UNCLASSIFIED]
Date: Wednesday, 18 October 2017 2:06:02 PM

I approve as presented s22
June

From: s22
Sent: Wednesday, October 18, 2017 10:57 AM
To: Darren Dick <darren.dick@humanrights.gov.au>; June Oscar <june.oscar@humanrights.gov.au>; Tim Soutphommasane <tim.soutphommasane@humanrights.gov.au>
Cc: s22
[Redacted]
[Redacted]
[Redacted]
Subject: RE: CERD Submission - review [SEC=UNCLASSIFIED]

No problem Darren – thanks for letting me know.

Cheers,
s22

From: Darren Dick
Sent: Wednesday, 18 October 2017 10:55 AM
To: s22 [Redacted] >; June Oscar <june.oscar@humanrights.gov.au>; Tim Soutphommasane <tim.soutphommasane@humanrights.gov.au>
Cc: s22 [Redacted]
[Redacted]
[Redacted]
Subject: RE: CERD Submission - review [SEC=UNCLASSIFIED]

Hi s22

Mine may not come until tomorrow as stuck in meetings all day (all week so far...) – I've got a few other documents off for approval but not this one yet – I will work off Tim's edits so you have one document

Cheers
Darren

From: s22
Sent: Wednesday, 18 October 2017 9:33 AM
To: June Oscar <june.oscar@humanrights.gov.au>; Tim Soutphommasane <tim.soutphommasane@humanrights.gov.au>; Darren Dick <darren.dick@humanrights.gov.au>
Cc: s22 [Redacted]

s22

Subject: FW: CERD Submission - review [SEC=UNCLASSIFIED]

Dear June, Tim, and Darren,

As below – I would be very grateful for any comments you have on the CERD submission by the end of today, if possible.

Happy to discuss.

Kind regards,

s22

Part of Document 49

From: [Rosalind Croucher](#)
To: s22
Cc: [Darren Dick](#)
Subject: Re: CERD Submission - review [SEC=UNCLASSIFIED]
Date: Monday, 23 October 2017 4:57:40 PM

I'll look on Wednesday

Sent from my iPad

On 20 Oct 2017, at 2:53 pm, s22
s22 <s22@humanrights.gov.au> wrote:

Hi Ros,

After discussions with Darren – there will be a some changes to a few of the sections in the CERD submission.

Unless you have already started – it might be a better use of your time to review the revised version circulated early next week.

Kind regards,

s22

From: s22
Sent: Tuesday, 17 October 2017 11:50 AM
To: Rosalind Croucher <rosalind.croucher@humanrights.gov.au>
Cc: Darren Dick <darren.dick@humanrights.gov.au>; s22
Subject: FW: CERD Submission - review [SEC=UNCLASSIFIED]

Hi Ros,

Please find attached the draft of our submission on information concerning Australia's compliance with the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD).

You will see below that I have sent this to Tim, June, Darren and s22 for preliminary review prior to circulating for approval to you and all Commissioners. I am expecting comments back by COB tomorrow.

Darren mentioned that you might also be interested in reviewing it at this earlier stage. If that is the case – would you be willing to provide comments in the next few days? No problem if you prefer to review it when I circulate for approvals next week.

Kind regards,

s22

Part of Document 49

From: [Edward Santow](#)
To: s22
Cc: s22
Subject: Re: CERD submission - INSLM [SEC=UNCLASSIFIED]
Date: Tuesday, 24 October 2017 1:37:42 PM

Thanks and my pleasure!

That sounds good re the INSLM section of the CERD sub.

Cheers,
Ed.

From: s22 @humanrights.gov.au>
Date: Tuesday, 24 October 2017 at 13:27
To: Edward Santow <edward.santow@humanrights.gov.au>
Cc: s22 @humanrights.gov.au>
Subject: RE: CERD submission - INSLM [SEC=UNCLASSIFIED]

Hi Ed,

s22

Third – thanks for the comments on s47C & s47E(d)

Happy to discuss.

Cheers,
s22

From: Edward Santow
Sent: Tuesday, 24 October 2017 1:11 PM
To: s22 @humanrights.gov.au>
Cc: s22 humanrights.gov.au>
Subject: CERD submission - INSLM [SEC=UNCLASSIFIED]

Hi s22

Further to my last email, I have a couple of minor suggestions s47C & s47E(d)
. I think this speaks for itself, but happy to discuss if helpful.

Regards,
Ed.

Edward Santow

Human Rights Commissioner

Australian Human Rights Commission

Level 3, 175 Pitt Street, Sydney NSW 2000

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T +61 2 9284 9814 **F** +61 2 9284 9794

E edward.santow@humanrights.gov.au | **W** humanrights.gov.au

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From: [June Oscar](#)
To: s22
Cc: s22
Subject: Re: JUNE - FOR APPROVAL [SEC=UNCLASSIFIED]
Date: Tuesday, 24 October 2017 2:37:04 PM

I approve.
June

Sent from my iPhone

> On 24 Oct 2017, at 2:03 pm, s22 @humanrights.gov.au> wrote:

>

> Hi June,

>

> s22

>

> Please send your approval to s22 at

s22 @humanrights.gov.au>

>

> Thanks,

>

> s22

>

> From: s22

> Sent: Tuesday, 24 October 2017 1:45 PM

> To: June Oscar <june.oscar@humanrights.gov.au>

> Cc: Darren Dick <darren.dick@humanrights.gov.au>; s22

s22 @humanrights.gov.au>

> Subject: FW: Request for approval: CERD Submission [SEC=UNCLASSIFIED]

>

> Hi June,

>

> You have already approved a previous version of this submission.

>

> The information regarding Aboriginal and Torres Strait Islander Peoples has not changed in this new version, except for s47C & s47E(d)

>

> However, please see the updated section s47C & s47E(d). Would be grateful if you could approve the sub again after considering this section.

>

> Kind regards,

> s22

>

> From: s22

> Sent: Tuesday, 24 October 2017 10:42 AM

> To: Requests for Approval

<RequestsforApproval@humanrights.gov.au><<mailto:RequestsforApproval@humanrights.gov.au>>>

> Cc: Policy Advisers <PolicyAdvisers@humanrights.gov.au><<mailto:PolicyAdvisers@humanrights.gov.au>>>; Darren Dick <darren.dick@humanrights.gov.au><<mailto:darren.dick@humanrights.gov.au>>>; s22

> Subject: Request for approval: CERD Submission [SEC=UNCLASSIFIED]

>

> Dear Ros and Commissioners,

>

> Submission to the UN Committee on the Elimination of Racial Discrimination on information concerning Australia's compliance with CERD

>

> I am requesting approval for a Submission to the UN Committee on the Elimination of Racial Discrimination

on information concerning Australia's compliance with the CERD.

>

> This submission will inform the Committee's consideration of Australia's 18th to 20th periodic reports at the Committee's upcoming 94th session in November. Tim Soutphommasane is attending.

>

> Like the very recent ICCPR submission to the Human Rights Committee, this submission summarises the established Commission position on a range of human rights issues within the scope of CERD. It is the product of consultation with Commissioner Soutphommasane and Commissioner Oscar (and their respective teams). It has also been reviewed by Darren and s22

>

> The submission covers:

>

> · general issues (the Australian human rights framework re domestic incorporation of CERD, human rights education, multiculturalism and racial discrimination generally);

>

> · key population groups (Aboriginal and Torres Strait Islander peoples and migrants, ethnic minorities and other culturally and linguistically diverse peoples); and

>

> · key thematic areas (police practices, counter-terrorism, cyber-racism, freedom of expression, immigration detention and business and human rights).

>

> The submission is due next Monday, 30 October 2017. I would be very grateful for your approval (and any comments) by COB Friday 27 October 2017. Apologies for the short turn-around.

>

> The compilation of recommendations in the attachment and a final proof will be completed once approvals are obtained. Given that the purpose of the submission is very similar to the ICCPR submission – and that the Commissioners with portfolios most directly engaged by the submission have been involved in its development – I do not propose to provide an oral briefing at the Commissioner's meeting. That said, I am happy to provide one if requested to do so.

>

> Please let me know if you have any queries.

>

> Kind regards,

> s22

>

> s22

> Research & Policy Officer – Human Rights Scrutiny

> Australian Human Rights Commission

> Level 3, 175 Pitt St, Sydney NSW 2000

> GPO Box 5218, Sydney NSW 2001

> T s22

> s22@humanrights.gov.au <s22@humanrights.gov.au> W

> www.humanrights.gov.au <<http://www.humanrights.gov.au>>

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> We acknowledge the traditional custodians of this land,

> the Gadigal peoples of the Eora Nation, and pay

> our respects to their Elders, past, present and future

>

>

>

Part of Document 44



From: [Tim Soutphommasane](#)
To: s22 ; [Requests for Approval](#)
Cc: [Policy Advisers](#); [Darren Dick](#); s22
Subject: RE: Request for approval: CERD Submission [SEC=UNCLASSIFIED]
Date: Wednesday, 25 October 2017 4:37:03 PM

Thanks for this s22 – and for the work you and others have put into it.

My main substantive comment concerns recommendation 13: s47C & s47E(d)

[REDACTED]

s47C & s47E(d)

[REDACTED]

s22 will also go through with you some stylistic and minor points we have picked up, which may warrant amendment.

Thanks – and with these comments and suggestions, I approve.

Tim

From: s22
Sent: Tuesday, 24 October 2017 10:42 AM
To: Requests for Approval <RequestsforApproval@humanrights.gov.au>
Cc: Policy Advisers <PolicyAdvisers@humanrights.gov.au>; Darren Dick <darren.dick@humanrights.gov.au>; s22 @humanrights.gov.au
Subject: Request for approval: CERD Submission [SEC=UNCLASSIFIED]

Dear Ros and Commissioners,

Submission to the UN Committee on the Elimination of Racial Discrimination on information concerning Australia's compliance with CERD

I am requesting approval for a Submission to the UN Committee on the Elimination of Racial Discrimination on information concerning Australia's compliance with the CERD.

This submission will inform the Committee's consideration of Australia's 18th to 20th periodic reports at the Committee's upcoming 94th session in November. Tim Soutphommasane is attending.

Like the very recent ICCPR submission to the Human Rights Committee, this submission summarises the established Commission position on a range of human rights issues within the scope of CERD. It is the product of consultation with Commissioner Soutphommasane and Commissioner Oscar (and their respective teams). It has also been reviewed by Darren and s22

The submission covers:

- general issues (the Australian human rights framework re domestic incorporation of CERD, human rights education, multiculturalism and racial discrimination generally);
- key population groups (Aboriginal and Torres Strait Islander peoples and migrants, ethnic minorities and other culturally and linguistically diverse peoples); and
- key thematic areas (police practices, counter-terrorism, cyber-racism, freedom of expression, immigration detention and business and human rights).

The submission is due next Monday, 30 October 2017. I would be very grateful for your approval (and any comments) by **COB Friday 27 October 2017**. Apologies for the short turn-around.

The compilation of recommendations in the attachment and a final proof will be completed once approvals are obtained. Given that the purpose of the submission is very similar to the ICCPR submission – and that the Commissioners with portfolios most directly engaged by the submission have been involved in its development – I do not propose to provide an oral briefing at the Commissioner's meeting. That said, I am happy to provide one if requested to do so.

Please let me know if you have any queries.

Kind regards,

s22

s22

Research & Policy Officer – Human Rights Scrutiny

Australian Human Rights Commission

Level 3, 175 Pitt St, Sydney NSW 2000

GPO Box 5218, Sydney NSW 2001

T s22 @humanrights.gov.au W www.humanrights.gov.au

Human rights: everyone, everywhere, everyday

I acknowledge the traditional custodians of the land on which I live and work and pay my respects to the elders past, present and future

*We acknowledge the traditional custodians of this land,
the Gadigal peoples of the Eora Nation, and pay
our respects to their Elders, past, present and future*

Part of Document 44

From: [Rosalind Croucher](#)
To: [Tim Soutphommasane](#); s22 [REDACTED]
Cc: [Policy Advisers](#); [Darren Dick](#); s22 [REDACTED]
Subject: RE: Request for approval: CERD Submission [SEC=UNCLASSIFIED]
Date: Wednesday, 25 October 2017 4:55:04 PM

I will take this document with me tonight. I have marked up some comments already, and will leave in the office for you when I return on Friday evening

Ros

**Emeritus Professor Rosalind Croucher AM
President**

Australian Human Rights Commission

Level 3, 175 Pitt Street, Sydney NSW 2000 | GPO Box 5218, Sydney NSW 2001

T +61 2 9284 9614 | F +61 2 9284 9794

E rosalind.croucher@humanrights.gov.au | W www.humanrights.gov.au

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Part of Document 56

From: [Megan Mitchell](#)
To: s22
Cc: [Requests for Approval](#); [Policy Advisers](#); [Darren Dick](#); s22
Subject: Re: Request for approval: CERD Submission [SEC=UNCLASSIFIED]
Date: Friday, 27 October 2017 11:10:59 AM

Hi s22 I understand you are considering mine and s22 comments, happy to approve on that basis,
regards, megan

Sent from my iPad

Part of Document 56

From: [Rosalind Croucher](#)
To: s22
Cc: [Megan Mitchell](#); [Requests for Approval](#); [Policy Advisers](#); [Darren Dick](#); s22
Subject: Re: Request for approval: CERD Submission [SEC=UNCLASSIFIED]
Date: Friday, 27 October 2017 11:16:45 AM

Dear s22

I am marking up hard copy with questions, comments etc - many have probably been resolved. I will be back in the office for a wee while tonight, when I get back from Melbourne, and will leave it for you.

Another very polished piece of work. Should have started with this observation!

Cheers
Ros

Sent from my iPad

On 26 Oct 2017, at 4:39 pm, s22
s22 <s22@humanrights.gov.au> wrote:

Dear Ros and Commissioners,

I have now received formal approvals from June, Tim and Ed. I would be grateful for further approvals by **COB tomorrow**. The submission is due on Monday.

Attached is a revised version of the submission implementing suggestions from June, Tim and Ed. The most substantive amendments are as follows:

s47C & s47E(d)

[Redacted content]

Kind regards,
s22

s22
Research & Policy Officer – Human Rights Scrutiny
[Australian Human Rights Commission](#)

Level 3, 175 Pitt St, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001

T **s22** [@humanrights.gov.au](mailto:s22@humanrights.gov.au) W www.humanrights.gov.au

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From: **s22**

Sent: Thursday, 26 October 2017 12:50 PM

To: Megan Mitchell <megan.mitchell@humanrights.gov.au>; Requests for Approval <RequestsforApproval@humanrights.gov.au>

Cc: Policy Advisers <PolicyAdvisers@humanrights.gov.au>; Darren Dick <darren.dick@humanrights.gov.au>; **s22**

Subject: RE: Request for approval: CERD Submission [SEC=UNCLASSIFIED]

Thanks very much Megan – very helpful.

I will make some tweaks to give effect to your comments.

With that, do you approve the submission?

Kind regards,

s22

From: Megan Mitchell

Sent: Thursday, 26 October 2017 12:34 PM

To: **s22** [@humanrights.gov.au](mailto:s22@humanrights.gov.au); Requests for Approval <RequestsforApproval@humanrights.gov.au>

Cc: Policy Advisers <PolicyAdvisers@humanrights.gov.au>; Darren Dick <darren.dick@humanrights.gov.au>; **s22**

Subject: RE: Request for approval: CERD Submission [SEC=UNCLASSIFIED]

Hi all, I have a few minor comments to consider as you see fit. **s47C & s47E(d)**

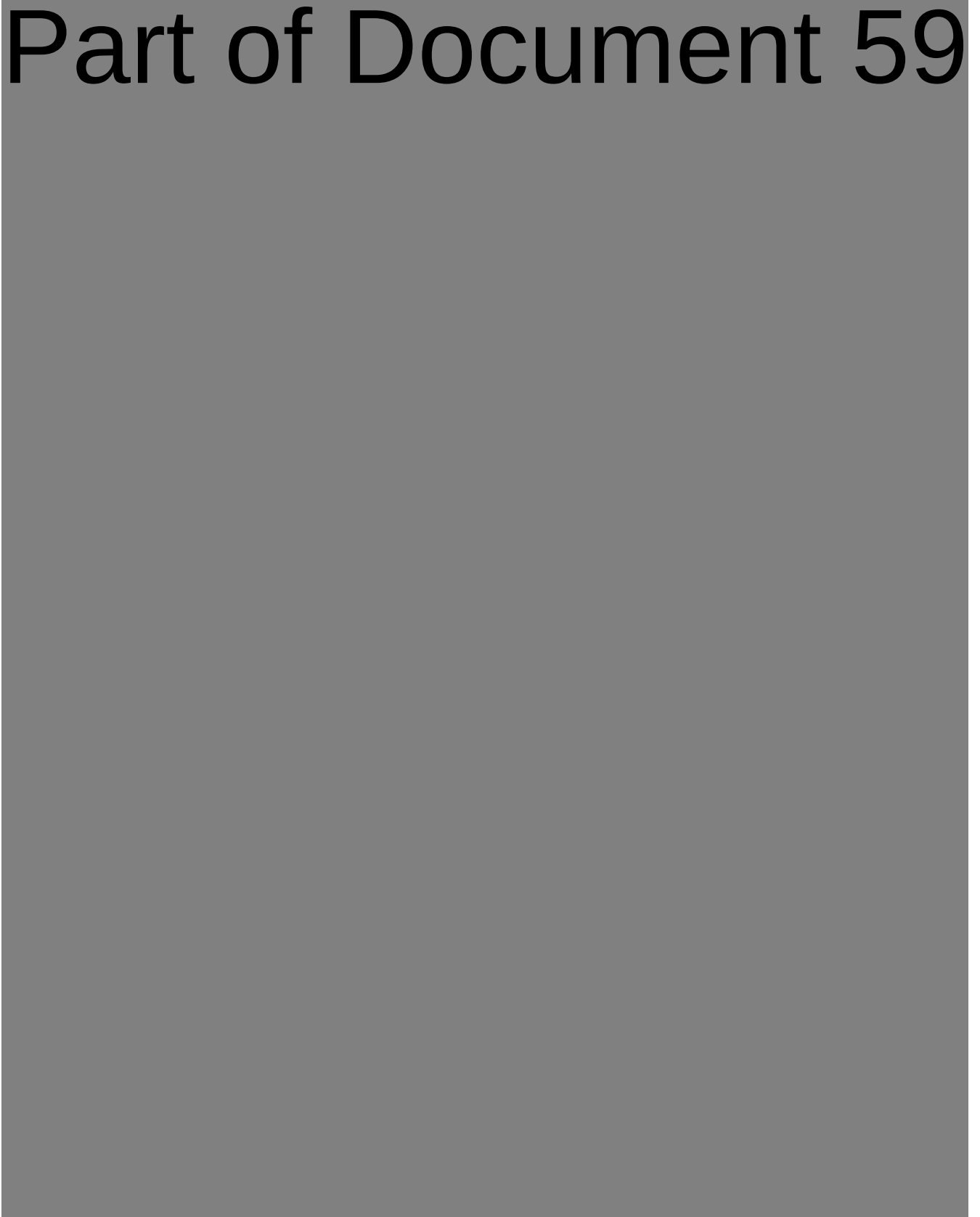
[REDACTED]

Regards, megan

From: [Kate Jenkins](#)
To: s22
Cc: [Megan Mitchell](#); [Requests for Approval](#); [Policy Advisers](#); [Darren Dick](#); s22
Subject: Re: Request for approval: CERD Submission [SEC=UNCLASSIFIED]
Date: Monday, 30 October 2017 10:31:54 AM

I am happy to approve, recognising others feedback will/has been included. Well done.
Kate

Part of Document 59



From: [Alastair McEwin](#)
To: [Kate Jenkins](#); s22
Cc: [Megan Mitchell](#); [Requests for Approval](#); [Policy Advisers](#); [Darren Dick](#); s22
Subject: Re: Request for approval: CERD Submission [SEC=UNCLASSIFIED]
Date: Monday, 30 October 2017 11:00:43 AM

Thank you for this s22
Well done on a comprehensive and well-cited submission.
I too approve this.
Al

Alastair McEwin

Disability Discrimination Commissioner

Australian Human Rights Commission

Level 3, 175 Pitt Street, Sydney NSW 2000

GPO Box 5218, Sydney NSW 2001

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Text +61 410 558 497

E alastair.mcewin@humanrights.gov.au

W www.humanrights.gov.au

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and pay our respects to their Elders, past, present and future.*

Part of Document 60

From: s22
To: [Requests for Approval](#)
Cc: [Policy Advisers](#); [Darren Dick](#); s22
Subject: Request for approval: CERD Submission (final approved version) [SEC=UNCLASSIFIED]
Date: Monday, 30 October 2017 5:48:39 PM
Attachments: [17.10.30 CERD Submission Final.pdf](#)
[17.10.30 CERD Submission Final.docx](#)

Dear Ros and Commissioners,

Thank you all for your approvals and helpful comments. The submission is now considered final.

Please see attached the final version (which incorporates changes including from Ros and Kay).

It will now be sent to the UN Committee on the Elimination of Racial Discrimination.

Kind regards,

s22

s22

Research & Policy Officer – Human Rights Scrutiny

Australian Human Rights Commission

Level 3, 175 Pitt St, Sydney NSW 2000

GPO Box 5218, Sydney NSW 2001

T s22 @humanrights.gov.au W www.humanrights.gov.au

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Part of Document 61

From: s22
To: cerd@ohchr.org
Cc: [Tim Soutphommasane](#); [Darren Dick](#); s22
Subject: Australian Human Rights Commission Submission - Review of Australia's 18th to 20th Periodic Report (CERD) [SEC=UNCLASSIFIED]
Date: Monday, 30 October 2017 5:51:00 PM
Attachments: [17.10.30 CERD Submission Final.pdf](#)
[17.10.30 CERD Submission Final.docx](#)

Dear CERD Secretariat,

Please find attached the submission of the Australian Human Rights Commission to the Committee on the Elimination of Racial Discrimination for its consideration during the upcoming review of the 18th to 20th periodic report of Australia.

Would you kindly acknowledge receipt please.

Kind regards,

s22

s22

Research & Policy Officer – Human Rights Scrutiny

Australian Human Rights Commission

Level 3, 175 Pitt St, Sydney NSW 2000

GPO Box 5218, Sydney NSW 2001

T s22 [@humanrights.gov.au](mailto:s22@humanrights.gov.au) W www.humanrights.gov.au

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From: s22
To: [Tim Soutphommasane](#); [Darren Dick](#); s22
Subject: CERD Factsheets (first 3) [SEC=UNCLASSIFIED]
Date: Wednesday, 22 November 2017 10:53:00 AM
Attachments: [4. Incarceration of Aboriginal and Torres Strait Islander people v1.docx](#)
[2. Multiculturalism and racial discrimination v1.docx](#)
[5. Police Practices on Palm Island v1.docx](#)

Hi all,

Attached are three factsheets for the CERD appearance.

The other two (on the national strategy and constitutional issues) will come through later today.

Cheers,

s22

s22

Research & Policy Officer – Human Rights Scrutiny

Australian Human Rights Commission

Level 3, 175 Pitt St, Sydney NSW 2000

GPO Box 5218, Sydney NSW 2001

T s22 [@humanrights.gov.au](mailto:s22@humanrights.gov.au) **W** www.humanrights.gov.au

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From: s22
To: [Tim Soutphommasane](#); [Darren Dick](#); s22
Subject: CERD factsheets (all factsheets) [SEC=UNCLASSIFIED]
Date: Wednesday, 22 November 2017 4:01:00 PM
Attachments: [3. Constitutional recognition and reform v1.docx](#)
[4. Incarceration of Aboriginal and Torres Strait Islander people v1.docx](#)
[5. Police Practices on Palm Island v1.docx](#)
[1. National Anti-Racism Strategy v1.docx](#)
[2. Multiculturalism and racial discrimination v1.docx](#)

Hi Tim, Darren and s22

Attached are FIVE factsheets for the CERD appearance:

1. National Anti-Racism Strategy
2. Multiculturalism and racial discrimination
3. Constitutional issues
4. Incarceration of Aboriginal and Torres Strait Islander peoples
5. Police Practices on Palm Island

As we did for the ICCPR review – these factsheets extract out and expand on some key aspects of our submission.

Please feel free to return any mark-ups to me over the course of this arvo/tomorrow. I note that, for the Strategy Factsheet, I have largely pulled from the 2015 evaluation (so more recent information may need to be added). The other Factsheets should be up to date.

Once settled, Maria and I will have 18 copies of each printed for Tim to take to Geneva for the Committee members.

Happy to discuss.

Cheers,

s22

s22

Research & Policy Officer – Human Rights Scrutiny

Australian Human Rights Commission

Level 3, 175 Pitt St, Sydney NSW 2000

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From: [Tim Soutphommasane](#)
To: s22
Cc: [Darren Dick](#); s22
Subject: Re: CERD factsheets (all factsheets) [SEC=UNCLASSIFIED]
Date: Thursday, 23 November 2017 12:34:21 PM

Should be ok — s47F . Text or call me. Text better

Sent from my iPhone

On 23 Nov 2017, at 12:32 pm, s22
s22 <s22@humanrights.gov.au> wrote:

Hi Tim

I should be able to get there at about 1.15-1.20pm – does that work?

I don't have email on phone. Is there a number I can get you on when I arrive?

From: Tim Soutphommasane
Sent: Thursday, 23 November 2017 12:24 PM
To: Darren Dick <darren.dick@humanrights.gov.au>
Cc: s22
Subject: Re: CERD factsheets (all factsheets) [SEC=UNCLASSIFIED]

Some feedback on the multiculturalism one. s22 you able to come to PWC during our lunch at 1pm? I have marked up.

Tim

Sent from my iPhone

On 23 Nov 2017, at 10:33 am, Darren Dick <darren.dick@humanrights.gov.au> wrote:

Thanks s22

I'll leave the multiculturalism one to Tim for any further comments. My only comment is on s47C & s47E(d)

Can you add that in to the fact sheet?

Subject to Tim they are fine by me and can be prepped.

This afternoon can you do 12 packs in Commission folders with the submission, Racism evaluation report, and fact sheets when finalised. I will be back 530ish and can take them with me to the flight tomorrow

Regards
Darren

Part of Document 65



Advance Unedited Version

Distr.: General
17 February 2016

Original: English
English, French and Spanish only.

Committee on the Elimination of Racial Discrimination

**Consideration of reports submitted by States
parties under article 9 of the Convention**

**Eighteenth to twentieth periodic reports of States parties due
in 2014**

Australia*

[Date received: 02 February 2016]

* The present document is being issued without formal editing.

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Appendixes**

** Appendixes can be consulted in the files of the secretariat.

I. Introduction

Preparation and structure of report

1. The Australian Government is pleased to present Australia's combined 18th, 19th and 20th reports under article 9 of the Convention on the Elimination of All Forms of Racial Discrimination (the convention) to the Committee on the Elimination of all Forms of Racial Discrimination (the committee).
2. The reporting period is 1 July 2008 to 30 June 2014. This report does not duplicate information on those issues addressed in Australia's combined 15th, 16th and 17th report which arose after 30 June 2008. Nor does it duplicate issues that were included in the Australian Government's response to the committee's concluding observations of 29 August 2011 (CERD/C/AUS/CO/15-17/Add.1).¹
3. Australia last appeared before the committee on 10 and 11 August 2010. The committee issued its concluding observations on Australia's combined 15th, 16th and 17th reports on 27 August 2010 (CERD/C/AUS/CO/15-17; the concluding observations). On 29 August 2011 Australia submitted a response to the three concluding observations for which the committee had requested a response within 12 months.² On 9 March 2012 the committee issued supplementary observations.³
4. This report responds to the committee's 2010 concluding observations and recommendations (CERD/C/AUS/CO/15-17) and 2012 supplementary observations and recommendations, and those areas where there have been significant new developments and where that information has not already been provided within reports under other treaties to which Australia is a party. Where appropriate, responses are grouped together.
5. This report was prepared in accordance with the guidelines to follow-up on concluding observations and recommendations, the committee's revised guidelines for convention-specific reporting documents, and the harmonised guidelines on reporting under the international human rights treaties. This report supplements Australia's 2007 Common Core Document and should be read in conjunction with this. Part 3 (sub items G and H) of the document includes information on non-discrimination, equality and effective remedies, which is relevant to many issues addressed by this report.
6. Australia draws the committee's attention to its 2010 and 2015 Universal Periodic Review reports submitted to the Human Rights Council and the subsequent report of the Human Rights Council's working group in March 2011⁴ which contains information relevant to Australia's implementation of the convention.
7. Australia also cross-references its recently submitted report under the International Covenant on Economic, Social and Cultural Rights (ICESCR) where appropriate.
8. After a federal election on 7 September 2013, a new Australian Government was constituted on 18 September 2013. Key strategies, policies and programs have changed

¹ CERD/C/AUS/CO/15-17/Add.1 is available at: <http://tb.ohchr.org/default.aspx?country=au> and is provided at: Appendix 4.

² This Australian response document is provided at: Appendix 5.

³ The Supplementary concluding observations is provided at: Appendix 6.

⁴ Report available at: <http://daccess-ods.un.org/TMP/8283475.63743591.html>.

since that date, as have some agency responsibilities and names. These are indicated in this report as appropriate.

Consultation with state and territory governments and civil society - Reference Concluding Observation 30

9. Australia has a federal constitutional system in which powers are shared between federal institutions and the six states (New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania), and three self-governing territories (the Australian Capital Territory, the Northern Territory and the Territory of Norfolk Island). Further information about Australia's political structure is available in part B of the common core document.

10. As Australia is a federation, while the Australian Government is the State Party to the Covenant, state and territory governments share responsibility for implementing Australia's obligations under the convention. The Australian Government consulted state and territory governments in preparing this report. Where possible federal, state and territory responses to relevant concluding observations and recommendations are included in this document. However, given the vast array of state and territory initiatives, Australia has also prepared Appendix 1 to provide a more complete picture of relevant cross-jurisdictional policies and programs over the reporting period.

11. The Australian Government recognises the importance of involving civil society in preparing this report and sought submissions from relevant organisations. A list of submissions received from non-government organisations (NGOs) and individuals that were taken into consideration in preparing this document is at **Appendix 2**.

Follow-up and dissemination: Reference Concluding Observation 31

12. This report is publicly available on the Department of Foreign Affairs and Trade's website. Electronic copies have been distributed including to state and territory governments, Australian Government agencies, the Australian Human Rights Commission (AHRC), civil society groups, the private sector and interested members of the public.

13. The following measures constitute Australia's dissemination of the Committee's concluding observations: following the issuance by the committee of its concluding observations on this report and consistent with the committee's concluding observations of 2010 (paragraph 9), the Department of Foreign Affairs and Trade will meet with Australian government agencies and state and territory governments to discuss the committee's concerns and recommendations. The views of the AHRC, state and territory statutory office holders, civil society groups, members of the public and other stakeholders will also be sought.

14. In addition to publishing the concluding observations on its website, the department will ask external stakeholders to make the observations available to their members.

15. Consistent with the committee's 2006 reporting guidelines, Australia's Mission to the United Nations in Geneva will remain the nominated point for liaison with the committee's follow-up coordinator.⁵

⁵ The Mission's contact details are: Chemin des Fins 2, Case Postale 102, 1211 Geneva 19. Phone: 022 799 9100,

16. The Australian Government is committed to effective operation of the UN human rights treaty system and looks forward to the committee's consideration of this report.

Australia's racial diversity

17. Australia has one of the most culturally and linguistically diverse and socially cohesive populations in the world. As well as our original inhabitants, Aboriginal and Torres Strait Islander people, Australia is made up of people from about 200 countries.

18. The 2011 Australian Census of Population and Housing, conducted every five years, revealed that 26% of Australia's population was born overseas and a further 20% had at least one overseas-born parent.⁶ Out of the OECD nations, only Luxembourg (42%), Israel (31%) and Switzerland (28%) have larger proportionate migrant populations.⁷ Migration made up to 60% of Australia's total population growth in 2013.⁸

19. The 2011 Census recorded an Aboriginal and Torres Strait Islander population of 548,370, with 20.5% more Australians identified as Aboriginal and Torres Strait Islander than in the 2006 Census. By August 2013, the Aboriginal and Torres Strait Islander population had reached 669,900, or 3% of the total population.⁹ About 60% of the population lives in major cities and inner regional areas, and just over 20% lives in remote and very remote areas.¹⁰

20. The 2011 Census identified over 300 ancestries and more than 300 languages spoken in Australia.¹¹ While the Census only takes account of 48 of the more common Indigenous languages and two creoles, there are about another 100 known Indigenous languages spoken by small groups of people.¹² In 2011, about one in ten Aboriginal and Torres Strait Islander people (11%) reported speaking an Australian Indigenous language at home and 17% of Australians spoke a language other than English.¹³

fax: 022 799 9178.

⁶ Data sourced from the Australian Bureau of Statistics (ABS), *Reflecting a Nation: Stories from the 2011 Census, 2012–13*, (Cat. No. 2071.0), available at:

<http://www.abs.gov.au/ausstats/abs@.nsf/mf/2071.0>.

⁷ Data sourced from ABS, *Australian Social Trends, 2014*, (Cat. No. 4102.0), available at:

<http://www.abs.gov.au/socialtrends>.

⁸ Data sourced from ABS, *Media Release – Can you imagine Australia's future population?*, August 2014, available at:

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/4102.0Media%20Release92014?opendocument&tabname=Summary&prodno=4102.0&issue=2014&num=&view=>

⁹ Data sourced from ABS, *Media Release – Aboriginal and Torres Strait Islander population nearing 700,000, August 2013*, available at:

www.abs.gov.au/ausstats/abs@.nsf/latestProducts/3238.0.55.001Media%20Release1June%202011

¹⁰ Ibid.

¹¹ Data sourced from ABS, *Media Release – 2011 Census shows Asian languages on the rise in Australian households, June 2012*, available at:

<http://www.abs.gov.au/websitedbs/censushome.nsf/home/CO-60>.

¹² Data sourced from ABS, *Australian Social Trends 1999, June 1999* (Cat. No. 4102.0) available at:

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/2f762f95845417aeca25706c00834efa/d67b7c95e0e8a733ca2570ec001117a2!OpenDocument>.

¹³ Data sourced from ABS, *Census of Population and Housing: Characteristics of Aboriginal and Torres Strait Islander Australians, 2011*, (Cat. No. 2076.0), available at:

<http://www.abs.gov.au/ausstats/abs@.nsf/lookup/2076.0main+features902011>

21. For the 2011 Census, the most common languages spoken in Australia, other than English, were Mandarin, Italian, Arabic, Cantonese and Greek.¹⁴ Chinese languages (including Cantonese and Mandarin amongst others) are spoken by about 3% of the population and have the greatest number of speakers after English.¹⁵

II. Responses to the Concluding Observations of the Committee on the Elimination of Racial Discrimination

22. The principal way Australia implements the Convention on the Elimination of All Forms of Racial Discrimination is through the Racial Discrimination Act 1975 (Cth) and the work of the Australian Human Rights Commission (AHRC). Australia's states and territories also have a variety of anti-discrimination and human rights legislation. Further detail on the federal, state and territory political and legal anti-discrimination framework is available in Part D of Australia's Common Core document.

23. The following provides responses to concerns and recommendations raised by the committee in its concluding observations (CERD/C/AUS/CO15-17) and supplementary concluding observations.¹⁶

Concluding Observations 9, 10, and 25: Establishment of a domestic implementation mechanism for the convention across the federal system and review of anti-discrimination laws, including burden of proof requirements for demonstrating discrimination

24. The Australian Government believes everyone is free to speak their mind, rights are accompanied by responsibilities, there is no place for racism, and all people should live in a harmonious and mutually respectful society.

25. Obligations in CERD can be implemented by States through a range of means, including legislation. Successive Australian governments have generally approached implementation by ensuring that domestic legislation, policy and practice are consistent with Australia's international human rights obligations.

26. Under Commonwealth law, the prohibited grounds for discrimination are set out in the Racial Discrimination Act 1975 (Cth), the Sex Discrimination Act 1984 (Cth), the Disability Discrimination Act 1992 (Cth) and the Age Discrimination Act 2004 (Cth).

- The Racial Discrimination Act 1975 makes it unlawful to discriminate on the basis of race, colour, or national or ethnic origin in any field of public life and prohibits racial vilification. The Act provides for civil remedies.

27. The Human Rights (Parliamentary Scrutiny) Act 2011 (Cth) commenced on 4 January 2012. It requires that all legislation introduced into the Australian Parliament be accompanied by a statement setting out its consistency with Australia's obligations under

¹⁴ ¹⁴ Data sourced from ABS, *Media Release – 2011 Census shows Asian languages on the rise in Australian households*, June 2012, available at:

<http://www.abs.gov.au/websitedbs/censushome.nsf/home/CO-60>

¹⁵ Racism! No way, *Languages other than English* at: www.racismnoway.com.au/about-racism/population/index-Diversit-2.html

¹⁶ The Supplementary concluding observations is provided at: Appendix 6.

the seven core United Nations human rights treaties to which Australia is a party, including CERD.

28. The Act also requires the establishment of a Parliamentary Joint Committee on Human Rights (PJCHR) in the Australian Parliament. This occurred in March 2012. The PJCHR considers the compatibility of new and existing Commonwealth legislation with human rights, including the rights in the CERD. It may undertake inquiries on matters relating to human rights referred to it by the Attorney-General. The PJCHR also plays an educative role, which includes raising public awareness of human rights. Since its establishment, the PJCHR has tabled numerous reports examining the compatibility of legislation introduced into the Parliament, including for consistency with the CERD.

29. The former Government reviewed and considered undertaking reform of Commonwealth anti-discrimination legislation. However, a proposal to consolidate Commonwealth anti-discrimination laws was not progressed. It does not form part of the current Australian Government's policy.

30. Australian, state and territory governments have also enacted legislation that provides additional protections from discrimination.

Victoria

31. In Victoria, the Equal Opportunity Act 2010 prohibits discrimination on the basis of a person's individual attributes (including race), and in certain areas of public life such as employment, education and the provision of goods and services. The Act prohibits both direct and indirect discrimination. It provides for a 'shift' in the evidentiary burden in relation to complaints of indirect discrimination. Under the Act, indirect discrimination occurs if a person imposes or proposes to impose a requirement, condition or practice that has, or is likely to have, the effect of disadvantaging people with an attribute, and the requirement, condition or practice is not reasonable. While a complainant needs to show that the requirement causes, or is likely to cause, them disadvantage, the person who imposes the requirement must show that it is reasonable. A respondent seeking to rely on an exception to discrimination, whether direct or indirect, must prove that the exception applies.

32. For more examples of state and territory policy and implementation under Concluding Observations 9, 10 and 25, see Appendix 1

33. The Australian Government has no plans to review the burden of proof requirements in Commonwealth anti-discrimination laws at this time.

Concluding Observation 11 and Supplementary Observation: Support for the Australian Human Rights Commission (AHRC) and appointment of a full-time Race Discrimination Commissioner, roles and responsibilities

34. Australia has a full-time Race Discrimination Commissioner within the AHRC, Dr Tim Southpommase, who was appointed in August 2013. The AHRC enquires into and conciliates complaints of unlawful racial discrimination or racial hatred. If conciliation is unsuccessful the complainant may lodge an application with the Federal Court of Australia or the Federal Circuit Court of Australia for remedies ranging from an apology to compensation.

35. The commission had a total budget of \$35,222,000 in 2013-14 for ordinary annual services, an increase on its 2011-12 budget of \$27,110,000.

Concluding Observation 12: Biometric data and sensitisation campaigns against stereotyping

36. In December 2010, the Australian Government introduced biometric collection into overseas visa processing arrangements. Facial images and fingerprint scans are kept on secure databases. Only authorised officers under the Migration Act 1958 (Cth), as regulated by the Privacy Act 1988 (Cth), may access the biometrics of applicants.

37. The pilot stage of the Offshore Biometrics Program included visa applications processed at locations managed by 10 Australian missions in Africa, Asia, Europe and the Middle East. Biometrics are now collected from applicants in Bahrain, Bangladesh, Cambodia, Colombia, Ethiopia, France, Ghana, Jordan, Kenya, Kuwait, Lebanon, Malaysia, Nigeria, Oman, Pakistan, Qatar, Saudi Arabia, Sri Lanka, United Arab Emirates, Yemen and Zimbabwe. Mobile biometric collection units are used in Ankara, Bangkok, Islamabad, Jakarta, Kuala Lumpur, Nairobi, New Delhi, Pretoria and Tehran.

38. The choice of locations takes into account factors including Australia's national security, fraud risks in visa caseloads, application volumes, and availability of biometrics collection infrastructure. All people, regardless of nationality, who lodge paper-based visa applications and some electronic applications in countries where biometrics are collected, need to provide their fingerprints and a digital photograph as part of the visa application process. Those under 15 only need to provide a photograph.

39. In May 2014, the Australian Government announced that biometric collection would be expanded to cover approximately 20 further countries by 2018.

40. A number of state and territory governments also work with community organisations to address racial and cultural stereotyping.

New South Wales

41. Multicultural NSW consults extensively with communities affected by overseas conflicts and terrorism to offer support and promote community harmony. The agency is a member of the NSW State Counter Terrorism Committee, NSW Countering Violent Extremism Advisory Group, and the Countering Violent Extremism Sub-Committee of the Australia New Zealand Counter Terrorism Committee.

42. Since 2010 the Community Relations Commission has secured funding under the National Framework to Counter Violent Extremism to implement a wide range of local and online community engagement initiatives that empower communities, promote intercultural engagement, and counter the negative impacts of violent extremism on social cohesion and community harmony.

43. Responding to concerns about the potential backlash against the broader Muslim community following major counter-terrorism operations in Australia in 2014, Multicultural NSW, in partnership with the NSW Police Force, established the Speak Out Hotline for reporting incidents of harassment and abuse based on race or religion.

For more state and territory examples under Concluding Observation 12, see Appendix 1

Concluding Observation 13: Regulation of Australian corporations

44. Australia expects Australian companies operating overseas to abide by local laws and standards as well as Australian laws that apply extraterritorially to their overseas activities. This includes Australian laws on bribery of foreign officials and Australian autonomous sanctions. Australian companies are also expected to conduct themselves in accordance with internationally recognised standards for corporate social responsibility and human rights, including on racial discrimination, and to comply with United Nations Security Council sanctions.

45. The Australian Government has endorsed OECD Guidelines for Multinational Enterprises. Though not legally binding, companies operating in Australia and Australian companies operating overseas are expected to act in accordance with the principles set out in the guidelines and to perform at a minimum the standards they suggest. Australia has established a National Contact Point in the Department of the Treasury that can consider complaints brought under the Guidelines. The contact point also provides a forum for discussion with stakeholders on matters relating to the guidelines.¹⁷

46. Australia supports voluntary frameworks to guide human rights protections by corporations, including the UN Guiding Principles on Business and Human Rights.

47. Australia supports the UN Global Compact, which at July 2015 had 120 Australian participants ranging from small and medium sized enterprises to large corporations such as BHP Billiton, KPMG Australia and the ANZ Banking Group, as well as academic institutions, business associations, foundations and non-government organisations. Launched in 2009, the UN Global Compact Network Australia offers practical assistance to Australian UN Global Compact signatories to integrate and operationalise the UN Global Compact.

48. The Leading Practice Sustainable Development Program for the Mining Industry¹⁸ initiative, launched in 2006, is a collaborative effort between government and industry that promotes sustainable development and industry self-regulation through proactive adoption of leading practice principles. The program has developed an internationally successful series of handbooks, which cover leading practice in mining management, including on Community Engagement and Development and Working with Indigenous Communities.¹⁹

49. The Australian Government is working with the resources sector, Aboriginal and Torres Strait Islander communities and others to build effective long-term relationships and encourage wider adoption of best practice. Through the Working in Partnership initiative, the Australian Government is enhancing enterprise development and increasing employment opportunities for communities in mining areas.

Facilitating a national dialogue on business and human rights

50. On 30 July 2014, the AHRC and Global Compact Network Australia met with about 100 representatives from some of Australia's biggest companies, non-government organisations, government departments, investors and academia to discuss how corporate strategies can be shaped with human rights objectives. The United Nations Working Group on Business and Human Rights also attended and supported the event.

¹⁷ Further information available at: www.ancp.gov.au.

¹⁸ Available at: <http://www.industry.gov.au/resource/Programs/LPSD/Pages/default.aspx>.

¹⁹ Handbooks available at: www.industry.gov.au/resource/Programs/LPSD/Pages/default.aspx.

51. The dialogue heard from 27 experts across seven topics, including corporate responsibility to respect human rights, the role of government, access to remedy and grievance mechanisms, bringing a human rights lens to Indigenous engagement, and human rights in the supply chain. The event concluded with a commitment from all stakeholders to continue the conversation and to strive to ensure Australian companies are seen as international leaders on business and human rights issues. A further national dialogue is planned for 2015.²⁰

Western Australia

52. Western Australia protects sites or objects of significance to Aboriginal people through its Aboriginal Heritage Act 1972 (WA). The Act requires land users and developers (including corporations and others) to have the consent of the Minister for Aboriginal Affairs before impacting sites of significance as defined by the Act. The government recently invited public comment on its intention to amend the Act to provide even greater protection to significant Aboriginal heritage through a number of measures, including increasing the penalty to \$1 million for corporations unlawfully impacting Aboriginal sites. Proposed changes were introduced as a Bill to Parliament in November 2014.

Indigenous Management Support Service

53. The Department of Agriculture and Food WA commenced its Indigenous Management Support Service in 2002 in partnership with the Indigenous Land Corporation and six Kimberley pastoral properties managed by Indigenous communities. It is a holistic support service focusing on production management, marketing, business management and capacity building. Key learnings include identifying what is needed to build a commercial pastoral enterprise managed solely by Indigenous directors, and providing sustainable pastoral careers for community members.

For more state and territory examples under Concluding Observation 13, see Appendix 1.

Concluding Observation 14: Access to services, multicultural policy and social inclusion

54. The committee is referred to the Australian Government's fifth periodic report under the ICESCR, specifically Concluding Observation 24 (Poverty).

Access to services

55. The Australian Government is committed to the core principle that programs and services should be accessible by all eligible Australians, responsive to their needs and deliver equitable outcomes regardless of cultural and linguistic backgrounds.

56. The Commonwealth's policy Multicultural access and equity policy: respecting diversity. Improving responsiveness²¹ covers all engagement of Commonwealth Government departments and agencies with multicultural communities, not just direct

²⁰ Australian Human Rights Commission: <https://www.humanrights.gov.au/education/business-and-human-rights>.

²¹ Further information: <https://www.dss.gov.au/our-responsibilities/settlement-and-multicultural-affairs/programs-policy/access-and-equity/multicultural-access-and-equity-policy-toolkit>.

service delivery. Commonwealth departments and agencies are required to develop Agency Multicultural Plans and publish these on their websites. The first plans run from 1 July 2013 to 30 December 2015.

57. The Australian Government has reached agreements with the Queensland, Western Australian, Victorian, Tasmanian and South Australian governments that will see the states take on responsibility for delivering municipal and essential services in remote Indigenous communities. The Australian Government has also allocated \$154.8 million in the 2015-16 Budget for the Northern Territory to assume full ongoing responsibility for the provision of municipal and essential services in Indigenous communities under the new National Partnership Agreement on Northern Territory Remote Aboriginal Investment. When agreed, these arrangements replace previous arrangements under the Stronger Futures in the Northern Territory National Partnership Agreement.

58. Between 2008 and 2014 Australia resettled 82,318 humanitarian entrants. The Australian Government assists humanitarian entrants through the Australian Cultural Orientation (AUSCO), Humanitarian Settlement Services (HSS) and Complex Case Support (CCS) programmes, and a range of activities funded through settlement grants. These programmes provide the basis for longer-term engagement with education, English language and employment service providers. AUSCO is an orientation programme delivered overseas by the International Organization for Migration for refugee and humanitarian visa holders preparing to be resettled in Australia. HSS provides early practical support to humanitarian clients generally for their first six to twelve months after their arrival. CCS helps eligible clients resolve more complex issues beyond the scope of HSS for up to five years. HSS and CSS programmes are delivered by contracted service providers in metropolitan and regional locations and take a needs-based, case management approach. Humanitarian entrants are also eligible for Free Interpreting Services and Free Translation Services to support them to access other mainstream services. Settlement grants fund services that foster social participation, economic and personal well-being, independence and community connectedness and are available to humanitarian entrants during their first five years of life in Australia.

59. The Australian settlement policy ensures humanitarian entrants are initially settled close to any existing links (family or friends) in Australia and have access to settlement service providers with expertise in meeting their specific needs and facilitating access to other support services.

60. People residing in Australia on Temporary Protection visas (TPV) and the Safe Haven Enterprise visa (SHEV) introduced in 2015 are not permanent residents and so they are not eligible for HSS or support funded with settlement service grants. However, under current arrangements, TPV and SHEV holders have permission to work; access to Medicare and related benefits; access to Early Health Assessment and Intervention Services (including counselling for torture and trauma); and access to education for children of school age. They are also eligible for some support through CCS, interpretation and translation services, social security payments, and employment services including disability employment services.

61. Australia's National Settlement Framework aims to bring together all three levels of government to improve settlement services through better coordination and collaboration and more effective use of existing resources.

Accessing services

62. The Department of Human Services provides social and health related services through Centre link and Medicare, as well as information in a range of languages, and

interpreter and translation services. Specialist multicultural service officers also help migrant and refugee communities connect with Australian Government programs and services.

63. There are around 70 of these officers operating across Australia, from metropolitan to regional and rural service centres.²²

64. To help Indigenous Australians better access Medicare services, the department also maintains a network of Medicare liaison officers in each state and the Northern Territory, with a diverse range of culturally appropriate skills and expertise. It also runs the Aboriginal and Torres Strait Islander Access Line.²³

South Australia

65. In December 2013 the Universal Access and Inclusion Guidelines²⁴ were endorsed to allow government agencies to assess whether their services are accessible and their practices inclusive. The document focuses on three key areas: inclusive leadership and governance; inclusive policies, programs and services; and inclusive workforce. The draft Access and equity guidelines for a multicultural South Australia will complement the guidelines.

For more state and territory examples under Concluding Observation 14, see Appendix 1.

Multicultural policies

66. The Australian Government is committed to building a prosperous and harmonious multicultural Australia. It recognises the significant contribution that migrants have made to our country.

67. The Government's approach to multiculturalism acknowledges the important contribution of everyone learning English, having a secure job, and gaining a quality education. At its core, Australia's approach is a balance of rights and responsibilities which are cornerstones of Australian democracy. The Government sees these pillars as critical to fostering participation, supporting productive diversity, and maintaining Australia's high levels of community harmony.

68. A range of policies and programs support Australia's approach to multiculturalism:

- The National Anti-Racism Strategy defines racism how it can be prevented and reduced.²⁵
- Through its Multicultural Community Liaison Officer network, the government engages with community leaders and stakeholders to monitor the views of multicultural communities.
- Diversity and social cohesion grants are provided to select community organisations to raise awareness, promote understanding, respect and fairness, and to develop a sense of belonging for all Australians.²⁶

²² Further information: www.humanservices.gov.au/customer/services/centrelink/multicultural-service-officers.

²³ Further information: www.humanservices.gov.au/customer/services/medicare/indigenous-access-program.

²⁴ <http://www.dcsi.sa.gov.au/about-us/key-strategies-and-plans>.

²⁵ Further information: <http://www.humanrights.gov.au/national-anti-racism-strategy-and-racism-it-stops-me-campaign>.

- The Australian Multicultural Council was appointed on 15 December 2014 to advise on issues of multicultural policy and programs over a three-year period.²⁷

Australian Capital Territory

69. The ACT Government is committed to maximising the benefits of cultural diversity. Its Multicultural Strategy 2010–2013 has been a blueprint for the territory’s multicultural focus and its Respect, Equity and Diversity Framework promotes a positive work culture across government. The Community Services Directorate recently released a new multicultural policy discussion paper, which sets out a number of principles that are now ingrained in ACT Government policy. These include human rights; access and equity; ageing and aged care issues; cultural and religious acceptance; language policy; and leadership and governance.

For more state and territory examples under Concluding Observation 14, see Appendix 1

Social Inclusion Agenda

70. Australia’s Social Inclusion Agenda was the overarching policy agenda between 2009 and 2013 and was designed to build a stronger, fairer Australia where everyone, regardless of their cultural background, language or religion, has the same opportunity to participate, including new arrivals and refugees. In 2012, a second edition of *How Australia is Fairing* and which provides a benchmark to measure future progress and included indicators measuring, among other things, attitudes to cultural diversity and the prevalence of discrimination.²⁸

71. Australia’s multicultural policy, *The People of Australia*,²⁹ was launched in 2011 to strengthen social cohesion by promoting belonging, respecting diversity and fostering engagement with Australian values, identity and citizenship within the framework of Australian law. The policy was made available in English, Arabic, Chinese, Dinka, French, German, Greek, Hindi, Italian, Spanish and Vietnamese.

72. The government has an ongoing research partnership with Monash University to undertake research into social cohesion in Australian communities. The National Mapping Social Cohesion Survey is an online survey that looks at patterns of engagement with Australian society and levels of identification, satisfaction and trust. This has been an annual survey since 2009. An additional, locations based survey, which built on previous research undertaken by Monash University, looks at the Australian community’s attitudes towards social cohesion and to assess changes in these attitudes over time. The results from these surveys are used by government to inform future directions in social cohesion policy work.³⁰

²⁶ Further information: <https://www.dss.gov.au/grants/diversity-and-social-cohesion-dsc>.

²⁷ Further information available at: <http://www.amc.gov.au/>.

²⁸ *How Australia is Fairing* available at: <http://www.socialinclusion.gov.au/resources/how-australia-is-fairing>.

²⁹ <https://www.dss.gov.au/our-responsibilities/settlement-and-multicultural-affairs/publications/the-people-of-australia-australias-multicultural-policy>.

³⁰ Further information available at: <http://monash.edu/mapping-population/social-cohesion-report.html>.

Concluding Observations 15 and 26: Indigenous recognition and reconciliation

73. All Australian governments are committed to meaningful reconciliation with Australia's Indigenous peoples. The Australian Government is working towards the recognition of Indigenous Australians in the Commonwealth Constitution. The Australian Government continues to engage with stakeholders, including holding a landmark meeting between Indigenous and political leaders on the path towards Indigenous constitutional recognition.

74. The Australian Constitution can only be changed by referendum. To be successful, a referendum must have the support of a majority of Australians nationally and in a majority of states. This generally requires strong bipartisan support, broad public awareness and a clear and easily understood proposal. Only eight out of the past 44 referendum proposals have passed.

75. On the fifth anniversary of the National Apology to Australia's Indigenous Peoples (13 February 2013) the Federal House of Representatives unanimously passed the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2013 which also passed unopposed in the Senate in March 2013. This entered into effect on 28 March 2013.

76. The Aboriginal and Torres Strait Islander Peoples Recognition Act 2013 is a significant step towards a referendum. The Act recognises the 'unique and special place of Aboriginal and Torres Strait Islander peoples'. On 19 March 2015, the Act was extended by three years until 28 March 2018. This ensures that parliamentary support for recognition of Australia's First Peoples in the Constitution continues in the lead up to a referendum.³¹

77. The Act requires the Minister for Indigenous Affairs to appoint a review panel to assess Australia's readiness for a referendum to recognise Indigenous Australians in the Constitution, and preconditions for a successful referendum. The review panel was appointed on 27 March 2014 and its final report was tabled in Parliament on 19 September 2014. The report found that the majority of Australians support Indigenous constitutional recognition. The report recommends a number of steps to prepare for a referendum on constitutional recognition of Indigenous Australians and is currently under consideration by government.

78. Recognising the need for commitment across parliament, the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples was re-established in December 2013 to inquire into steps that can be taken to progress towards a successful referendum and to build multi-partisan parliamentary consensus on the content and wording of referendum proposals. From 2014 to 2015 the committee undertook public consultations around Australia and received 139 written submissions. The committee's Final Report, tabled on 25 June 2015, makes a number of recommendations and puts forward a range of options for constitutional change. The Australian Government will carefully consider the Final Report.

South Australia

79. The South Australian Government amended the state's Constitution to recognise Aboriginal peoples as traditional owners and occupants of land and waters of the state, and committed all state government agencies to develop Reconciliation Action Plans.

³¹ Further information available at: <http://monash.edu/mapping-population/social-cohesion-report.html>.

80. To ensure Aboriginal people can exercise meaningful control over their affairs, the government has also:

- Established the South Australian Aboriginal Advisory Council to provide high level advice to government;
- Established the Office for the Commissioner for Aboriginal Engagement to serve as an independent voice for the Aboriginal community in government;
- Committed to developing the Aboriginal Regional Authorities policy to harness the strengths of the Aboriginal community to most effectively represent that community in decision making (the Aboriginal Regional Authority policy is to be implemented in 2015);
- Committed to support the state's three Aboriginal landholding authorities which collectively hold more than 20% of South Australian land for the benefit of Aboriginal people; and
- Committed to drafting legislation to recognise the self-determining governance structures of Aboriginal nations, and the unique cultural authority of those nations. This legislation will set out guiding principles for cooperation, and allow agreements to be negotiated between government and Aboriginal groups.

For more state and territory examples under Concluding Observations 15 and 26, see Appendix 1.

Complementing these actions is the RECOGNISE movement which is supported by the Australian Government to help build community awareness and support for Constitutional recognition.³²

National Congress of Australia's First Peoples

81. From 2009-10 to 2016-17, the National Congress of Australia's First Peoples will receive \$29.3 million in funding to support its establishment and operations.

In April 2010, the national congress was incorporated as a company limited by guarantee. It is owned and controlled by its membership and is independent of government. The national congress has held annual general meetings each year since June 2011. At the end of 2014, it had 8,206 individual and 181 corporate members.

82. On the recommendation of the Commission of Audit, the Australian Government did not proceed with additional funding to the National Congress of Australia's First Peoples, announced in the previous Government's last Budget (2013-14). The Government will continue with its approach of consulting with Aboriginal and Torres Strait Islander peoples through a range of mechanisms.

The Stolen Generations

83. The Australian Government has committed to support healing and help Stolen Generations trace, locate, and reunite with their families. At the time of the National Apology, the government made it clear that compensation would not be paid.

84. The Australian Government funds the Aboriginal and Torres Strait Islander Healing Foundation to help heal the grief, loss and intergenerational trauma experienced by Indigenous people due to past government policies.

³² Further information on RECOGNISE available at: <http://www.recognise.org.au/>.

85. In April 2012, the Stolen Generations Reference Committee was established to guide the foundation's work. Projects funded by the foundation contribute to suicide prevention and improved mental health of individuals and communities through the provision of: healing services; community education about trauma, managing grief and loss effectively; and building a professional workforce that can better respond to loss, grief and trauma in Indigenous communities.

86. From 2011 to 2014 \$54.4 million was provided to support Stolen Generations through:

- Link Up Services to deliver family tracing, reunion and counselling services to members of the Stolen Generations; and training and support for Link Up staff through the Family History Unit located in the Australian Institute of Aboriginal and Torres Strait Islander Studies.
- A network of social and emotional wellbeing counselling staff located in Aboriginal community-controlled health services across Australia.

87. The Australian Government has also funded the collection and preservation of some records of those removed from their families, and provided \$100,000 to the National Library of Australia to make oral history recordings more accessible to the public. The Government also funded the development of a publically accessible website where 50 members of the Stolen Generations tell their stories or testimonies.³³

Concluding Observation 16 and Supplementary Observations: Northern Territory Emergency Response and income management

88. The following information is provided to the committee in addition to CERD/C/AUS/CO/15-17/Add.1.³⁴ The committee is also referred to the Australian Government's fifth periodic report under the ICESCR; specifically Concluding Observation 15 (Northern Territory Intervention Response).

89. The Northern Territory National Emergency Response (NTER) Act 2007 ceased to have effect and was repealed when the Stronger Futures in the Northern Territory 2012 (Stronger Futures) legislation commenced. The three Acts in the Stronger Futures package are:

- Social Security Legislation Amendment Act 2012;
- Stronger Futures in the Northern Territory Act 2012; and
- Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012.

90. The Act effectively redesigned NTER measures as either special or non-discriminatory measures under the Racial Discrimination Act 1975 (Cth). All elements under the Stronger Futures package are consistent with this Act.

91. Stronger Futures was developed following extensive consultations with Aboriginal communities about what was important to them. Stronger Futures invests in programs and

³³ www.stolengenerationstestimonies.com.

³⁴ CERD/C/AUS/CO/15-17/Add.1 is available at: <http://tb.ohchr.org/default.aspx?country=au> and is provided at: Appendix 4.

services critical to closing the gap in Indigenous disadvantage and making communities safer in areas such as health, education, housing and policing.³⁵

92. The Stronger Futures in the Northern Territory Six-Monthly Progress Report, which covers the period 1 January to 30 June 2013 was released in May 2014 and showed that despite the investment, there has only been limited improvement.³⁶ In the 2014-15 Budget, it was announced that Stronger Futures would be revised in collaboration with the Northern Territory.

93. In the 2015-16 Budget, it was announced that the National Partnership Agreement (NPA) on Stronger Futures would be replaced with a new NPA on Northern Territory Remote Aboriginal Investment. The new NPA retains the overarching direction of the outcomes of the Stronger Futures NPA and will continue to be supported by the existing Stronger Futures legislation

Income management

94. Income management is a tool, applied in a non-discriminatory way, which helps people better budget their welfare payments and ensures they are getting the basic essentials of life, such as food, housing, electricity and education.³⁷ Managed by the Department of Social Services, it is implemented in a number of areas around Australia including:

- New South Wales (Bankstown).
- the whole of the Northern Territory.
- Queensland (Logan, Rockhampton, Livingstone, Cape York).
- South Australia (Anangu Pitjantjatjara Yankunytjatjara (APY) Lands, Ceduna region, Playford).
- Victoria (Greater Shepparton).
- Western Australia (Perth Metropolitan, Peel, the Kimberley Ngaanyatjarra Lands, Laverton Shire, Kiwirrkirra Community).

95. Several recent evaluations highlight the benefits of income management: ³⁸

- Recent evaluations reported that income management helped stabilise the expenditure patterns of people in severe financial difficulties including a significant decrease in alcohol and tobacco consumption, improvements to child wellbeing and reduction in the proportion of people running out of money before payday, making them feel safer and improving their lives and the lives of their children. In particular, voluntary, child protection referred and social worker assessed forms of income management seem to produce the most positive results, particularly in relation to improving customers' sense of financial control and for some, providing a degree of harm minimisation and stabilisation of crisis situations.

³⁵ Further information: <http://www.dss.gov.au/our-responsibilities/indigenous-australians/programs-services/stronger-futures-in-the-northern-territory/stronger-futures-in-the-northern-territory-six-monthly-progress-report>.

³⁶ http://www.dpmc.gov.au/PUBLICATIONS/stronger_futures_NT_progress/index.cfm.

³⁷ Further information: <https://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/income-management>.

³⁸ All income management evaluations available at: <https://www.dss.gov.au/our-responsibilities/families-and-children/programmes/services/income-management/income-management-evaluations>.

- There have been multiple indications that Voluntary Income Management has had a positive impact on helping to reduce expenditure on tobacco and alcohol among program participants. For example, findings from the interim Place-Based Income Management Evaluation showed that people participating in Voluntary Income Management consumed on average 26.6 fewer drinks per month at wave one compared with baseline.
- The New Income Management evaluation found that approximately 70% of Indigenous people “agreed” or “strongly agreed” that income management “made things better for me”.
- An evaluation of Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara Lands has shown that for vulnerable groups, particularly women, income management has been reported by some respondents to result in less financial harassment from relatives and more control over their own money.
- A review of Child Protection Income Management indicated that income management has, in some cases, allowed participants to leave abusive relationships by helping them to stabilise their finances. This meant they had the means to leave and the ability to secure other housing. The review also showed that there was a perceived reduction in the amount of alcohol-related violence in the Kimberley region where income management was operating.

96. On 26 August 2014, the Parliamentary Joint Committee on Human Rights released its 10th report, which included an examination of the compatibility with human rights obligations of the Ceduna and surrounding region determination.³⁹ The committee’s view is that the income management measures in Ceduna and surrounding region have the potential to limit a range of human rights, such as the rights of equity and non-discrimination and the right to social security. The Department of Social Services has responded to the report demonstrating that income management pursues a legitimate objective, and is reasonable and proportionate.

Concluding Observation 17: Article 4(a) reservation, absence of Northern Territory legislation prohibiting incitement to racial hatred; information on complaints, prosecutions and sentences regarding acts of racial hatred or incitement in states and territories with legislation specifying such offence

97. Australia has a strong tradition of freedom of expression and considers that its current laws in relation to racial hatred and vilification are appropriate. Accordingly, Australia will not be introducing legislation to give any further effect to article 4(a) nor does Australia have any intention to withdraw its reservation to this article.

98. At the federal level, the Racial Discrimination Act 1975 (Cth) contains a civil prohibition on racial hatred. The AHRC has the power to conciliate complaints of racial hatred under this Act. If the conciliation is unsuccessful, legal proceedings can be commenced by the complainant in the Federal Court of Australia or the Federal Circuit Court. The Commission does not publish disaggregated data on a complainant’s gender or religion in relation to complaints of racial discrimination.

³⁹ www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Completed_inquiries/2014/1044.

99. The AHRC's annual report details complaints it receives. In 2013-14, the Commission received 2,223 complaints of which 380 (17%) were lodged under the Racial Discrimination Act. The Commission successfully conciliated 71% of complaints received under the Act.⁴⁰

100. Under the Commonwealth Criminal Code Act 1995, it is an offence to urge violence against a group that is distinguished by race, religion, nationality, national or ethnic origin or political opinion. In 2010 Australia passed federal legislation criminalising the urging of the use of force or violence towards a group (or member of a group) on grounds of race, religion, nationality, national or ethnic origin or political opinion.⁴¹

101. Under the Australian and New Zealand Offence Codes structure there are no specific offence codes for hate crime other than 1333 Racial Vilification.

102. All states and territories, with the exception of the Northern Territory, have enacted legislation that specifically creates criminal or civil prohibitions against racial hatred.

103. In most jurisdictions, there is no requirement for victims of crime to provide information on their nationality/race/ethnicity or occupation. Some jurisdictions may include these factors in crime recording systems, however these fields are not mandatory.

Queensland

104. Since 2001, the Anti-Discrimination Act 1991 (Qld) has included an offence of serious racial vilification. Section 131A provides that a person must not, by a public act, knowingly or recklessly incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the basis of race or religion, in a way that includes threatening physical harm, or inciting others to threaten physical harm towards the person or their property. The offence carries a maximum penalty of a fine of \$7,969.50 or six months imprisonment (individual) or \$39,847.50 (corporation). There have been no prosecutions in Queensland for serious racial vilification.

For more state and territory examples under Concluding Observation 17, see Appendix 1.

Concluding Observation 18: Legislative reforms to the Native Title Act 1993 (Cth), burden of proof and mechanisms for effective consultations with indigenous peoples

105. The committee is referred to the Australian Government's fifth periodic report under the ICESCR, specifically Concluding Observation 32 (Native title reform).

106. National Native Title Tribunal figures show that, at 30 September 2014, 26.1% of land in Australia is subject to a determination that native title exists. This is in addition to land held by Indigenous people under Commonwealth, state and territory land rights legislation. Work continues on improving the claims resolution processes.

107. The native title system has evolved since it was established in 1993, with significant increases to the numbers of native title determinations made each year following reforms to the Federal Court and the National Native Title Tribunal in both 2012 and 2009. For

⁴⁰ Australian Human Rights Commission, *Annual Report 2013-2014*, available at http://www.humanrights.gov.au/sites/default/files/document/publication/ahrc_annual_report_2013-14v2.pdf.

⁴¹ See Sections 80.2A and 80.2B of the *Criminal Code Act 1995* (Cth).

instance, in 2013–14 the Federal Court handed down 65 native title determinations, the highest number in any financial year to date and an improvement on the 33 determinations made in 2012–13, 36 made in 2011–12 and 29 in 2010–11. By contrast the Federal Court made 10 determinations in 2009–10, and averaged less than 10 determinations a year during the time from its first determination in 1996–97 and the beginning of the 2009 reforms. The majority of Federal Court determinations have been either unopposed or through consent between parties.

108. As a result of these increases in the number of determinations made each year, the National Native Title Tribunal had 410 registered native title claim applications at 30 June 2014. This is the lowest number since the end of 1994–95. At 30 June 2014 there had been 238 positive determinations of native title.

Native Title reforms

109. The Native Title Act 1993 (Cth) continues to meet the needs of native title stakeholders through targeted government reforms borne out of consultations with state and territory governments, Indigenous stakeholders including native title representative bodies, native title service providers, native title prescribed bodies, and corporate and industry representatives. The Native Title Amendment Act 2009 gave the Federal Court of Australia a central role in managing native title claims mediation by removing the automatic referral of mediation to the National Native Title Tribunal and requiring the court to decide which individual or body would mediate each claim. The Federal Court of Australia has established a priority list to manage the court's native title caseload. Since 1 July 2010 (to the end of the reporting period) there have been 175 determinations, which is more than half of the total number of determinations (309) made since the introduction of the Native Title Act in 1993.

110. In 2012 the government implemented reforms to create better alignment and allocation of functions between the Federal Court of Australia and the National Native Title Tribunal, and to speed the resolution of claims. Of the 65 native title determinations handed down by the Federal Court in 2013–14, 55 were by consent

111. At 30 June 2014, there were 410 native title claim applications registered with the National Native Title Tribunal. This is the lowest number since the end of 1994–95 (the number of registered applications has decreased by more than a third over this period). The number of consent determinations has continued to increase, indicating recent reforms are contributing to speedier negotiated outcomes.

South Australia

112. The state-wide Native Title Resolution process has provided a foundation for collaboration in the area of native title. The process has provided an opportunity for native title groups to discuss land access rights with government and landholders, and to exercise native title rights. To date approximately 73% of South Australia is covered by native title claims and native title determinations. Some 88 Indigenous land use agreements have been negotiated across the State dealing with pastoral, local government, land access, mining and infrastructure issues, and 23 out of 44 native title claims that have been made have been resolved.

113. The Aboriginal Heritage Act 1988 (SA) also provides an opportunity for Aboriginal people to be consulted about how areas of cultural significance, as well as Aboriginal objects and remains, can be protected. Some ministerial powers under the Aboriginal Heritage Act have been delegated to the traditional owners in four areas of the state, which

has considerably enhanced the traditional owners' decision-making powers in relation to Aboriginal heritage protection.

For more state and territory examples under Concluding Observation 18, see Appendix 1.

Burden of proof

114. The government notes the committee's concerns expressed in paragraph 18 of the concluding observations about the standards of proof required for recognition of the relationship between Indigenous peoples and their traditional lands which is referred to as 'connection' in the Native Title Act 1993 (Cth). The Act does not provide an express standard of proof for connection between Indigenous peoples and their traditional lands. That standard of proof has been developed through jurisprudence.

115. On 4 June 2015, the Australian Law Reform Commission (ALRC) released its report *Connection to Country: Review of the Native Title Act 1993 (Cth)*. The report considers the requirements under the Native Title Act for native title claimants to prove connection with the land or waters; and the provisions in the Act for joining parties to claims and authorising claims. In terms of connection, the ALRC recommended removing technical and complex elements required to prove native title and to clarify that native title rights and interests can adapt, evolve or otherwise develop and be transferred or transmitted between Indigenous groups. The ALRC also recommended guidance be given to the Federal Court regarding when inferences may be drawn in the proof of native title. The Report will be considered in the context of the Council of Australian Governments' Investigation into Indigenous land administration and use.

Effective consultation mechanisms with Indigenous peoples

116. On 25 September 2013, the Prime Minister's Indigenous Advisory Council was announced. The council is a directly appointed, non-representative group which advises the Prime Minister on Indigenous issues and focuses on practical changes to improve the lives of Indigenous people.⁴² It is charged with engaging Indigenous communities, including existing Indigenous advocacy bodies, to ensure the government has access to a diversity of views.

117. The Australian Government also funds a network of service providers throughout Australia to assist native title holders to pursue the recognition of their native title rights and to make agreements about use of native title land.

118. The post-determination environment presents jurisdictions with new challenges to ensure that native title bodies can empower native title holders to leverage their assets for wealth creation and economic development as part of the mainstream economy. The government is working to meet these challenges in a number of ways.

119. Prescribed Body Corporates are the corporations that represent the interests of the native title group. Following extensive public consultations in 2011, the government amended the Native Title (Prescribed Bodies Corporate) Regulations 1999 to improve the flexibility and certainty of the Prescribed Bodies Corporate governance regime so that native title holders are able to use and maximise their native title rights, and engage meaningfully in land management.

⁴² Details on the Prime Minister's Indigenous Advisory Council available at: http://www.dpmc.gov.au/indigenous_affairs/indigenous_advisory_council/index.cfm.

120. Australian Government and state and territory ministers responsible for native title met in August 2014 to renew and reinvigorate discussions about the operation of the Native Title Act 1993 (Cth). Ministers committed to work cooperatively to improve social, cultural and economic outcomes from native title for Indigenous people, landholders and communities.

121. State and territory governments are also working to strengthen consultation mechanisms with Aboriginal and Torres Strait Islander peoples.

Northern Territory

122. The Northern Territory Government, in cooperation with the Australian Government and the Local Government Association of the Northern Territory, is improving engagement capacity through the Governance and Leadership Development Project. This initially targets five remote communities with activities including:

- Developing skills to ensure effective engagement with government;
- Improving the governance and leadership capacity of individuals and community decision making groups in line with National Partnership Agreements;
- Building local capacity to engage in service delivery planning and implementation; and
- Assisting community committees and groups to develop and implement operational procedures and strategies that streamline decision making.

123. Under the Community Champions Program Initiative, ministers have special responsibility for specific remote communities to create direct linkages to Cabinet as the community champion. Ministers have been discussing with communities a range of topics, with special focus on understanding and supporting economic development aspirations.

124. New programs have been introduced to improve engagement with Indigenous communities and residents including:

125. First Circles – which focuses on engaging future Indigenous leaders from across the territory to bring new voices to the conversation and help build their skills and capacity.

126. Indigenous Male Advisory Council – established to provide guidance, direct policy and generate outcomes for Indigenous men in the territory. The council focuses on:

- Leadership and participation strategies that strengthen positive social cohesion, cultural integrity, men's health, and social and emotional wellbeing;
- The safety of territory women, children and families through preventative responses that men can take to family violence that are culturally appropriate and contextually specific;
- Providing facilitation, engagement, consultation, policy advice and reporting on issues affecting Indigenous men in the Northern Territory; and
- Emphasising the significance of nurturing social and cultural capital in Indigenous communities to strengthen social values, social cohesion and leadership.

For more state and territory examples under Concluding Observation 18, see Appendix 1.

Concluding Observation 19: Provision of legal aid and training for law enforcement personnel and legal profession in the provision of professional and culturally appropriate Indigenous legal and interpretive services within the criminal justice system

Indigenous legal and interpretive services

127. Australia provides a range of funding for legal assistance - including the Indigenous Legal Assistance Programme which supports high-quality, culturally appropriate and accessible legal assistance to Indigenous Australians across Australia. Funding of approximately \$275 million was provided by the Australian Government for Indigenous legal assistance over 2010-11 to 2013-14, with a further \$350 million being invested over the next five years. The Australian Government also funds community legal centres to deliver legal information, advice and assistance to disadvantaged people, including Indigenous people.

128. There is a legal aid commission in each state and territory. These are independent statutory bodies jointly funded by the Australian, state and territory governments. They deliver a wide range of family, civil and criminal law services focused on assisting vulnerable and disadvantaged people.

129. While Australian Government funding to legal aid commissions is greater than that provided for Indigenous legal assistance, the percentage of the population serviced by legal aid commissions is also higher than that of Indigenous legal assistance providers. Funding to Indigenous legal assistance providers is quarantined to assistance for Indigenous Australians only. Legal aid commissions also provide assistance to Indigenous clients.

130. Funding provided by the Australian Government for legal assistance is determined through the Federal Budget process. Available programme funds are distributed through funding allocation models, which provide an evidence base for allocating available Commonwealth funding between jurisdictions to support similar access to services across Australia.

131. An independent review of all Australian Government funded legal assistance programmes ('the NPA review') found that generally, legal assistance service providers are performing well, and are delivering services appropriate to meet the legal needs of disadvantaged Australians. The Productivity Commission conducted a review into access to justice arrangements, with a report released in December 2014. The Productivity Commission Inquiry Report into Access to Justice Arrangements specifically examined legal assistance services, and Indigenous legal assistance services. Both of these reports found that there remain significant levels of unmet demand for legal services.

132. The Productivity Commission reaffirmed the need for Indigenous-specific legal services and also found that state and territory governments should contribute towards the funding of Indigenous legal assistance services, given that state laws impacted on service delivery. The findings of both reviews informed the government's consideration of new funding arrangements for legal assistance from 1 July 2015, including the reversal of previously announced savings measures.

133. The Australian Government also funds family violence prevention legal services to provide culturally sensitive legal services and assistance to Indigenous victims of family violence or sexual assault. Fourteen providers are funded to provide services in 31 locations across Australia. Funding for these legal services is being maintained at current levels in 2015-16.

134. The Australian and state and territory governments deliver access to specialised legal assistance and interpreting services. For example, the Commonwealth and Northern Territory provide specialised interpreting, community and legal assistance services for Indigenous peoples. State and territory governments also provide resources relevant to Aboriginal and Torres Strait Islander justice issues for courts, members of the legal profession and for people who come before the courts.⁴³

Western Australia

135. The Department of the Attorney General's Aboriginal Liaison Program aims to improve Aboriginal people's access to, confidence in, and use of, the range of services provided by the courts. By doing so, it is reducing the over-representation of Aboriginal people as offenders in the criminal justice system. There are seven Aboriginal liaison officer positions. A portable community education kit linked to the program was also developed to assist officers when they present education sessions on court processes and services in regional and remote communities. It uses plain language and pictures to explain different situations that Aboriginal people might find themselves in.

For more state and territory examples under Concluding Observation 19, see Appendix 1

Human rights and cultural awareness training

136. The Australian Government has made available a suite of educational materials on human rights⁴⁴ that aims to:

- Help public sector officials understand their human rights obligations.
- Strengthen the capacity of legal and policy officers to deliver services and develop policies, programs and legislation that are consistent with human rights.
- Provide guidance to administrative decision-makers on relevant human rights considerations to take into account.
- Anti-discrimination and cultural awareness training is provided to law enforcement officers across all jurisdictions.

137. The **Australian Federal Police (AFP)** conducts anti-discrimination and cultural awareness training to all sworn staff upon their commencement. Sworn officers are also trained in diversity, cross-cultural awareness, human rights legislation and AFP values covering anti-racism legislation and policy. Religious and cultural diversity, cross cultural awareness and human rights legislation is also integrated into human trafficking and counter-terrorism training. The Federal Police Development Program, which is also undertaken by ACT Policing recruits, is currently being reviewed for its cultural awareness training.

Queensland

138. The Queensland Public Safety Business Agency and Queensland Police Service are building the cultural capability of the Queensland Police Service to strengthen community

⁴³ For example see: <http://www.datsima.qld.gov.au/datsima/aboriginal-torres-strait-islander/government/programs-and-initiatives/justice-resource> on a Justice Resource provided by the Queensland Government.

⁴⁴ <http://www.ag.gov.au/RightsAndProtections/HumanRights/PublicSector/Pages/default.aspx>.

confidence in law and order in Queensland. For example, the Queensland Police Service offers the following training programs through online learning.

For more state and territory examples under Concluding Observation 19, see Appendix 1.

Concluding Observation 20: Incarceration rates of Indigenous peoples and provision of adequate health care; addressing social and economic factors underpinning Indigenous contact with the criminal justice system

139. The committee is referred to the Australian Government's fifth periodic report under the ICESCR, specifically Concluding Observation 29, (Health Services in Prison).

Law and justice

140. Ensuring effective law enforcement in providing safe Indigenous communities is one of the Australian Government's top three priorities in Indigenous affairs. It wants safer Indigenous communities where people can make a living and raise healthy families. Safe and stable communities also help drive improvements in other areas of investment, like education and employment.

141. The Australian Government is focused on addressing the underlying factors that bring Indigenous people into contact with the criminal justice system. The evidence points to poor educational and employment outcomes as key factors underpinning Indigenous people's contact with the criminal justice system. Therefore the Government has accordingly prioritised lifting rates of school attendance and employment for Indigenous people to address this situation.

142. Statistics show a pattern of poor community safety, higher rates of imprisonment, short prison sentences, and more returns to prison for Indigenous Australians.

- Indigenous Australians are over-represented in our justice system and are currently 13 times more likely to be imprisoned than non-Indigenous Australians.
- In 2013-14, the age standardised rate of imprisonment for Indigenous Australians was 1857.2 per 100,000 compared with 144.0 per 100,000 for non-Indigenous Australians.
- At 30 June 2014, Indigenous adults represented over one quarter (27%) of the total prisoner population while representing only 3% of the general population (Australian Bureau of Statistics, Prisoners in Australia 2014).
- The age standardised rate of imprisonment for Indigenous people has increased by 39.9% over the last 10 years.
- While the number of Indigenous women in prison remains relatively small (906), Indigenous women represent the fastest growing prison population.
- In 2013-14, Indigenous young people aged 10-17 were 24 times more likely than non-Indigenous young people to be in detention. This ratio increased from 21 times to 24 times more likely in the five year period up to 2013-14. While rates of young people under supervision have decreased over the past five years, the decrease was proportionally greater for non-Indigenous young people than for Indigenous young people.

143. Under the Indigenous Advancement Strategy (IAS)⁴⁵, the Australian Government funds a range of activities to address the drivers of Indigenous people's contact with the criminal justice system.⁴⁶ This includes activities to increase school attendance, employment and address alcohol abuse. The Safety and Wellbeing Program of the IAS focuses on activities that support wellbeing and community safety, including prevention of family violence, combatting alcohol and other substance misuse, reducing offending and supporting victims of crime.

144. The 2014-15 budget focuses on priorities that seek to improve community safety including:

- Investing in infrastructure to support a permanent police presence in some remote Indigenous communities.
- Continuing to fund the Northern Territory Community Engagement Police Officers.
- Continuing funding for the Australian Federal Police involvement in the Northern Territory Child Abuse Taskforce.

145. Under the Stronger Futures in the Northern Territory package, the Australian Government funds remote policing services, specialist units and policing infrastructure. Additionally, funding is provided to the Northern Territory Aboriginal Interpreter Service to help Indigenous Australians navigate the justice system and access basic community services.

146. In the 2014-15 Budget, the Australian Government committed \$54.1 million over four years to support policing in some additional remote Indigenous communities in Queensland, Western Australia and South Australia.

147. The National Indigenous Law and Justice Framework 2009–2015, developed by the then Standing Committee of Attorneys-Generals, supported a national approach to address the complex issues around the interaction between Aboriginal and Torres Strait Islander people and justice systems in Australia. The Framework does not prescribe strategies or actions to be implemented by governments or service providers but serves as a good practice guide for jurisdictions to adopt according to their priorities and resources.⁴⁷

148. The Australian Government is committed to improving the lives of Indigenous Australians, including making communities safer and ensuring the ordinary law of the land applies in Indigenous communities. Efforts to improve outcomes for Indigenous Australians are occurring under the Indigenous Advancement Strategy, with a focus on delivering practical actions that will make a real difference on the ground

Victoria

149. The Victorian Aboriginal Justice Agreement between the Victorian Government and Koori⁴⁸ community aims to improve Koori justice outcomes and reduce over-representation in the criminal justice system. The first agreement (2000-2006) laid the foundation for

⁴⁵ Further information on the Indigenous Advancement Strategy (IAS) is provided at [paragraph 164](#) of this report.

⁴⁶ Further information: www.dpmc.gov.au/indigenous_affairs/ias/.

⁴⁷ Further information: <http://www.ag.gov.au/LegalSystem/Legalaidprogrammes/NationalIndigenousLawandJusticeFramework/Pages/default.aspx>.

⁴⁸ The terms Koori and Koories are used in this report, along with Aboriginal and Indigenous, to describe the traditional inhabitants of Victoria.

improved outcomes by developing robust partnerships and infrastructure, and putting in place a range of new justice initiatives. Now the agreement is in its third phase, work on preventing and reducing Koori overrepresentation in the justice system is continuing, with an increased focus on improving the safety of Koori families and communities.

150. Each phase of the agreement builds and extends on the one that went before it. The latest consolidates and extends successful initiatives and components, ensuring the agreement is well-placed to respond to new challenges.

151. The agreement maintains an emphasis on prevention, early intervention and diversion to reduce further progression into the justice system. It also seeks to reduce re-offending and strengthen the focus on addressing drivers such as alcohol and drugs, mental health, unstable housing and unemployment through offender rehabilitation and behaviour programs, improved transition support and continuity of care to assist offenders reintegrate into the community.

For more state and territory examples under Concluding Observation 20, see Appendix 1

Restorative justice, justice reinvestment and diversionary measures

152. The Australian Government considers that states and territories are best placed to lead any justice reinvestment initiatives in Australia. While more work is required to determine the feasibility of a justice reinvestment approach in the Australian context, the government will continue to work with jurisdictions on efforts to reduce Indigenous incarceration. The focus remains on implementing practical, on-the-ground solutions, which have been shown to improve community safety and reduce disadvantage.

153. At the October 2013 Standing Council on Law and Justice meeting, the Australian and state and territory governments endorsed the National Restorative Justice Guidelines. These aspirational guidelines inform the use of restorative justice programs in criminal law matters in all jurisdictions. The Australian Government funds two restorative justice projects on Mornington Island, Queensland, and at Galiwinku in the Northern Territory. These projects seek to resolve disputes in communities before they escalate.

154. In 2014, the Australian Institute of Criminology published a research report on Restorative justice in the Australian criminal justice system.⁴⁹ This details restorative justice practices available in the Australian criminal justice systems, including conferencing for youth and adult offenders and victim-offender mediation practices.

155. The report found that a wide range of restorative justice options are available across Australia. At 30 October 2013, these included:

- Conferencing for young offenders in all Australian states and territories.
- Conferencing for adult offenders in New South Wales and South Australia.
- Circle sentencing in New South Wales and Western Australia.
- Victim-offender mediation in all jurisdictions, except Victoria and the Australian Capital Territory.

156. The Australian Government is also committed to evaluating the impact of Indigenous justice initiatives to build the evidence base on what works to reduce offending and re-offending. In 2009, the government provided \$2 million to evaluate Indigenous

⁴⁹ Larsen, *Restorative Justice in the Australian criminal justice system*, AIC Reports Research and Public Policy Series 127, 2014. The full report can be accessed via the AIC's website: www.aic.gov.au.

justice programs under the National Indigenous Law and Justice Framework. A total of 26 Indigenous justice services are being evaluated as part of this project. The majority of evaluations were publicly released on the Commonwealth Attorney-General's website in May 2014⁵⁰ with the remaining reports currently being finalised.

Australian Capital Territory

157. In January 2005 the ACT implemented an innovative model of restorative justice under the Crimes (Restorative Justice) Act 2004 – a legislated program that has at its heart the needs of victims. Since it commenced, the ACT's Restorative Justice Unit has received over 1,538 referrals, involving 2,685 victims and 1,960 offenders. The unit surveys each victim and offender following a restorative justice conference about their experience. In 2012–13, a 97% satisfaction rate was achieved amongst those participating.

158. The 2014–15 ACT budget provided for two justice reinvestment projects and a Justice Reform Strategy. The first justice reinvestment project is to develop a whole-of-government strategy to reduce recidivism and divert offenders—and those at risk of becoming offenders from the justice system. The second project is providing \$600,000 for an Australian Research Council Linkage Grant on justice reinvestment, which deals with Aboriginal and Torres Strait Islander incarceration rates.

For more state and territory examples under Concluding Observation 20, see Appendix 1.

Circle sentencing

Circle sentencing often falls under the umbrella of Indigenous courts in Australia. Indigenous courts have been established in New South Wales, Victoria, Queensland⁵¹, Western Australia, South Australia and the Australian Capital Territory. These courts provide a more culturally responsive and appropriate alternative to the traditional court systems. Such courts may have 'restorative' elements, but they are not necessarily examples of restorative justice due to the focus on offender rehabilitation and the traditional role of the victim in the process.⁵²

Western Australia

159. Circle sentencing courts offer an alternative sentencing process for Indigenous offenders and include Aboriginal elders in the decision making process. The Barndimalgu Court in Geraldton deals with family violence issues, with adult community corrections officers providing assessment, progress and presentence reports; supervising offenders while they are engaged in the program and referring offenders released on conditional bail

⁵⁰ The evaluation reports available at: <http://www.ag.gov.au/LegalSystem/Legalaidprogrammes/NationalIndigenousLawandJusticeFramework/Pages/default.aspx>.

⁵¹ Indigenous Court services were available in Queensland for parts of the CERD reporting periods. However, some of these services were cut by the previous Queensland Government. The current Queensland Government, elected in January 2015, announced in its 2015-16 budget that court-based referrals to Youth Justice conferencing, the Murri Court and a Special Circumstances Court Diversion program would be re-established. Further information available at: <http://statements.qld.gov.au/Statement/2015/7/14/court-programs-to-address-crime-reinstated>.

⁵² Australian Institute of Criminology, *Restorative justice in the Australian criminal justice system*, available at: http://www.aic.gov.au/publications/current%20series/rpp/121-140/rpp127/05_restorative.html.

to the Indigenous Family Violence Program. The Kalgoorlie-Boulder Community Court for adult Indigenous offenders consists of a presiding magistrate and two elders of the Indigenous community. Circle sentencing courts assess and supervise services while the offender is released on bail subject to supervision.

160. For more state and territory examples under Concluding Observation 20, see Appendix 1

Indigenous youth in the criminal justice system

161. On 20 June 2011 the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs tabled its report, *Doing time – time for doing: Indigenous youth in the criminal justice system*.⁵³ The Australian Government accepted all 40 of the report's recommendations in whole or in part. The government's response sets out where action has been taken against specific recommendations.⁵⁴

162. Further efforts to improve Indigenous community safety are occurring under the Indigenous Advancement Strategy's Safety and Wellbeing Programme. The Australian Government funds a range of youth crime prevention and diversion activities under the Strategy and is working with State and Territory Governments to improve outcomes for Indigenous juveniles and keep them from coming into contact with the justice system.

New South Wales

163. Data on the juvenile justice population indicates that in 2013–14 total admissions to juvenile justice detention centres was 3,684; a 27% decrease since 2009–10.

- Of these, 1,602 (43%) identified as Aboriginal or Torres Strait Islander; a 28% decrease on the numbers of Aboriginal or Torres Strait Islander young people admitted to custody in 2009-10.
- The average number of young people in juvenile justice detention centres on any one day was 314; a 27% decrease from 2009–10.
- Of the Indigenous juveniles who were in the care or under supervision by juvenile justice:
 - 2,108 were under community supervision (being 39.8% of the total juveniles under community supervision)
 - 364 were referred for a youth justice conference (being 28% of the total juveniles referred for a youth justice conference)
 - 1,310 were remanded in custody (42% of the total juveniles remanded in custody)
 - 292 were sentenced to detention (being 51% of the total juveniles sentenced to detention).

⁵³ Available at: http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=atsia/sentencing/report.htm.

⁵⁴ Please see Annex 16 for the Government's response to the report *Doing Time- Time for Doing: Indigenous Youth in the Criminal Justice System*, available at: http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=atsia/govt%20responses/doingtimereponse.pdf.

164. Juvenile Justice's capacity to deliver policy, programs and services in a culturally appropriate way is supported through the Aboriginal Strategic Plan and cultural respect training. The Aboriginal Strategic Plan includes the Aboriginal Recruitment and Retention Strategy and the Aboriginal and Torres Strait Islander Cultural Respect Framework. Juvenile Justice provides educational, recreational, vocational, specialised counselling and personal development programs to help young people reintegrate into their communities on their release. Programs specifically designed for or targeted at Aboriginal young people include:

- DthinaYuwali: a group work program developed by Juvenile Justice's Aboriginal staff for Aboriginal young people with substance-related offending. This program is implemented in the community and in custody.
- Our Journey to Respect: a group session program for young Aboriginal males that aims to reduce the incidence of family and inter-generational violence. This package is currently being reviewed by the agency with a view to strengthening it.
- The Intensive Supervision Program: a family focused approach operating in the Hunter and Western Sydney areas that has proven successful for young offenders from all backgrounds including Indigenous populations. The program seeks to empower caregivers to address systemic factors that lead to or maintain offending. It addresses a range of issues, including aggression, substance abuse, financial problems, housing needs, family conflict and negative peer pressure. Of the 35 families who completed the program in 2013–14, 29% were Indigenous.
- Act Now Together Strong: an intensive family focused intervention that aims to create lasting change addressing the issues that put a young person at risk of reoffending. The program has a high level of participation from indigenous families.

For more state and territory examples under Concluding Observation 20, see Appendix 1.

Indigenous women in the criminal justice system

165. In recognition of the particular impact the criminal justice system can have on women, state and territory governments have introduced gender-specific policies and programs, many of which seek to provide guidance for Indigenous women and supervising correctional officers.

South Australia

166. To help gain a better understanding of the profile of Aboriginal women offenders throughout the South Australian criminal system, a dedicated principal advisor position for female offenders was created in 2012–13. The advisor will lead development of a strategic framework to prioritise women offenders, especially Aboriginal women. This is expected to result in better-targeted service delivery to female offenders.

167. Imprisonment numbers are reported publicly in the annual Report on Government Services, published by Australia's Productivity Commission. The Report includes specific data in the Justice chapter on imprisonment of Aboriginal and Torres Strait Islander adults, both nationally and in each state and territory. The 2015 Report indicates that some jurisdictions experienced an increase in the average daily female Indigenous prisoner population over the last three years, although the average in South Australia did not significantly increase (45, 47 and 47 respectively in each year over 2011-14).

For more state and territory examples under Concluding Observation 20, see Appendix 1.

Implementation of recommendations of the Royal Commission into Aboriginal Deaths in Custody

168. All levels of government have taken steps to implement the recommendations made by the 1991 Royal Commission into Aboriginal Deaths in Custody, which aim to reduce the representation of Indigenous persons in custody. This includes the introduction of diversionary programs and improvements to custody conditions.

169. The Australian Senate passed a motion in March 2011 in acknowledgment of the 20th Anniversary of the Deaths in Custody Report.⁵⁵ The motion called on the Australian Government to:

- Consider the outcomes of current reviews underway into the implementation of the recommendations of the Royal Commission.
- Undertake to report on progress and gaps, and map out further action.
- Work with the states and territories to audit standards and independent monitoring of places of detention, and consider options to promote consistency across jurisdictions.

170. One of the objectives under the National Indigenous Law and Justice Framework is to ensure that the findings of Royal Commission into Aboriginal Deaths in Custody continue to guide governments, service providers and communities to address current issues in law and justice for Aboriginal and Torres Strait Islander peoples.

171. All levels of government continue to fund a National Coroner's Information System, with information on every death reported to a coroner since July 2000 (January 2001 for Queensland). This database enhances the ability to identify any trends or patterns in reportable deaths, identify risk factors, and inform evidence based policy.

Western Australia

172. States and territories have also introduced measures to reduce the number of deaths in custody with a focus on suicide prevention. In Western Australia this includes:

173. Electronic At-Risk Management System, which increases transparency, accountability and provides a whole-of-prison approach to further reduce incidents of self-harm and suicide.

174. Support and Monitoring System, which provides a collaborative case management system for prisoners who are not at acute risk to self-harm, but require intervention or additional support and monitoring while in custody. This includes those considered emotionally vulnerable, those with sensitive cultural and spiritual issues, those with 'dangerous sex offender' alerts and those who are held under the Criminal Law (Mentally Impaired Accused) Act 1996 (WA).

175. Suicide awareness training courses - including a two-day gatekeeper suicide awareness workshop delivered to Department of Corrective Services' staff and prisoners – to increase the ability of participants to identify and refer people considered to be a self-risk.

⁵⁵ Report available at: <http://www.aic.gov.au/publications/current%20series/mr/1-20/20.html>.

176. A Cell Ligature Removal Program, where 425 cells have had all suicide ligature points removed and 528 cells have had the three most commonly utilised ligature points removed.

Tasmania

177. There have been no recorded Aboriginal and Torres Strait Islander unnatural deaths in Tasmanian prisons since data collection commenced in the early 1980s. Two deaths due to apparent natural causes are recorded for that same period. Areas of the Tasmania Prison Service are now designed to accommodate 'at risk' prisoners.

For more state and territory examples under Concluding Observation 20, see Appendix 1.

Prison conditions and the provision of adequate health care to prisoners

178. The committee is also referred to Australia's fifth report under the International Covenant of Economic, Social and Cultural Rights at Concluding Observation 29 (Health Services in Prisons).

179. In Australia, state and territory governments are responsible for managing and operating prisons, including health service delivery. The Commonwealth does not own or operate any prisons.

180. The states and territories deliver corrective services in accordance with the Standard guidelines for corrections in Australia, which comprise a uniform set of principles that are used by states and territories in developing their own legislative, policy and performance standards on correctional practice. These guidelines comply with the UN Standard Minimum Rules for the Treatment of Prisoners and Article 10 of the International Covenant on Civil and Political Rights.

181. The guidelines state that prisoners should be managed fairly and openly without discrimination. Prisoners should also be managed in a manner consistent with their individual needs regarding health, disability, culture and language. Key aspects of the guidelines include:

- Physical separation of certain classes of prisoners, such as males from females, adults from juveniles, and convicted prisoners from those on remand.
- Ensuring adequate accommodation, including regular maintenance of all prison cells and facilities.
- Providing clothing and bedding suitable for the climate and adequate to keep prisoners in good health.
- Providing continuous access to clean drinking water and a supply of nutritious food, adequate for the health and wellbeing of prisoners, at the usual hours, prepared in accordance with relevant health standards.

New South Wales

182. All inmates, including Indigenous, are provided with a comprehensive range of health services including nursing, general medical, psychiatric, dental and optometry. Every person entering custody undergoes a comprehensive health assessment.

183. Aboriginal health issues are addressed through both mainstream and targeted programs and services. For example, the Aboriginal chronic care program, Murr-roo-ma dhun-barn (Worimi language for 'to make strong') is run by the Aboriginal health team from

Justice Health. The program is operational in 15 correctional centres (including 14 adult correctional centres and the Kariong Juvenile Correctional Centre) throughout the state.

For more state and territory examples under Concluding Observation 20, see Appendix 1

Complaint mechanisms

184. A number of authorities have jurisdiction to investigate complaints about prison conditions, including complaints about human rights breaches. These include the AHRC, state and territory ombudsman's offices, and internal corrective services review bodies (corrections inspectorates).

Tasmania

185. Prisoners have access to a wide-range of mechanisms for raising concerns or lodging complaints about conditions or individual treatment. These include an internal complaints system, direct telephone access to the ombudsman, confidential access to their legal representatives as well as the Integrity Commission

Concluding Observation 21: Preservation of national languages

186. The committee is also referred to Australia's Fifth Periodic Report to the ICESCR at Concluding Observation 33 (National Indigenous Language Survey).

Indigenous languages

187. The 2011 Census indicated that about 61,000 people speak an Indigenous language. Of these, approximately 19% speak an Australian creole (that is, a combination of English, Indigenous and other languages).

188. The Australian Government recognises that arts and languages are essential to the wellbeing, culture and identity of Aboriginal and Torres Strait Islander peoples and play an integral role in maintaining the sustainability, vitality and strength of Indigenous communities and is committed to providing targeted funding through the Indigenous Visual Art Industry Support and Indigenous Languages and Arts programs. The Australian Government continues to support activities in the field of Indigenous languages so that they can continue to be safeguarded and passed on to future generations, preserving this important part of Australia's cultural heritage. To ensure Australia's estimated 250 Indigenous languages are maintained, revived and transmitted for posterity, the government supports community based activities, language research and the development of language resources by regional language centres and other key advocacy and training organisations across Australia.

Australian Capital Territory

189. Local schools and community-based organisations partner to develop programs that promote and teach Aboriginal and Torres Strait Islander languages, culture and history.

For more state and territory examples under Concluding Observation 21, see Appendix 1.

Indigenous languages in schools

190. The Australian Government is committed to working with state and territory education authorities to maximise the learning opportunities and life chances of Aboriginal and Torres Strait Islander Australians. The government recognises the important role

Indigenous language learning plays in some schools and communities. However, decisions about how schools offer learning programs, including bilingual education, are matters for education authorities.

191. A Framework for Aboriginal Languages and Torres Strait Islander Languages is being developed by the Australian Curriculum, Assessment and Reporting Authority as part of the Australian Curriculum: Languages. This will provide a guide for schools to support the teaching and learning of Aboriginal and Torres Strait Islander languages.

192. The framework will cater for all the Aboriginal and Torres Strait Islander languages of Australia, irrespective of whether it is still a language of a community used for everyday communication or a language that is beginning to be revitalised. The framework will also take into account that the study of Aboriginal and Torres Strait Islander languages is as much about what it is to be an Indigenous Australian today, as it is about ancient traditions and social, cultural and linguistic continuity with the past.

193. Under new funding arrangements that commenced in January 2014, the Australian Government is providing significant additional school funding to states and territories over four years. Funding is determined on a base per student amount plus specific loadings that address identified student and school need.

194. These loadings are targeted at students from low socioeconomic backgrounds, Aboriginal and Torres Strait Islander students, students with limited English skills and students with disability, as well as small schools and schools in regional and remote areas. Additional funds provided to state and territory education authorities can be used to support Indigenous language programs.

Victoria

195. The Victorian Government's Vision for Languages Education (2011) supports Aboriginal communities to extend the teaching and learning of Aboriginal languages. This includes improving learning outcomes for Aboriginal students and developing a richer knowledge and appreciation of Aboriginal cultures in all students.

Victoria has:

- Provided \$100,000 in grants to develop learning resources and to pilot new teaching programs in three locations.
- Developed standards and protocols to reclaim and teach Aboriginal languages and cultures in Victorian schools.

Ongoing work is underway with the Victorian Aboriginal Corporation for Languages and the Aboriginal Education Association Inc. to raise awareness about opportunities for learning Aboriginal languages in school communities.

For more state and territory examples under Concluding Observation 21, see Appendix 1.

Minority languages

196. While English is the official language, there are over 200 languages spoken in Australia. According to the 2011 Census data, 18% of people spoke a language other than English at home in 2011. The dominant language spoken at home was Mandarin (1.6%)

followed by Italian (1.4%), Arabic (1.3%), Cantonese (1.2%), Greek (1.2%) and Vietnamese (1.1%).⁵⁶

Australian Capital Territory

197. The 2012–2016 ACT Language Policy takes a whole-of-government approach to the use of interpreter services. The policy details the ACT Government’s commitment that all Canberrans:

- Have the opportunity to acquire English language skills.
- Can access language services to improve their use of government funded services and programs.
- Are encouraged to learn and treasure languages other than English.
- Embrace the economic benefits of the knowledge of other languages and cultures to increase tourism, global markets, trade and international education.

For more state and territory examples under Concluding Observation 21, see Appendix 1.

Concluding Observation 22: Eradicating socio-economic disparities, cultural appropriateness of public service delivery, Indigenous self-empowerment

198. The committee is referred to the Australian Government’s fifth periodic report under the ICESCR; specifically Concluding Observation 18 (Unemployment rates).

199. In 2008, the Council of Australian Governments agreed to six targets to address disadvantage faced by Indigenous Australians in life expectancy, child mortality, education and employment.⁵⁷ In 2014 a new target to increase school attendance within five years was also agreed. The Prime Minister reports annually on progress made against the targets in the Closing the Gap report. These reports can be found on the Department of the Prime Minister and Cabinet website.⁵⁸

200. The 2015 Closing the Gap report is the seventh. It acknowledges that ‘although there has been some improvement in education and health outcomes for Indigenous Australians, in many areas progress has been far too slow’. Key findings of the seventh report include:

- Indigenous life expectancy and mortality have improved slightly, but progress will need to accelerate considerably if the gap is to be closed by 2031.
- Progress has slowed on the target to halve the gap in child mortality, but the target is broadly on track to be met by 2018.
- The target for Indigenous four year olds in remote communities to have access to early childhood education by 2013 was not met. Through the extended National Partnership Agreement on Universal Access to Early Childhood Education, all states and territories have committed to achieving the target of 95% access by 2015.
- No overall progress was made on the target to halve the gap in reading and numeracy achievements for Indigenous students by 2018.

⁵⁶ <http://profile.id.com.au/australia/language>.

⁵⁷ Available at: https://www.coag.gov.au/closing_the_gap_in_indigenous_disadvantage.

⁵⁸ Further information available at: www.dpmc.gov.au/publications/index.cfm.

- The target to halve the gap in Year 12 attainment by 2020 is on track.
- No progress has been made against the target to halve the employment gap within a decade.

201. The 2014 Overcoming Indigenous disadvantage report measures the wellbeing of Indigenous Australians and was produced in consultation with governments and Indigenous Australians. The report shows some positive trends in Indigenous wellbeing, with improvements in health, education and economic outcomes. However there has been little or no change in some indicators such as literacy and numeracy at school and more work remains to be done.

202. Economic outcomes have improved over the longer term, with higher incomes, lower reliance on income support, increased home ownership, and higher rates of full-time and professional employment. The proportion of adults whose main income was from employment increased from 32% in 2002 to 41% in 2012-13, with a corresponding decrease in the proportion on income support. Increasing proportions of people were in full-time and managerial positions.

203. In 2013, the Australian Government commissioned a review of Indigenous training and employment programs led by Mr Andrew Forrest. The Forrest Review was made public on 1 August 2014.⁵⁹ It makes 27 recommendations to create parity between Indigenous and other Australians. In addition to Indigenous training and employment programs, the recommendations targeted pre-natal care, early childhood services, school attendance, welfare, vocational education and training, Indigenous land reform, and housing and mobility.

204. In August and September 2014, national consultations were held, and submissions were invited to obtain feedback on the review. At its 10 October meeting, the Council of Australian Governments agreed to a range of actions to lift Indigenous school attendance and to reach bilateral agreements with the Commonwealth on priority areas within the review.

205. In line with the Forrest Review's recommendations, the government is reforming employment services for job seekers in remote Australia to provide real pathways to employment through participation in work-like activities and building work skills. This includes the introduction of Work for the Dole in remote communities, with the majority of remote job seekers to undertake work-like activities five days a week, 12 months of the year.

Indigenous Advancement Strategy

206. The Indigenous Advancement Strategy (IAS) commenced on 1 July 2014 and replaced more than 150 individual programs and activities that were delivered by the government into five overarching programs. This new flexible program structure will support a new way of engaging with Indigenous people, communities, industries, business and service providers, allowing for joint development and implementation of solutions that will sustainably improve outcomes, including through regional and place-based solutions. The new program streams are:

- Jobs, land and economy;

⁵⁹ Further information available at: <https://indigenousjobsandtrainingreview.dpmc.gov.au/forrest-review>.

- Children and schooling;
- Safety and wellbeing;
- Culture and capability; and
- Remote Australia strategies.

Remote Service Delivery National Partnership Agreement

207. An IAS grant funding round was held in 2014-15. In this round the Australian Government recommended more than \$1 billion in funding for 996 organisations and over 1,350 projects. In total, 46% of recommended organisations are Indigenous and 55% of funds under the IAS grant round have been recommended to go to Indigenous organisations.

208. The Department is currently reviewing the IAS Guidelines and will be holding public consultations over the coming months on the IAS grant round and funding guidelines, to talk about community and organisational experiences of the process to date and to seek input into new IAS Guidelines.

209. The National Partnership Agreement on Remote Service Delivery expired on 30 June 2014 and was not extended as, in most cases, outcomes had not improved in the 29 remote communities. The government is committed to a new engagement with Indigenous Australians to deliver practical action in the priority areas of getting children in school, adults in jobs and developing safer communities.

210. The new approach under the IAS will drive outcomes by working with Indigenous communities to tailor solutions to local problems and putting Indigenous people at the centre of design and delivery. The government's regional network will also see senior decision makers located closer to, and working more effectively with, communities.

Indigenous Opportunities Policy

211. The Indigenous Opportunities Policy will enable Indigenous Australian business entities to become part of the supply chain to the Australian Government. The policy encourages supplier diversity and forms a key part of the Australian Government's strategy to halve the gap in employment outcomes between Indigenous and non-Indigenous Australians. While the policy is focused on creating training and employment opportunities in the area a project is being delivered, Indigenous businesses from across the country can be subcontracted if Indigenous suppliers are not available locally. While the number of businesses and contracts can fluctuate, there were 276 Indigenous businesses represented on the database in October 2014.

212. The review of Indigenous Training and Employment Programmes, The Forrest Review – Creating Parity,⁶⁰ makes a number of recommendations regarding government purchasing of goods and services and tax-free status for Indigenous run businesses, which are being considered by the government.

⁶⁰ <https://indigenousjobsandtrainingreview.dpmc.gov.au/forrest-review>.

New South Wales

213. The Ministerial Taskforce on Aboriginal Affairs Progress Report outlines a number of initiatives under consideration. These are designed to strengthen the connection between education, training and employment.

Opportunity hubs

214. Opportunity hubs provide pathways and supported transitions for young people from early years through to tertiary education and employment. Partnerships are brokered with local businesses, industry leaders, non-government organisations and local government to coordinate employment and training opportunities for young Aboriginal people.

Industry agreements

215. The state government is working with industry bodies on private sector initiatives, such as industry-specific agreements, to improve employment and retention of Aboriginal employees. The corporate sector can create employment opportunities by purchasing services from Aboriginal businesses. The public sector can also encourage greater employment and business opportunities through government projects and procurement.

Aboriginal employment in the public sector

216. The taskforce has asked the Public Service Commission to incorporate a focus on strengthening Aboriginal employment at both entry level and through supported progression to senior positions.

For more state and territory examples under Concluding Observation 22, see Appendix 1

Concluding Observation 23: International students and racially motivated violence

217. The Australian Government submitted a response addressing this concluding observation on 29 August 2011.⁶¹ See also the response to [Concluding Observation 17](#) (above) regarding the Australian and New Zealand Standard Offence Codes.

Victoria

218. The Victorian Equal Opportunity and Human Rights Commission is the statutory body that has responsibilities under the Equal Opportunity Act 2010, the Racial and Religious Tolerance Act 2001 (VIC) and the Victorian Charter of Human Rights and Responsibilities Act 2006. People with complaints of racial discrimination or vilification can take their matters to the commission for dispute resolution or directly to the Victorian Civil and Administrative Tribunal to have the matters heard and determined. In 2013-14, race was the second most common reason for making a discrimination complaint to the commission (about 11% of all complaints). More than half of the 25 complaints taken to commission under the Racial and Religious Tolerance Act concerned racial vilification.

⁶¹ CERD/C/AUS/CO/15-17/Add.1 is available at: <http://tb.ohchr.org/default.aspx?country=au> and is provided at: Appendix 4.

219. In August 2014 the commission, Victoria Police and the Victorian Aboriginal Legal Service launched the Reporting Racism project-an online reporting tool for the Aboriginal community to report any incident of race discrimination (including third-party reporting).⁶²

For more state and territory examples under Concluding Observation 23, see Appendix 1.

Concluding Observation 24: Immigration policies, ‘excised offshore places’

220. Australia takes its obligations under international law seriously with respect to immigration policies, including its obligations relating to non-refoulement under international human rights law and refugee law. Australia gives effect to these obligations through a combination of legislation, policy and practice.

Excised offshore places

221. ‘Excised offshore places’ remain part of Australian territory and Australian migration legislation continues to apply. Excision was introduced in 2001 and has remained in place as a way to reduce instances of people entering Australia by means of hazardous sea voyages and to deter the activities of people smugglers.

222. The effect of designating an ‘excised offshore place’ is that non-citizens who have first entered Australia via an ‘excised offshore place’ without a valid visa are, in effect, barred from making a valid visa application on arrival or during their stay in Australia, unless the Immigration Minister lifts the bar in the public interest.

223. In May 2013, the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013 (Cth) was passed. This amended the Migration Act 1958 (Cth) to provide that individuals who arrive on the Australian mainland on or after 1 June 2013 by unauthorised maritime means are given the same legal status and access to processing arrangements as those who enter at an excised offshore place. The Migration Act was also amended to allow the transfer of unauthorised maritime arrivals who entered Australia after 13 August 2012 to regional processing countries. This also removed the incentives for people to risk their lives seeking to reach the Australian mainland to avoid being subject to regional processing arrangements.

224. The effect of these amendments is that a non-citizen who arrives anywhere in Australia by sea without a valid visa is barred from making a valid visa application unless the minister allows them to do so and, for those people arriving after 13 August 2012, they are subject to transfer to a regional processing country.

Suspension of processing (Afghan asylum seekers)

225. Processing of asylum claims by Sri Lankan and Afghan asylum seekers was suspended for periods of three and six months respectively on 9 April 2010. The suspensions were introduced to allow time for relevant, up-to-date information on the security and humanitarian conditions in those countries to be collected for use in refugee assessments.

⁶² Further information on Reporting Racism project available at: www.humanrightscommission.vic.gov.au/index.php/our-projects-a-initiatives/reporting-racism.

226. The suspensions were lifted on 6 July 2010 for Sri Lankan asylum seekers and on 30 September 2010 for Afghan asylum seekers. A total of 184 Sri Lankan and 1,202 Afghan irregular maritime arrivals were affected by the suspension.

227. All affected asylum seekers had their claims assessed on a case-by-case basis, in line with the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (the Refugees Convention) and with reference to updated country information. All asylum seekers who had applications submitted and were therefore affected by the suspension were provided an Immigration Advice and Application Assistance Scheme (IAAAS) agent, and were assisted to prepare a statement of their claims.

228. While IAAAS services continue to be available to authorised arrivals, access to the service was limited to assistance at the primary process only and all IAAAS services were withdrawn from unauthorised maritime arrivals and unauthorised air arrivals from 31 March 2014.

229. Since the suspensions were lifted in 2010, the Department of Immigration and Border Protection (formerly the Department of Immigration and Citizenship) has not suspended the processing of any cohorts of asylum seekers who were subject to detention.

Non-refoulement

230. As noted above, Australia takes its non-refoulement obligations under international human rights law and refugee law seriously. For asylum seekers who arrive in Australia legally (that is, with a valid visa), Australia grants protection visas to those asylum seekers who are found to be refugees and who satisfy health, character and security requirements.

231. From 24 March 2012, complementary protection claims have been considered as part of the protection visa assessment process. Complementary protection is the term used to describe a category of protection for people who are not refugees but cannot be returned to their home country, in line with Australia's international obligations under human rights treaties, because there is a real risk that the person will suffer certain types of harm. These international obligations arise under international human rights conventions that Australia is a party to, including the International Covenant on Civil and Political Rights (ICCPR) and its Second Optional Protocol, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

232. For asylum seekers subject to regional processing arrangements, processes are in place to ensure transfers to the regional processing country are consistent with Australia's non-refoulement obligations under the Refugees Convention, the ICCPR and CAT. In the memoranda of understanding with both Nauru and Papua New Guinea that set up these arrangements, both countries assured Australia that they would assess, or permit an assessment to be made, of the transferees' refugee status. In addition, those countries assured Australia that asylum seekers will not be expelled or returned to another country where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion, or where there is a real risk that they will be subjected to torture, cruel, inhuman or degrading treatment or punishment, arbitrary deprivation of life or the imposition of the death penalty.

233. The Government's policy is to intercept any vessel seeking to illegally enter Australia and safely remove it beyond our waters. Measures and safeguards are in place to enable actions and activities to be undertaken in a manner consistent with Australian domestic law and Australia's obligations under international law. Potential illegal maritime arrivals may be subject to an assessment process on water to determine whether they engage Australia's non-refoulement obligations under international law. Interviews are conducted by trained protection officers, supported by qualified interpreters.

234. The enactment of the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 (Cth) has clarified Australia's international law obligations under the Refugees Convention reintroduced temporary protection visas for Illegal Maritime Arrivals (IMAs). Further information on this legislation, which was enacted outside the CERD reporting periods, can be found at Appendix 3.

Cooperation with United Nations High Commissioner for Refugees (UNHCR)

235. The Australian Government is committed to working closely with UNHCR to address issues of shared interest and concern, including the challenges of irregular migration and to improve protection outcomes for refugees. We are working with UNHCR to explore and develop a range of practical arrangements for regional cooperation, particularly through consideration of UNHCR advice on the development of a stronger protection environment in the Asia-Pacific region and global refugee resettlement needs.

236. In September 2012, Australia signed its first multi-year partnership framework with UNHCR, with Australia endeavouring to provide a total of \$105 million over four years (2013-2016). At 30 June 2014, Australia had provided \$40 million to UNHCR under the partnership framework. Funding for the forward years is yet to be confirmed. The partnership framework also established annual high-level consultations between Australia and UNHCR which provide opportunities to raise and discuss issues of mutual concern.

Concluding Observation 27: Human rights education

237. The committee is referred to Australia's fifth periodic report under the ICESCR, specifically Concluding Observation 34 (Human rights education).

Australian Curriculum

238. The Australian Curriculum, Assessment and Reporting Authority's work in developing the Australian Curriculum is guided by the Melbourne Declaration on Educational Goals for Young Australians. This declaration recognises the fundamental role that education plays in building a society that is 'cohesive and culturally diverse, and that values Australia's Indigenous cultures'.

239. Throughout 2010-12, the AHRC worked closely with the Australian Curriculum, Assessment and Reporting Authority, and provided extensive submissions on the history, geography, health and physical education, and civics and citizenship curricula.

240. The Commission published a series of education resources, called RightsED, which are mapped to the national curriculum. These resources are designed to help students gain a critical understanding of human rights and responsibilities, and to develop the attitudes, behaviours and skills to apply human rights in everyday life.

241. Intercultural understanding is one of seven general capabilities in the Australian Curriculum for Foundation to Year 10. In the Australian Curriculum students develop intercultural understanding as they learn to value their own cultures, languages and beliefs, and those of others. This capability involves students learning about and engaging with diverse cultures in ways that recognise commonalities and differences, create connections with others and cultivate mutual respect.

242. Understanding Aboriginal and Torres Strait Islander histories is a cross-curriculum priority in the Foundation to Year 10 Australian Curriculum. This priority provides opportunities for learners to deepen their knowledge of the world's oldest continuous living cultures.⁶³

243. Asia and Australia's engagement with Asia is another cross-curriculum priority in the Foundation to Year 10 Australian Curriculum. This priority ensures that students learn about and recognise diversity within and between the countries of the Asian region, and develop knowledge and understanding of Asian societies, cultures, beliefs and environments. This priority also builds understanding of the diversity of cultures and people living in Australia, fostering social inclusion and cohesion.⁶⁴

244. In 2014, the Australian Government reviewed the Australian Curriculum to evaluate its robustness, independence and balance. In October 2014, the government released the final report of the review and its initial response.⁶⁵ As a next step, the curriculum review was discussed at the education council of federal, state and territory education ministers. All ministers agreed to refer the recommendations relating to overcrowding of the curriculum, parental engagement, accessibility for students with disability and rebalancing the curriculum (outlined in the Australian Government's initial response to the review), to the Australian Curriculum, Assessment and Reporting Authority for advice.

245. Following this, the Government will work with the state, territory and non-government schools sectors to consider any changes to the curriculum.

Northern Territory

246. The Northern Territory has been working to implement the Australian Curriculum, with Aboriginal and Torres Strait Islander histories and cultures as a cross curriculum priority and embedded in all learning areas. Northern Territory teachers are also able to access a set of Indigenous studies modules that have been developed using local stories, histories and cultures. These are currently being reworked to ensure alignment with the Australian Curriculum. The modules support teachers to develop knowledge and understanding of Indigenous perspectives and to integrate these across learning areas.

247. Through teaching the Indigenous Studies: History and Identity modules teachers can help students gain an appreciation of the importance of Aboriginal and Torres Strait Islander cultures as part of the heritage of every Australian.

For more state and territory examples under Concluding Observation 27, see Appendix 1.

Community and adult education

248. The Australian Government has developed a range of easy-to-use educational materials on human rights tailored to public sector officials. Material was also developed to strengthen the capacity of legal and policy officers to assess human rights compatibility of

⁶³ Further information on Aboriginal and Torres Strait Islander cross-curriculum priority available at: <http://www.australiancurriculum.edu.au/CrossCurriculumPriorities/Aboriginal-and-Torres-Strait-Islander-histories-and-cultures>.

⁶⁴ Further information on Asia and Australia's engagement with Asia cross-curriculum priority available at: <http://www.australiancurriculum.edu.au/CrossCurriculumPriorities/Asia-and-Australias-engagement-with-Asia>.

⁶⁵ Report and initial Government response available at: <http://www.studentsfirst.gov.au/review-australian-curriculum>.

policies and legislation, and for administrative decision-makers on relevant human rights considerations. At the federal level, more than 700 public sector officials were trained on the requirements under the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth).

249. In Victoria and the Australian Capital Territory, two Australian jurisdictions with Charters or Human Rights Acts (Charter of Rights and Responsibilities Act 2006 (Vic) and Human Rights Act 2004 (ACT)), human rights training on the rights, responsibilities and obligations, under their respective charters, are being delivered to public service graduates.

250. A core function of the AHRC is promoting understanding and acceptance, encouraging public discussion of human rights, and undertaking human rights education programs.

251. In 2014, the AHRC published the Declaration Dialogue Series on the Implementation of the United Nations Declaration on the Rights of Indigenous Peoples. These papers are designed to engage with and educate Australian audiences. The AHRC also chairs the National Anti-Racism Partnership which brings together existing expertise on anti-racism and multicultural matters across government and non-government representatives.

252. The National Anti-Racism Strategy was developed as part of the National Anti-Racism Partnership, and launched in August 2012. The strategy focuses on public awareness, education resources and youth engagement, and is underpinned by research, consultation and evaluation. It aims to promote a clear understanding in the Australian community of what racism is, and how it can be prevented and reduced.

253. Objectives of the strategy are to:

- Create awareness of racism and how it affects individuals and the broader community.
- Identify, promote and build on good practice initiatives to prevent and reduce racism.
- Empower communities and individuals to take action to prevent and reduce racism and to seek redress when it occurs.

254. The primary awareness raising and engagement activity within the strategy is the Racism. It stops with me campaign. This campaign aims to:

- Ensure more Australians recognise that racism is unacceptable in our community
- Give more Australians the tools and resources to take practical action against racism
- Empower individuals and organisations to prevent and respond effectively to racism.

255. The campaign has been endorsed by over 360 organisations in the areas of arts and culture, business, sport, education, health and the legal profession, as well as peak bodies, non-government organisations, local governments and the public sector.

256. In September 2013, the AHRC's Race Discrimination Commissioner, Dr Tim Soutphommasane, published a report evaluating the work of the strategy. It found that:

- 85% of respondents said that awareness of racism had increased among their organisation's staff, customers, clients, members and affiliates.
- 70% of respondents said they had implemented anti-racism activities to support the campaign, such as developing anti-racism policies and procedures, holding events or making a public statement against racism.

- 52% of respondents felt they were better equipped to respond to racism since signing on to the campaign.

Tasmania

257. The Tasmanian Government supports the National Anti-Racism Strategy and is committed to a policy agenda that promotes inclusivity. Educational programs promoting youth engagement in these goals are ongoing. ‘Students against Racism’ won the 2013 as well as the 2009 Tasmanian Human Rights School Award.

258. Tasmania includes human rights education within the curriculum. The development and implementation of the Respectful Schools Respectful Workplaces Framework helps build a culture of respect and mutual trust.

259. The Office of the Anti-Discrimination Commissioner in Tasmania undertakes an extensive program of activities to promote cross-cultural understanding and racial tolerance, including:

- Delivering 156 workplace training sessions to over 2,500 participants in 2013-14 to help people define, recognise and deal with racism.
- Participating in 117 community awareness sessions reaching more than 6,800 people across Tasmania in 2013-14.
- Developing a broad-based diversity in education school program in partnership with the community organisation A Fairer World.
- Continuing involvement in the ‘Play by the Rules’ initiative, which promotes sporting cultures that are inclusive and free of harassment and discrimination.
- Coordinating awards and other activities to recognise Human Rights Week.

Concluding Observation 28: Additional ratifications

260. Australia acceded to the Optional Protocol to the Convention on the Rights of Persons with Disabilities on 21 August 2009, which entered into force on 20 September 2009. Australia has received communications under the Optional Protocol and is responding to these in good faith.

261. The Australian Government is considering whether it will ratify the Optional Protocol to the Convention against Torture and therefore bring it into force in Australia. Places of detention under the Australian Government’s control are currently under independent scrutiny by a range of bodies at the federal and state and territory levels, including the Commonwealth Ombudsman, state and territory ombudsmen and the AHRC.

262. Australia regards the combination of its strong domestic and international protections already in place to be sufficient and does not intend to sign, accede or become party to the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

263. Australia protects the human rights of migrants and temporary entrants under existing domestic and international law, including consistently with the human rights conventions to which Australia is a party. Australia also recognises the importance of providing legal protections to migrant workers and has recently passed domestic laws to ensure better protection of temporary overseas workers.

264. Australia is concerned about the incompatibility of the Migrant Worker's Convention with domestic migration policies. For example, becoming party to this Convention would require Australia to treat migrant workers and their family members more favourably than other migrants in visa application processes. At times, this Convention does not distinguish between those who are working lawfully and those working unlawfully.

265. Ratification of International Labour Organization Convention 169 (Indigenous and Tribal Peoples Convention, 1989) is not a priority for the Australian Government at this time. The Australian Government has a clear reform agenda that focuses on delivering practical assistance to Australia's Indigenous people. The rights of Indigenous Australians are protected under the Racial Discrimination Act 1975 (Cth) and the International Convention on the Elimination of All Forms of Racial Discrimination. Australia also supports the UN Declaration on the Rights of Indigenous Peoples. The Australian Government consults Indigenous people in a variety of ways, and will continue consulting with state and territory governments, Indigenous leaders and communities while continuing to improve outcomes for Indigenous Australians.

**AUSTRALIA'S COMBINED 18th, 19th AND 20th REPORTS
UNDER THE CONVENTION ON THE ELIMINATION OF ALL
FORMS OF RACIAL DISCRIMINATION**

**APPENDIX 1
State and Territory Examples**

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I. INTRODUCTION

Purpose of this Appendix

1. The Australian Government is pleased to present this Appendix to Australia's combined 18th, 19th and 20th reports under article 9 of the Convention on the Elimination of All Forms of Racial Discrimination (the convention) to the Committee on the Elimination of all Forms of Racial Discrimination (the committee).
2. Australia has a federal constitutional system in which powers are shared between federal institutions and the six states (New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania, and three self-governing territories (the Australian Capital Territory, the Northern Territory and the Territory of Norfolk Island). Further information about Australia's political structure is available in part B of the common core document.
3. As Australia is a federation, the Australian Government and state and territory governments share responsibility for the implementation of the convention. The Australian Government consulted the states and territories to prepare its report. Where possible federal, state and territory responses to relevant concluding observations and recommendations are included in Australia's report. However, given the vast array of state and territory initiatives, Australia has also prepared this Appendix to provide a more complete picture of relevant of cross-jurisdictional policies and programs over the reporting period.

II. RESPONSES TO THE CONCLUDING OBSERVATIONS OF THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Concluding Observations 9, 10, and 25 - Establishment of a domestic implementation mechanism for the convention across the federal system and review of anti-discrimination laws, including burden of proof requirements for demonstrating discrimination

Australian Capital Territory

4. The ACT Human Rights and Discrimination Commissioner notes that the Victorian Equal Opportunity Act was the most recently reviewed and amended amongst state and territory anti-discrimination laws, yet many of the features noted here are also present in other state and territory laws.

5. For example, section 70 of the ACT *Discrimination Act 1991* requires that ‘if apart from an exception, exemption, excuse, qualification or justification’ conduct would be unlawful discrimination, vilification or sexual harassment, the onus of establishing that exception lies on those seeking to rely on it.

Concluding Observation 12 - Biometric data and sensitisation campaigns against stereotyping

Northern Territory

6. The Northern Territory reports high levels of integration with the Muslim community into the broader community and low levels of discrimination. In 2013, an Australian–New Zealand Counter-Terrorism Committee funded project was undertaken by the government to understand the risk of radicalisation within the local Islamic youth population. The project indicated that the risk at that time was very low and there was no evidence within the reporting period that this situation had changed.

Queensland

7. Queensland actively promotes cultural diversity and building social cohesion. In *The Queensland Plan: Queenslanders’ 30-year vision*, Queenslanders have set a goal for a community where everybody belongs and no one is left behind. In line with this, the vision of the *Queensland Cultural Diversity Policy* is to provide equality of opportunity for all Queenslanders so that each and every person can participate in its strong economy and enjoy its vibrant society.

8. The Queensland Government, Department of Aboriginal and Torres Strait Islander and Multicultural Affairs (DATSIMA), is proactive in combatting racial or religious stereotypes, working closely with the Muslim community and other faith communities and across government to recognise the contribution of culturally diverse Queenslanders and demonstrate public leadership about saying ‘no’ to racism.

Tasmania

9. The Tasmanian Government is finalising an e-learning cultural competency training package for all of its staff. This will help develop awareness and knowledge of cultural diversity and help prevent stereotyping of people from other cultural backgrounds.

Victoria

10. Victoria has undertaken a range of initiatives to counter the stereotyping of particular communities in relation to terrorism and criminality. The government provides significant financial support to the peak body representing Victorian Muslims, the Islamic Council of Victoria, to underscore its work to both support and accurately represent the state's Muslim communities. The government's Promoting Community Harmony Program also funds media and communication training to help faith and other community representatives address misconceptions and stereotypes.

11. Victoria Police is reviewing its policies to ensure they do not lead to racial profiling and drafting additional guidelines. A receipting pilot is also being developed to enable community members to have a record of their contact with police. A range of non-discriminatory approaches are also developed and implemented in its training.

Concluding Observation 13 - Regulation of Australian corporations

South Australia

12. The South Australian Government enacted the *Aboriginal Heritage Act 1988* (SA) to protect Aboriginal heritage, the recognition of which is of vital importance to all Aboriginal people and communities. The government has committed to:

- developing the Aboriginal Regional Authorities policy, to be implemented in 2015, to harness the strengths of the Aboriginal community to represent itself in decision making
- drafting legislation to recognise the self-determining governance structures of Aboriginal nations, and the unique cultural authority of these. The legislation will set out guiding principles for cooperation and allow agreements to be negotiated between government and certain Aboriginal groups.

13. Support continues for the Aboriginal Land Trust under the *Aboriginal Lands Trust Act 2013* (SA), to manage and maximise the value of its considerable landholding for the benefit of all Aboriginal people in the state. In 2013 it was estimated that Aboriginal land interests comprised about 23% of South Australia's land area.

Concluding Observation 14 - Access to services, multicultural policy and social inclusion agenda

Access to services

Australian Capital Territory

14. The ACT's *Towards Culturally Appropriate and Inclusive Services – a coordinating framework for ACT Health 2014–2018*, provides guidance, objectives and associated actions to improve organisational responsiveness to the needs of people from culturally and linguistically diverse backgrounds or with limited English language proficiency.

New South Wales

15. Multicultural NSW continues to support and hold government agencies accountable for planning equitable service delivery outcomes for the state's diverse community, including driving a coordinated approach to service delivery for newly arrived migrants and humanitarian entrants. Multicultural NSW co-chairs the New South Wales Government Immigration and Settlement Planning Committee, which represents the state on the inter-jurisdictional Senior Officials Settlement Outcomes Group.

Northern Territory

16. Cross-cultural training for all Northern Territory Government officers is compulsory. The level of training is higher for those involved in direct Indigenous service delivery and policy development. It is compulsory for all selection criteria for NT Public Service vacancies to include 'an ability to interact effectively with people of different cultures'.

17. The Northern Territory has also adopted a *Language Services Policy* which recognises the importance of providing culturally and linguistically sound service to ensure all clients are able to access these in a fair and equitable way. The policy acknowledges the importance for government agencies to make use of the Aboriginal Interpreter Service.

Tasmania

18. Following the Federal Government's decision to cease funding municipal and essential services in remote communities, Tasmania negotiated a one off payment to assist with the transfer of responsibility to the State. Cape Barren Island is the only remote Aboriginal community under Tasmanian jurisdiction. A working group was established to scope the work needed to be done to ensure the future sustainability of the community. An asset maintenance audit was then undertaken, which indicated that upgrades were required to some housing and municipal and essential services. Once these upgrades have been completed, a new funding agreement will be negotiated with the Cape Barren Island Aboriginal Association which will give the organisation responsibility and accountability in managing its own funding. Until that time, funding will continue to be managed by the State Government. At all stages through the transfer process, the Cape Barren Island Aboriginal Association has been consulted and informed of progress.

Multicultural policies

New South Wales

19. In 2014, Multicultural NSW launched a new direction in multicultural policy through its Strategic Plan, *Harmony in Action 2014–2017*. This, coupled with amendments to its enabling legislation, will see Multicultural NSW maximise the state's diversity dividend by promoting social cohesion and cultural diversity. Multicultural NSW advises on government policy and programs; consults and engages with diverse communities; builds community capacity through partnerships with all sectors through a grants program and strategic partnerships; provides interpreting and translation services; celebrates multicultural achievements; and promotes the benefits of the state's cultural and linguistic diversity.

Northern Territory

20. The Northern Territory Government recognises the importance of acknowledging, promoting and celebrating the territory's multicultural diversity. Work is currently underway to develop a multicultural participation framework in consultation with the Minister's Advisory Council on Multicultural Affairs and the broader community. This is expected to be finalised by mid-2015. In addition to regular community engagement activities, the government provides funding to the multicultural community through its grant program to celebrate diversity and strengthen social cohesion. This includes:

- the Multicultural Affairs Sponsorship Program to fund projects that benefit social inclusion, social cohesion, and cultural and linguistic diversity
- Harmony Grants to organisations for projects that enhance multiculturalism. Funding is available for community and school celebrations, as well as participation in the Darwin Waterfront Harmony Soiree.

Queensland

21. The *Queensland Cultural Diversity Policy* (the Policy) was released in December 2013. It focuses on maximising the benefits cultural diversity brings to the state and making sure all Queenslanders can access the same opportunities and support to participate fully in Queensland's economy and society. The Policy identifies four outcomes to focus state government effort — language independence; education participation and attainment; economic independence and participation; and community participation. These four outcomes are underpinned by a renewed commitment to delivering frontline services that are the best culturally responsive services in Australia.

22. In July 2014, the Queensland Government released the *first Queensland Cultural Diversity Action Plan* (the Action Plan). The Action Plan outlines the steps the Queensland Government will take to achieve improvements across the Policy outcomes and deliver on the vision. A total of 170 actions are identified reflecting the strong commitment across government to improved outcomes for culturally diverse Queenslanders. Included are two specific purpose grants rounds – the *Valuing Diversity Grants Program* which provides funding to support local and signature events that showcase and celebrate Queensland's diversity; and the *Economic Participation Grants Program* which assists organisations to deliver innovative projects that support economic participation and business development for Queenslanders from culturally diverse backgrounds

Tasmania

23. The Tasmanian Community Fund is a state-funded, independent entity which provides grants to not-for profit organisations to benefit the Tasmanian community, meet the needs of migrant communities, as well as retain and promote culture. The Tasmanian Government provides a range of other funding, including grants to:

- empower migrant and refugee communities and individuals
- help governments and inter-governmental organisations improve support and services for migrants and refugees
- facilitate successful settlement of new arrivals to Tasmania and promote social cohesion and expression of cultural diversity.

Victoria

24. In March 2014 the Victorian Government launched a new Multicultural Affairs and Citizenship Policy: *Victoria's advantage – unity, diversity, opportunity*. This outlines the vision for harnessing increasing cultural, linguistic and religious diversity for the social, cultural and economic advantage of all Victorians.

25. The policy addresses future challenges to ensure that all Victorians are supported and encouraged to participate in the community and to access services that are responsive to their cultural, linguistic and religious needs. Indicators – such as labour force participation and school retention rates – are included to measure the progress of Victoria's culturally diverse communities.¹

¹ Further information available at: www.multicultural.vic.gov.au/resources/victorias-advantage-unity-diversity-opportunity

Western Australia

26. The Office of Multicultural Interests has released a new Strategic Plan 2014–2018 for Western Australia to promote multiculturalism and achieve an inclusive and cohesive multicultural community. The plan aims to:

- strengthen the capacity of culturally diverse communities
- support the development of culturally inclusive policies, programs and services
- facilitate full participation by culturally diverse communities in social, economic, cultural and civic activities
- develop intercultural understanding and promote the benefits of the state's cultural diversity.

Concluding Observations 15 and 26 - Indigenous recognition and reconciliation

Indigenous recognition and reconciliation

Australian Capital Territory

27. The Australian Capital Territory's whole-of-government Aboriginal and Torres Strait Islander Agreement 2015–2018 is under negotiation and will be an agreement between the ACT Government, the ACT Aboriginal and Torres Strait Islander Elected Body, service partners, community organisations and the territory's Aboriginal and Torres Strait Islander community.

28. The territory has no overarching Reconciliation Action Plan, however each ACT Government Directorate is helped to establish a documented Reconciliation Action Plan. This includes actions to increase reconciliation goals and activities relating to relationships, respect and opportunities. For example, the ACT Health Directorate has been on a reconciliation journey since 2010, with regular monitoring and reporting against action items. A new Reconciliation Action Plan is currently under development for 2015-2018.

New South Wales

29. The New South Wales Government recognises that changing the Constitution to recognise the first Australians is an important step, and has given its in-principle support for the referendum.

Tasmania

30. The Tasmanian Government strongly supports the recognition of Aboriginal and Torres Strait Islander people as the first Australians in the Australian Constitution. Further, the Premier has encouraged "all Tasmanians to join the reconciliation conversation and to build stronger relationships with Aboriginal and Torres Strait Islander peoples, especially the Tasmanian Aboriginal community".

Victoria

31. The Victorian Aboriginal Affairs Framework 2013-2018 promotes respect and recognition of Aboriginal culture. It is supported by whole-of-government guiding principles that include:

- acknowledging, respecting, and valuing Aboriginal culture
- acknowledging the right of Aboriginal people to maintain their identity and culture
- recognising that a strong cultural identity is fundamental to the wellbeing of Aboriginal people.

32. All Victorian Government departments are required to develop and implement Aboriginal Inclusion Action Plans. Through these, departments acknowledge Aboriginal culture, values and practices and demonstrate how access by Aboriginal people to the department will be improved, both in its capacity as an employer and a provider and funder of services. Most departments now have these plans in place.

Western Australia

33. During the reporting period, Western Australia's Department of Aboriginal Affairs continued to fund and administer its school based Aboriginal culture and history awareness program, Partnership, Acceptance, Learning, Sharing. The department sponsored and administered a number of reconciliation activities, including a major annual Reconciliation Banner Project where corporate, government and community based partners combine to place banners in the Perth central business district during Reconciliation Week. A number of state government departments have developed Reconciliation Action Plans to increase Aboriginal employees and to improve the delivery of culturally appropriate services and programs.

Concluding Observation 17 - Article 4(a) reservation, absence of Northern Territory legislation prohibiting incitement to racial hatred; information on complaints, prosecutions and sentences regarding acts of racial hatred or incitement in states and territories with legislation specifying such offence

Australian Capital Territory

34. The ACT prohibits discrimination on the grounds of race and the incitement of racial hatred through vilification provisions of the *Discrimination Act 1991*. Vilification that incites violence is known as 'serious vilification' and is an offence under the Act. In addition, Part 2.4 of the *Criminal Code 2002* (ACT) includes the offence of incitement (section 47). The ACT Law Reform Advisory Council is reviewing the Act, the scope of which covers consideration of vilification provisions. In May 2014, the ACT Human Rights Commission held its fourth annual ACT Race Roundtable, one of the strategies being employed to prevent and address race discrimination and vilification. Between 1 July 2012 and 30 June 2014, the ACT Human Rights Commission received 17 complaints about vilification on the ground of race.

New South Wales

35. Serious racial vilification is a criminal offence under Section 20D of the *Anti-Discrimination Act 1977* (NSW). However, to date, there have been no prosecutions for this offence.

36. In September 2013, the NSW Law Reform Commission released a review of sentencing laws. It concluded that state sentencing legislation should continue to require courts to take into account whether a crime is racially motivated in sentencing (recommendation 4.8 of *Report 139: Sentencing*). The commission recommended some minor changes to better identify when courts should take into account that an offence was motivated by prejudice or hatred.²

37. In December 2013, the Standing Committee on Law and Justice tabled a report on its inquiry into racial vilification law. The inquiry examined the effectiveness of section 20D of the *Anti-Discrimination Act 1977* which creates the offence of serious racial vilification. The committee concluded that the effectiveness of section 20D had been hindered by a number of procedural impediments and made several recommendations to overcome these. The government is currently considering both reports.

² Available at: http://www.lawreform.justice.nsw.gov.au/lrc/lrc_completed_projects/lrc_sentencingcurrentprojects.html

38. While there have been no prosecutions for the offence of serious racial vilification, there is a mechanism for complaints concerning racial vilification to be conciliated by the Anti-Discrimination Board and, where conciliation is not successful, determined by the Administrative Decisions Tribunal. In the period 1 July 2008 to 30 June 2014, the following enquiries, complaints and referrals to the tribunal were made concerning racial vilification:

Year	Enquiries received by tribunal	Complaints received by tribunal	Complaints referred to tribunal
2011–2012	31	15	Not available
2010–2011	59	21	3
2009–2010	73	22	2
2008–2009	47	14	3

South Australia

39. South Australia is a signatory to the Australian Government's National Anti-Racism Strategy: *Racism. It stops with me*, led by the Race Discrimination Commissioner in partnership with the Australian Human Rights Commission and government and community bodies.

Tasmania

40. Civil anti-vilification provisions are available under section 19 of the *Anti-Discrimination Act 1998* (TAS). There are at present no laws in Tasmania that make racial vilification or incitement a criminal offence. Amendments to the Anti-Discrimination Act came into force on 1 January 2014. These extend prohibited conduct under the Act to that which humiliates, offends, intimidates, ridicules or insults on the ground of race.

Victoria

41. The *Racial and Religious Tolerance Act 2001* (VIC) prohibits racial vilification—any conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, another person on the grounds of their race. Complaints of racial vilification can be taken to the Victorian Equal Opportunity and Human Rights Commission for dispute resolution or to the Victorian Civil and Administrative Tribunal for formal determination. Serious vilification is also an offence under this Act.

42. Under the *Sentencing Act 1991* (VIC), in sentencing an offender a court must have regard to whether the offence was motivated (wholly or partly) by hatred for or prejudice against a group of people with common characteristics with which the victim was associated or with which the offender believed the victim was associated.

Western Australia

43. The *Equal Opportunity Act 1984* (WA) covers racial harassment in employment, education and accommodation. Racial harassment and incitement to racial hatred is a crime under the *Criminal Code 1913* (WA).

Concluding Observation 18 - Legislative reforms to the Native Title Act 1993 (Cth), burden of proof and mechanisms for effective consultations with Indigenous peoples

Native Title reforms

Australian Capital Territory

44. The ACT Government is developing a project proposal on how to best reach agreement on the recognition of the territory's traditional custodians. The ACT Community Services Directorate is

seeking advice from leaders in Aboriginal and Torres Strait Islander affairs on how to assist the community to engage on this matter.

New South Wales

45. New South Wales recently completed a review of the *Aboriginal Land Rights Act 1983* (NSW) to determine whether the objectives of the Act remained current and if changes were required. The government consulted broadly and in partnership with Aboriginal Land Councils and members of the Aboriginal community on the form and function of the Act. It has considered the recommendations of the review, and the Bill of amendments has passed through the Parliament for commencement in July 2015. The reforms aim to increase the efficiency, accountability and economic capacity of the Aboriginal Land Rights network to deliver greater benefits to the state's Aboriginal people.

Northern Territory

46. The Northern Land Council and Northern Territory Government, in consultation with the Australian Government and NT Cattlemen's Association, have developed a short-form anthropological 'connection report' to fast-track resolution of native title claims over pastoral leases located in the Top End. This resulted in 49 positive determinations between 2011 and 2014.

Tasmania

47. The *Native Title Act* (TAS) was introduced in 1994. Native title has had little practical impact in Tasmania, primarily because the necessary traditional and unbroken connection with the land has not been maintained. The Tasmanian Aboriginal community generally shares this understanding. As a result there have only been four native title claims, none of which have progressed. As a recognition of native title concepts, successive Tasmanian governments have to date returned a total of 55,617 hectares of land to the Tasmanian Aboriginal community and fund the Aboriginal Land Council of Tasmania to manage those lands.

Victoria

48. One of the main objectives of the *Native Title Act 1993* (Cth) is to provide for the recognition and protection of native title, however this has had limited effectiveness in Victoria where extinguishment of native title through land dealings has been more extensive and proof of the continuity of native title 'connection' has proved onerous. Victoria developed an alternative native title settlement framework under the *Traditional Owner Settlement Act 2010* (VIC). Unlike the Native Title Act, the Traditional Owner Settlement Act does not entail a legal test for establishing who the traditional owners are for a given area. In 2013, Victoria published *Threshold guidelines for Victorian traditional owner groups seeking a settlement under the Traditional Owner Settlement Act*. These guidelines provide information about matters Traditional Owner groups need to prepare for and address before negotiations.

49. The first comprehensive settlement under the Traditional Owner Settlement Act commenced on 24 October 2013, settling with the Dja Dja Wurrung Traditional Owner group four native title claims that had been with the Federal Court since 1998. The settlement was the culmination of 18 months of negotiations and formally recognises the Dja Dja Wurrung people as the traditional owners for part of central Victoria. The financial value of the settlement package is \$9.65 million, with funding to assist the Dja Dja Wurrung Corporation to meet its settlement obligations and advance the cultural and economic aspirations of Dja Dja Wurrung people.

Western Australia

50. Legislation in Western Australia which may have an impact or effect on native title interests must comply with the *Native Title Act 1993* (Cth). This effectively requires corporations to deal with certain classes of Aboriginal peoples (registered native title claimants and holders) as though they were instead ordinary titleholders. For example, where the state seeks to grant an interest to a third party to explore, mine or otherwise disturb land pursuant to the *Mining Act 1978* (WA) the granting authority must ensure that the relevant procedural rights as afforded by the *Native Title Act* have been complied with.

Effective consultation mechanisms with Indigenous peoples

New South Wales

51. The Ministerial Taskforce on Aboriginal Affairs has conducted extensive consultation with Aboriginal people to inform a strategy that resulted in the development and release of OCHRE, the New South Wales Government's plan for Aboriginal affairs. One initiative of the taskforce was establishing the position of deputy ombudsman responsible for Aboriginal programs. This will provide Aboriginal people with an additional avenue to question the efficacy of government programs and services and a higher level of government accountability.

Queensland

52. As part of the Stronger Families reforms, which are designed to ensure the delivering of the right services at the right time to support families keep children safely at home, the Queensland Government has developed a range of responses to consult with Aboriginal and Torres Strait Islander stakeholder groups and representatives to ensure the work of the reform meets the needs and expectations of Aboriginal and Torres Strait Islander people and communities.

53. For example, the department's Aboriginal and Torres Strait Islander Child and Family Reform team have fortnightly meetings with the Queensland Aboriginal and Torres Strait Islander Child Protection Peak to support efforts of co-design and build effective consultation mechanisms across Queensland between the department and the child protection sector.

South Australia

54. To ensure effective consultation with Aboriginal peoples around all policies affecting their lives and resources, the South Australian Government has committed to draft legislation to recognise the self-determining governance structures of Aboriginal communities, and their unique cultural authority. The legislation will set out guiding principles for cooperation, and allow for negotiation of agreements, between government and certain Aboriginal groups. This will be complemented by community capacity building initiatives to support improved Aboriginal regional governance and improved recognition of Aboriginal culture and values across government and the community. The government has also committed to developing an Aboriginal Regional Authorities policy to harness the strengths of the Aboriginal community and to most effectively represent Aboriginal interests at the regional level. The policy is to be implemented in 2015.

Tasmania

55. Consultation is undertaken with the Tasmanian Aboriginal community through a number of forums. The Tasmanian Government through its Office of Aboriginal Affairs regularly consults with Tasmania's Aboriginal people and organisations on issues affecting the community, as do other state government agencies and departments. In addition, an interim Aboriginal Heritage Council was established in 2012 to advise the government on the protection and management of Aboriginal heritage. In 2015, the Government committed to reset its relationship with the Tasmanian Aboriginal community. The Government is working with the Tasmanian Aboriginal community, with

the aim of achieving a greater understanding between Tasmanian Aboriginal and non-Aboriginal people in a way that acknowledges Aboriginal history and culture.

Western Australia

56. The Western Australian Aboriginal Advisory Council was established under the *Aboriginal Affairs Planning Authority Act 1972* (WA). It advises the Minister for Aboriginal Affairs and the Department of Aboriginal Affairs on matters relating to the interests and wellbeing of Aboriginal people. It consists of Aboriginal people chosen by and from Aboriginal people living in Western Australia. In 2014 the council held its inaugural summit in Perth, bringing people from across the state to discuss ways to improve engagement with government.

Concluding Observation 19 - Provision of legal aid and training for law enforcement personnel and legal profession in the provision of professional and culturally appropriate Indigenous legal and interpretive services within the criminal justice system

Indigenous legal services

Australian Capital Territory

57. In its 2014–15 budget, the ACT Government committed \$100,000 a year in recurrent funding to supplement the budget of the Aboriginal Legal Service (ACT/NSW) and strengthen court duty lawyers for Aboriginal defendants.

Queensland

58. The *Queensland Cultural Diversity Action Plan* (the Action Plan) outlines the steps the Queensland Government will take to drive improvements for culturally diverse Queenslanders across a number of priority policy areas, including in the delivery of culturally responsive and accessible legal and interpretive services, and in law enforcement. This is underpinned by a continued commitment across government to the implementation of the *Queensland Language Service Policy* which sets out the arrangements and expectations of government in providing access to interpreter and translations services for clients requiring assistance.

59. Some example initiatives include:

- Legal Aid Queensland is working in partnership with the Brisbane-based Refugee and Immigration Legal Service to provide a legal assistance and advice clinic to culturally diverse clients who have difficulties with employment law, consumer law (banking, housing, mobile phones), domestic violence and protection order applications, and child protection.
- The Queensland Department of Justice and Attorney-General is providing information sessions and workshops about the department's services of interest to people from culturally diverse backgrounds in areas of identified need.
- The Department of Justice and Attorney-General is providing simultaneous interpreter support to multiple defendants in courtrooms where possible.
- The Queensland Public Safety Business Agency is recruiting and training police and fire personnel from a variety of cultural backgrounds to improve connections between culturally diverse communities, the Queensland Police Service and Queensland Fire and Emergency Services.

60. It is acknowledged that, while face to face discussions are the best practice, particularly with Indigenous clients where English is a second language and the legal system is confusing and intimidating, this may not also be possible particularly for people in remote communities who have courts circuiting to their communities either once per month, quarterly or half yearly.

61. To address this situation, the Department of Justice and Attorney-General have installed video-conferencing facilities in a number of remote and regional courthouses. These facilities are able to be used by legal practitioners to undertake interviews and gain instructions.

62. The use of interpreters in the justice system is an important and significant step in providing access to justice to Indigenous defendants and victims. The ability to speak in the local dialogue and explain complex legal terms would break down the confusion and anxiety attached to any court appearance. The Department of Justice and Attorney-General has provided training for Indigenous interpreters in the last six years.

South Australia

63. South Australia is working across all government agencies to improve awareness of, access, and processes relating to the provision of Aboriginal language interpreters and translators. A new South Australian Government Policy for Aboriginal Languages Interpreters and Translators was adopted in February 2014 to ensure that government agencies use Aboriginal language interpreters and translators consistently and appropriately.

Human rights and cultural awareness training

New South Wales

64. Following recommendations of the Legislative Council Inquiry into the Family Response to the Murders in Bowraville, NSW Police commenced a review of its Aboriginal cultural awareness training and materials. It is intended to bolster training at both academy and local command levels.

Northern Territory

65. The Northern Territory Police recruitment course, as well as development courses focused on remote policing, place a strong emphasis on Indigenous cultural awareness and equipping police with the skills to communicate, interact and make appropriate referrals.

Tasmania

66. The Department of Police and Emergency Management has prepared multicultural language services guidelines in partnership with the Department of Premier and Cabinet. These fortify the department's commitment to equitable service delivery for people with English language barriers.

67. The department also has a Policing in a Culturally Diverse Tasmania policy—a broad guide for law enforcement personnel on undertaking their duties in a culturally appropriate way. The department has released an Aboriginal Strategic Plan for 2014–2022, and the Tasmanian Police Service includes a state Aboriginal liaison coordinator, district and assistant Aboriginal officers. Their role is to represent Aboriginal perspectives and issues in the broader operation of the department and to improve links with the Aboriginal community.³

Victoria

68. The Victorian Aboriginal Legal Service and the Aboriginal Family Violence Legal and Prevention Service are both members of the Aboriginal Justice Forum, which oversees the development and implementation of the Victorian Aboriginal Justice Agreement. Cultural awareness training is a key activity, which includes training in relevant areas such as courts.

69. Victoria Police has a number of training packages, including for cultural and Indigenous sensitivities, that are designed to enhance policing responses to the community.

³ Further information: www.police.tas.gov.au/about-us/corporate-documents/aboriginal-strategic-plan/

70. It also participates in the regional Aboriginal justice advisory committees and has established state-wide and Local Aboriginal Justice Advisory Committees.

Western Australia

71. Western Australia Police provides training to recruits on cultural, religious and social diversity, along with specific issues dealing with Aboriginal awareness. It also encourages and supports specialised professional development to operational police officers.

72. Substantial changes have been made to training for Justices of the Peace, including delivery of electronic and hardcopy training modules to ensure those who are unable to attend annual training sessions still have access to appropriate information on court duties and functions.

Concluding Observation 20 - Incarceration rates of Indigenous peoples and provision of adequate health care; addressing social and economic factors underpinning Indigenous contact with the criminal justice system

Law and justice

Northern Territory

73. The Northern Territory Police Force pursues crime prevention and proactive policing strategies to target antisocial behaviour before it escalates into more serious offending, which may require apprehension. Such initiatives include targeted operations and temporary beat locations, where police target takeaway liquor outlets and the illegal consumption of alcohol. In addition, the rollout of the SupportLink Referral Management System provides a centralised mechanism for police to make targeted referrals for victims and offenders who require social services assistance. For offenders, the referral by police to social support aims to reduce the likelihood of reoffending and further contact with police.

74. Community Justice Centre (CJC)

The CJC delivers mediation training for local peacemakers from the Yuendumu Family Violence and Mediation Group. It is also involved with community safety working groups in collaboration with Central Desert Shire, the Northern Territory Police Force, Department of the Chief Minister and the Department of Housing. It collaborates with the Department of Correctional Services and community based Indigenous mediators to facilitate correctional centre conferencing between the offender and victim that reinforces re-integration prospects without continued violence.

The Ponki Tiwi Mediation Training Program received an Australian Crime and Violence Prevention Award in 2013 and the training has expanded to include participants from Lajamanu, Gunbalanya, Katherine and surrounding communities.

75. Alcohol Mandatory Treatment

The *Alcohol Mandatory Treatment Act* (NT) commenced on 1 July 2013. It is a legislative framework for the mandated assessment, treatment and aftercare of people who chronically misuse alcohol and who are either unlikely or unable to voluntarily access treatment options. This Act aims to stabilise and improve the health and social functioning of people, restore their capacity to make decisions about their alcohol use and personal welfare, and improve their access to ongoing treatment.

76. *Darwin Correctional Precinct*

On 8 September 2014 the new 1,048 bed Darwin Correctional Precinct was opened. Its design optimises inmate activities that help engage prisoners in programs, education, vocational education and prison industries. Inmates also undertake reparation, work release and programed activities.

South Australia

77. *Cross-Border Legislation*

The *Cross-border Justice Act 2009* (SA) facilitates the administration of justice in regions straddling the State's borders with Western Australia and the Northern Territory. (Western Australia and the Northern Territory have mirror / complementary cross-borders legislation in place.)

The legislation is directly aimed at persons who have a connection with a cross-border region (Aboriginal people living on regional or remote lands) and provides for these people to have court matters heard, orders to be supervised and custody to occur in any participating jurisdiction (South Australia, the Northern Territory and Western Australia).

The South Australian Department for Correctional Services (DCS) was an active participant in the Prisons and Community Corrections working groups as part of this Project, liaising with other Justice Agencies and Correctional counterparts interstate.

78. *Offender Management Plan*

The South Australian Offender Management Plan is a multi-agency response to manage the state's highest risk offenders. The critical component of the plan is the co-ordinated and managed focus on individual offenders, using the collective resources of participating agencies including South Australian Police, Correctional Services; Health and the Department of Families & Community (including Housing South Australia, Families South Australia and Disability Services).

The emphasis is on information sharing, which leads to informed decision making and a collaborative response that links agency interventions. By working together under a co-ordinated framework, responses by agencies to serious criminal behaviour are more effective and efficient. The plan focuses on two streams of multi-agency service delivery: Offender rehabilitation and law enforcement.

The rehabilitation stream involves providing or brokering services that address criminogenic needs. This includes, but is not limited to health, substance abuse, meaningful employment and housing needs. This is partnered with a law enforcement focus on the offender to limit the opportunity for offending; or to increase the probability of apprehension should offending continue.

79. *Aboriginal Services Unit*

Within the South Australia Department for Correctional Services is the Aboriginal Services Unit, established to service the needs of Aboriginal stakeholders as well as to monitor the department's implementation of recommendations from the Royal Commission into Aboriginal Deaths in Custody (1991). This unit works across the department at both strategic, and operational levels to provide advocacy for Aboriginal departmental staff, as well as oversee the development of culturally appropriate services.

Key activities include establishing a visiting elders program at the Adelaide Women's Prison, Mobilong Prison and Port Augusta Prison, and recruiting an Aboriginal visiting inspector.

Tasmania

80. Tasmania's imprisonment rate for Aboriginal and Torres Strait Islanders is significantly lower than any other state or territory at 467.9 per 100,000 adults in 2013–14. The average daily number of Aboriginal and Torres Strait Islander females in Tasmania's prisons has remained stable for a number of years according to the Australian Bureau of Statistics' publication *Corrective Services Australia* (with an average eight in custody in 2011, 11 in 2012 and six in 2013).

Restorative justice, justice reinvestment and diversionary measures

Queensland

81. Queensland Corrective Services provides Indigenous specific programs both in prisons and through various Probation and Parole offices across Queensland that are aimed at addressing Indigenous offender rehabilitation needs. In addition, a range of Indigenous specific services and facilities have been implemented in Queensland prisons, such as the Indigenous Elders Visiting Scheme, Indigenous Cultural Liaison and Cultural Development Officers, and Indigenous Cultural Centres.

82. Probation and Parole offices operate in Indigenous communities such as Mornington Island, Palm Island and Doomadgee, which provide confidence to the judiciary that Indigenous offenders can be managed in their community and diverted from prison where appropriate.

South Australia

83. The South Australian Government has a strong interest in activity that is underpinned by justice reinvestment principles, which involve working with communities to understand underlying causes of crime. A Justice Reinvestment South Australia Working Group has been meeting regularly since June 2012.

Western Australia

84. The Western Australia Department of Aboriginal Affairs supports the provision of Aboriginal community patrols in 14 locations across the state through service agreements with locally-based non-government organisations predominantly operated and staffed by Aboriginal people.

85. The patrols provide street-level, non-coercive interventions to assist people at risk of harm. The service is culturally sensitive and aimed at reducing unnecessary contact between Aboriginal people and the criminal justice system, by assisting those in situations of potential harm, taking them to a safer place and linking them with support services.

86. In 2013, the department reviewed the patrols across the state, and found strong community acceptance and support for the program and its community based operating model.

Circle sentencing

Australian Capital Territory

87. The ACT Government established a circle sentencing court in 2004 to address issues of over representation of Aboriginal and Torres Strait Islander people in the criminal justice system. The Galambany Court provides a culturally relevant sentencing process for eligible Aboriginal and Torres Strait Islander adults and youth. The Galambany Court sits within the Magistrates Court jurisdiction and involves Aboriginal and Torres Strait Islander community members in the court process as panel members. Galambany means 'I, we all, including you'. It recognises the various origins of people of Aboriginal and Torres Strait Islander descent living on Ngannawal country today. The court is a permanent fixture within the ACT Magistrates Court jurisdiction and the government has identified a number of strategies to strengthen its operations.

South Australia

88. South Australia operates a diversionary court called the Nunga Court (the regional Aboriginal name given to it by the local Aboriginal community). Piloted in June 1999 it was Australia's first Aboriginal Sentencing Court. The Nunga Court and the Aboriginal Sentencing Courts operate monthly across different regions of the state. Aboriginal Sentencing Courts are presided over by a magistrate who is assisted by Aboriginal Elders and respected persons. As they are sentencing courts, they do not hear trials or contested matters. They provide an opportunity for Aboriginal court users to have their voice heard in a culturally appropriate manner, and family members and supporters are encouraged to attend and speak directly to the court.

89. Aboriginal justice officers provide information about the location and operation of the courts, as well as support to Aboriginal court users and their families. They also advise magistrates and the court generally regarding appropriate services and programs that may assist in the court user's rehabilitation.

Indigenous youth in the criminal justice system

Australian Capital Territory

90. In recognition of the over representation of Aboriginal and Torres Strait Islander people in the criminal justice system and the disadvantage experienced by Aboriginal and Torres Strait Islander youth, the Restorative Justice Unit established the position of Indigenous guidance partner. The partner works with Aboriginal and Torres Strait Islander youth to support them through a restorative justice conference and help them complete their restorative justice agreement.

Western Australia

91. Western Australia's Regional Youth Justice Strategy in the Mid-West Gascoyne, Goldfields, Kimberley and Pilbara regions includes youth bail services, bail options, prevention and diversion officers, and dedicated juvenile justice team coordinators. It has proven successful in raising the diversion rate and reducing remands in custody, with fewer young people entering the formal justice system and detention centres. The Metropolitan Youth Bail Service provides short-term accommodation for young people eligible for bail, and has been expanded to locate responsible adults to assume responsibility for the release a young person from custody on bail.

Indigenous women in the criminal justice system

New South Wales

92. From 2011–12, solicitors from Wirringa-Baiya Aboriginal Women's Legal Centre, Women's Legal Services NSW and Hawkesbury Nepean Community Legal Centre have provided civil and family law advice to women in the Silverwater Women's, Dillwynia and Emu Plains Correctional Centres. The centres provided advice to 24 women a month and community legal education about topics including human rights law and other civil law matters.

Northern Territory

93. Alice Springs Correctional Centre has an industries shed, which involves 30 women prisoners in activities including food packaging, textiles, creative work and ragging operations. The new Darwin Correctional Precinct has a dedicated female section with a mother and babies unit to enable women to care for their young children while incarcerated. Industries are being developed to provide the women with meaningful employment, including in the food packaging, bakery and creative work areas.

Victoria

94. The Victorian Aboriginal Justice Agreement Phase 3 (AJA3) acknowledges that we need to work with women in the prison system both pre-and post release, and more importantly, their initial diversion. While the great majority of Koories in prison are male, the number of Koori women has been increasing, highlighting a lack of diversion options. The high proportion of Koori women on remand who subsequently do not get a custodial sentence is of particular concern. Not only does incarceration have a significant impact on individual Koori women, but it also has significant consequences for their communities, potentially exposing children to the risks of neglect, abuse, hunger and homelessness, and increasing their likelihood of adverse contact with the criminal justice system in future.

95. As part of this, AJA3 included a Victorian Equal Opportunity and Human Rights Commission research project that documented the experiences of Koori women within the justice system, particularly their experience of custody. This report, *'Unfinished business: Koori women and the justice system'*, was released in August 2013 and provides evidence to support diversionary programs for Koori women, as well as specific recommendations regarding the establishment of a culturally and gender appropriate model of diversion

Western Australia

96. The *Female Prisoners Plan 2012–2022* sets out the strategic and operational direction required to improve gender specific facilities, services and interventions. It also identifies actions required to successfully manage female prisoners including Indigenous female prisoners.

Implementation of recommendations of the Royal Commission into Aboriginal Deaths in Custody

Northern Territory

97. *Royal Commission Aboriginal Deaths in Custody*

All recommendations accepted by the Northern Territory Government have previously been implemented.

These include clarification of legislation and legislative reform, and for other jurisdictions to learn from Northern Territory practices in relation to the school-based constables program and Indigenous-specific recruitment programs. Significant legislative reform, particularly with the *Liquor Act 1978* (NT) and the *Alcohol Reform (Prevention of Alcohol Related Crime and Substance Misuse) Act 2011* (NT), has occurred.

98. *Coronial inquiries*

All government agencies must report on coronial recommendations that fall within their jurisdiction. For example, the Northern Territory Police Force maintains a central register of all inquest findings from the coroner directed at police, and provides bi-annual status reports on recommendation to the coroner's office.

On 17 September 2012, the coroner handed down findings on the unnatural death of a prisoner in police custody on 4 January 2012. Recommendations relating to detainee treatment, particularly for assisted carries, were incorporated into Northern Territory Police Force policy and the General Order - Custody updated to incorporate the coroner's findings. Annual operational safety and tactics training were also updated with techniques for assisted carries, and wheelchairs procured for use at the territory's four major watch houses.

A new position of custody superintendent was created with oversight of all watch houses across the territory, including periodic roster audits. Watch houses at Alice Springs and Darwin are now equipped with a medical room and custody nurse 12 hours a day and 24 hours over weekends, and the service recently extended to Katherine, with a room and nurse for 12 hours, six days a week.

An At-Risk of Suicide and Self Harm Policy was released in August 2013, which was developed in conjunction with stakeholders including the Department of Health. The document was developed recognising that Indigenous Australians take their own lives at younger ages than non-Indigenous Australians, with the rate of suicide for Aboriginal youth in the Northern Territory being five times higher than the national rate. The document recognises the complexities associated with prevention of suicide and self-harm, and sets out departmental principles and expectations with respect to at-risk responses.

Queensland

99. Since the Royal Commission into Aboriginal Deaths in Custody, Queensland Corrective Services have increased the proportion of secure cells with suicide resistant features across the correctional system to 93 per cent (as at 30 June 2014).

South Australia

100. Correctional Services continues to ensure that every reasonable measure is taken to identify offenders most at risk of self-harm and, wherever possible, prevent deaths in custody.

101. Prisoners are assessed for risk of self-harm when they enter the prison. Multidisciplinary High Risk Assessment Teams (HRAT) involving prison management, health and intervention staff have been established in each prison, and prisoners who are assessed to be at risk are monitored by the HRAT. As a result, prisoners may be separated for their own protection, the protection of others, or admitted to a health facility for forensic mental care. The HRAT also provides intervention and support to such prisoners.

102. In addition, the department's Aboriginal Services Unit coordinates the Prevention of Aboriginal Deaths in Custody Forum, which is held every six weeks at different prisons. This focuses on reducing reoffending and ongoing commitment to recommendations made as a result of the Royal Commission into Aboriginal Deaths in Custody. It provides an opportunity for Aboriginal prisoners to communicate issues important to them. As a result of these strategies, Aboriginal deaths in custody have drastically decreased. In 2013-14, there were no unnatural deaths of Aboriginal prisoners.

Victoria

103. The first phase of the Victorian Aboriginal Justice Agreement in 2000 committed the government to review of the recommendations from the Royal Commission into Aboriginal Deaths in Custody in partnership with the Koori community. The review report was tabled in the Victorian Parliament in October 2005. The justice related recommendations of the review were responded to through the Aboriginal Justice Agreement phase two. The Aboriginal Justice Agreement phase three continues this work.

Prison conditions and the provision of adequate health care to prisoners

Australian Capital Territory

104. The ACT Government's Health Directorate provides health services to detainees at a number of settings including at the territory's court cells, the adult correctional facility (the Alexander Maconochie Centre), the Periodic Detention Centre and at the Bimberi Youth Justice Centre.

105. An Aboriginal and Torres Strait Islander drug and alcohol liaison officer is also funded, as well as a mental health liaison officer to work with Aboriginal and Torres Strait Islander peoples both inside and outside the correctional system. Winnunga Nimmityjah Aboriginal Health Service, the ACT's Aboriginal community controlled health organisation, provides an outreach service to the territory's correctional facilities. This comprises medical and other team support to deliver health services to Aboriginal and Torres Strait Islander peoples in custody. The ACT Government's Health Directorate has a senior nursing position and the rotation of a psychiatric registrar attached to the service.

106. Gungan Gulwan Youth Aboriginal Corporation under an ACT Health service funding agreement (2013-16) provides an alcohol and other drug treatment and support service to young Aboriginal and Torres Strait Islander peoples who are at risk of or experiencing problematic alcohol, tobacco or other drug use. This service also includes outreach to the Alexander Maconochie Centre and Bimberi Youth Justice Centre.

Northern Territory

107. Comprehensive primary health services designed to meet the specific needs of Indigenous prisoners will be delivered at the new Darwin Correctional Precinct. This has the capacity to deliver on-site X-ray services and a range of allied health services according to demand. These are focused on addressing chronic disease, taking into account the early onset and prevalence of chronic disease among Aboriginal and Torres Strait Islander people.

108. During 2011–12, Northern Territory Police Force, in collaboration with the Department of Health, placed nurses in the Darwin, Katherine and Alice Springs watch houses. This was rolled out between December 2011 and April 2012 and corresponded with peak custody intake periods. It ensured that nurses assessed and monitored vulnerable members of the public and that those unfit to be in custody were appropriately referred to a medical facility.

109. The Department of Correctional Services' Healthy Lifestyles Strategy, directed at staff and prisoners in adult correctional centres, provides a framework to shape and shift the organisation's thinking and attitudes around four key initiatives:

- *No Joke! Quit the Smoke* – a quit smoking initiative
- *Take in Good Tucker!* – a healthy food initiative
- *Polish those Pearls!* – to address the connection between bad gums and perio-cardio disease
- *Listen' ear!* – to raise awareness that Indigenous people in particular have very high rates of all forms of inflammation and infection of the middle ear.

110. The department also provides a range of alcohol and other drugs programs to prisoners to reduce the incidence of violence, antisocial behaviour, injury and illness.

Queensland

111. All onsite health services at publically operated correctional facilities are provided by Queensland Health. The services are provided by competent multidisciplinary healthcare teams consisting of nursing, medical and allied health staff. The care provided to prisoners is of a standard comparable to that available to the general community. It is safe, patient-centred, socially appropriate, accessible, equitable and evidence-based care.

South Australia

112. The South Australian Prison Health Service provides prisoners, including Aboriginal prisoners, with access to comprehensive, coordinated health care. Health care provision is focused on meeting the complex multiple health problems experienced by Indigenous Australians, as well as co-morbidities compounded by other social and historical abuses. Given the over-representation of Aborigines in the prison population, the health of this group is fundamentally relevant to the health of the wider Aboriginal community.

Tasmania

113. In recent years the Tasmanian Government has made a significant investment in prison infrastructure, including improved facilities for exercise, education and accommodation. New prison facilities were opened in 2006. All those entering prison in Tasmania are medically assessed and may be referred for treatment. Suicide and self-harm behaviour is intensively managed by the Tasmania Prison Service Therapeutic Services Unit, Correctional Primary Health Services and a dedicated Crisis Support Unit.

Victoria

114. The second phase of the Aboriginal Justice Agreement articulated the need to develop an evidence base to guide the development and enhancement of culturally appropriate mental health services for Aboriginal prisoners.

115. The third phase of the agreement, launched in 2013, committed to a Koori prisoner mental health and cognitive function study. Now complete, this study made a number of recommendations to improve the mental health of Aboriginal prisoners, including that the department develop an action plan to underpin mental health service delivery for Aboriginal prisoners based on the social and emotional wellbeing model of mental health. Key themes emerging from the recommendations were to:

- invest in programs and services that build resilience, promote positive social and emotional wellbeing and prevent mental health problems from developing
- increase the cultural awareness, understanding and capacity of the prison workforce to respond to Aboriginal people and their needs
- improve the cultural responsiveness of services and programs by embedding cultural values in service design and policy
- strengthen partnerships with Aboriginal community organisations to support transition and continuity of care
- improve reporting and data to inform future service planning and delivery.

116. In response to the findings of the Koori Prisoner Study, the Aboriginal Social and Emotional Wellbeing Strategy was developed and endorsed at the Aboriginal Justice Forum in 2014.

Western Australia

117. Western Australia's Drug and Alcohol Office implemented sobering-up centres in response to the 1988 Royal Commission into Aboriginal Deaths in Custody. This recommended establishing safe places for intoxicated people and the decriminalisation of public drunkenness. Sobering-up centres provide a safe, care-oriented environment where people intoxicated in public can sober up. This diverts them from police lock-ups and reduces the likelihood of them causing harm to themselves or others in the community. Services include overnight care in a supervised setting, showers, laundry facilities and meals. Alcohol intervention and supported referral is also available. There are currently 10 sobering-up centres in Western Australia with a total capacity of 173 beds.

Concluding Observation 21 - Preservation of national languages

Indigenous languages

New South Wales

118. OCHRE (Opportunity, Choice, Healing, Responsibility and Empowerment) is the state's plan for Aboriginal affairs. Released in April 2013, OCHRE outlines a number of key initiatives, including Aboriginal Language and Culture Nests, which support Aboriginal students to learn, reclaim, revitalise and maintain Aboriginal languages. The nests are viewed as a conduit to community empowerment, cultural self-determination, cultural reconnection/connection and cultural health and wellbeing. They will create learning pathways for Aboriginal students, teachers and community members, and help to build identity, self-esteem and resilience amongst Aboriginal students and community.

Indigenous languages in schools

New South Wales

119. The Minister for Aboriginal Affairs launched a revised K-10 Aboriginal Languages Scope and Sequence on 13 December 2013. This provides the basis to develop Aboriginal language units of work and will guide program development in schools and communities with Aboriginal language programs.

120. Five language and culture nests have been established, which seek to revitalise Aboriginal languages through a coordinated and strategic approach. They provide links between Aboriginal communities, schools, TAFEs and universities in language regions. The nests are:

- improving knowledge of, and competency in, Aboriginal languages
- strengthening Aboriginal identity, pride and community resilience
- increasing the number of language learners
- increasing the number of language teachers
- helping to increased school attendance and retention.

Northern Territory

121. The committee's concern regarding the Northern Territory Government's abolition of bilingual education funding is noted. The government's *A share in the future Indigenous education strategy 2015–2024* gives direction for future work regarding the teaching and learning of Indigenous languages and cultures in schools (see *A Share in the future – review of Indigenous education in the NT*, Bruce Wilson, July 2013). This includes a focus on further developing operational policy surrounding effective teaching of Indigenous languages and cultures, identifying system and school level resources and skills required for the effective teaching of Indigenous languages and cultures, as well as improving access to the quality of programs in schools. The government is currently strengthening bilingual education in eight designated bilingual schools.

Queensland

122. Queensland state schools can choose to teach Aboriginal and Torres Strait Islander Languages.

123. When selecting the language to offer, Queensland state schools consult with their community and consider a range of factors to ensure a quality language program. This includes ensuring continuity of learning from primary to secondary school as well as ongoing availability of quality teachers.

124. The Queensland Curriculum, Assessment and Reporting Authority offers a syllabus for Aboriginal and Torres Strait Islander Languages for Prep – Year 10 and for Years 11 – 12.

125. To support schools to implement this syllabus, the Department developed the Aboriginal and Torres Strait Islander Languages in Education Queensland Schools: A guide to implementing the Aboriginal and Torres Strait Islander Languages Syllabus.

126. This guide provides comprehensive advice to principals on a range of topics including how to establish an Aboriginal and Torres Strait Islander Language program in their school through consultation with their local community.

South Australia

127. The South Australian Government delivers Aboriginal cultural studies in the state curriculum. Over 4,000 students each year in state schools learn Aboriginal languages, with a ratio of about 2:3 Aboriginal versus non-Aboriginal students. This highlights that non-Aboriginal students are studying Aboriginal languages, which is a positive reconciliation strategy. The group of strong languages still spoken in the remote north-western regions of the state are further supported by the development of first-language teaching materials and programs, and associated professional learning for staff.⁴

128. The Department for Education and Child Development also employs Aboriginal culture and language instructors in schools and supports the study of Aboriginal languages at senior secondary school through the South Australia Certificate of Education subject *Australian Languages*. TAFE and the University of Adelaide also run the Anangu Pitjantjatjara Yankunytatjara (APY) program offering courses including *Learning an endangered Indigenous language* to Aboriginal students living on the APY Lands. Universities facilitate Aboriginal student entry and offer programs such as Indigenous studies and a Pitjantjatjara language and culture course.

Western Australia

129. In 2014, 16 Aboriginal languages were being taught to Aboriginal and non-Aboriginal students in 49 public schools across remote, regional and metropolitan areas of Western Australia. There are 12 remote, 24 regional and 11 metropolitan schools. Data from the August 2014 Census confirmed that 6,170 Kindergarten to Year 12 students are learning an Aboriginal language. These are not bilingual programs.

130. For Years 11 and 12, Western Australia schools can offer, in the dialect of their choice, the Aboriginal Languages of Western Australia course. Year 11 and 12 eligible Indigenous students can learn English through English as an Additional Language or Dialect courses.

Minority languages

Western Australia

131. Through the Community Languages Program, funding was allocated each year to support not-for-profit community organisations to promote language and culture through out of school hours tuition for school-aged children. In January 2014, administration of the program was transferred from the Department of Education to the Office of Multicultural Interests.

⁴ Further information: in Department for Education and Child Development *Aboriginal Strategy 2013–2016*

http://www.aboriginaleducation.sa.edu.au/files/links/Aboriginal_Strategy.pdf and

Department for Education and Child Development Aboriginal Strategy policy regarding the Australian Curriculum: Curriculum, Pedagogy, Assessment and Reporting Policy for Reception – Year 10 available at:

http://www.decd.sa.gov.au/teachingandlearning/files/pages/Policy/DECD_Curriculum_Pedagogy_1.pdf

Concluding Observation 22 - Eradicating socio-economic disparities, cultural appropriateness of public service delivery, Indigenous self-empowerment

Indigenous Opportunities Policy

Australian Capital Territory

132. The ACT Government supports the inclusion of Aboriginal and Torres Strait Islander students in vocational education and training through a range of support services and initiatives. These include wrap around services, fee concessions and foundation skills training. The importance of increased access to vocational education and training for Aboriginal and Torres Strait Islander students was also recognised through specific training targets in the *National partnership agreement on skills reform* (2012–2017). The ACT is on track to exceed the agreed Aboriginal and Torres Strait Islander student commencement targets under the agreement. The ACT has also provided grants for a range of culturally appropriate adult and community education programs including in Aboriginal and Torres Strait Islander leadership and governance, diversity mentoring, and pre-vocational and vocational training.

Northern Territory

133. The *Framing the future* foundation plan for the Northern Territory sets the guidelines for a prosperous economy, a strong society, a confident culture and a balanced environment.⁵ One of the three objectives of ‘to develop a confident culture’ is to recognise Aboriginal culture and allow territorians to follow their traditions and languages to focus on an inclusive and participative society. Actions are focused on promoting recognition and respect for Aboriginal people, organisations, culture and language. The facilitation of Indigenous economic development is an integral part of this.

134. The government also has a strategy in place to increase the number of Indigenous employees: the Indigenous Employment and Career Development Strategy 2010–2012. Indigenous employment in the Northern Territory public sector had increased from 4.6% in June 2002 to 8.1% in June 2011.

South Australia

135. The South Australian Government committed to close the gap between Aboriginal and non-Aboriginal Australians in areas such as life expectancy, child mortality, education and employment by making government and non-government services more accessible, culturally appropriate and responsive. It has committed to developing a state-wide Aboriginal Economic Participation Strategy to guide and coordinate state government activity that will enable all South Australians to increase opportunities for economic participation and improve economic outcomes for Aboriginal people.

136. To address socio-economic disparities and provide for culturally appropriate service delivery, the government has also:

- amended the South Australian Constitution to recognise Aboriginal peoples as traditional owners and occupants of state land and waters
- committed to drafting legislation to recognise the self-determining governance structures of Aboriginal communities, and the unique cultural authority of those communities. The legislation will set out guiding principles for cooperation, and allow for agreements to be negotiated between government and certain Aboriginal groups. This will be complemented by community capacity building initiatives to support improved Aboriginal regional governance

⁵ Strategy available at: http://www.dcm.nt.gov.au/framing_the_future

and improved recognition of Aboriginal culture and values in non-Aboriginal organisations and across the community

- developed the Aboriginal Regional Authorities policy to harness the strengths of the Aboriginal community to most effectively represent Aboriginal interests. The policy is to be implemented in 2015
- committed all state government agencies to developing new State Government Reconciliation Action Plans, to guide reconciliation activity and accountability.

137. The Department for Communities and Social Inclusion's Aboriginal Priorities Plan 2012–13 achieved over 50% of its objectives, with many of the remaining actions being considered as priorities in the next plan. A new priorities plan is currently being scoped and implementation is anticipated from mid-2015. The plan will document a range of actions under the following four priority areas:

- Aboriginal young people
- Aboriginal women
- Aboriginal residents of remote communities
- governance and community engagement.

138. Cultural awareness and operational training is conducted for department staff with a focus on how to work appropriately and effectively with people from culturally and linguistically diverse groups. The department is aiming for at least 80% of its staff to have completed the training by June 2015.

Tasmania

139. The Department of Education is supporting a number of resources and programs to close the gap, including Aboriginal education workers (supporting Aboriginal perspectives in schools) and Aboriginal education officers (to support the retention of Aboriginal secondary students). The department's Enrolment, Attendance and Participation Policy, and Enrolment Procedures, support the integration of students for whom English is an additional language into their local schools, supporting social cohesion and language.

140. Following a review into the accessibility of services in 2013, a Multicultural Access Point website and Multicultural Language Services Guidelines were launched for Tasmanian Government agencies. The website contains information about housing access, education options, transport, social events and employment opportunities for migrants. The guidelines, which include the provision of interpretive services, assist people with limited English language proficiency in communicating with service providers.⁶

Victoria

141. The Victorian Aboriginal Affairs Framework 2013–2018 has been established to improve life outcomes for Aboriginal Victorians. Central to this is improved access to services. The framework identifies a set of seven key access criteria to guide evaluations of service effectiveness and future system reforms, and to provide more effective access for Aboriginal Victorians and improve outcomes consistent with framework priorities.

142. The framework seeks to ensure that existing services are inclusive and respond appropriately to the needs of Aboriginal Victorians. All departments now have plans in place to action these priorities.

⁶ Further information: <http://www.multicultural.tas.gov.au/> & www.dpac.tas.gov.au/multicultural

143. In December 2013, Victoria released the Victorian Aboriginal Economic Strategy 2013–2020. This builds partnerships between Aboriginal Victorians and the public and private sectors and takes an integrated approach to Aboriginal economic participation across education, skills development and training, access to jobs, and business and wealth building opportunities.

Concluding Observation 23 - International students and racially motivated violence

New South Wales

144. Bureau of Crime Statistics and Research data indicates:

- in 2012–13, there were about 233 incidents that involved racial/ethnicity prejudice, of which about 61 resulted in charges being laid. Of these, 73 female and 120 male victims were identified
- in 2013–14, there were about 154 incidents that involved racial/ethnicity prejudice, of which about 42 resulted in charges being laid. Of these, 44 female and 91 male victims were identified.

Tasmania

145. The Office of the Anti-Discrimination Commissioner in Tasmania collects information on incidents of abuse and harassment as part of its *Report it!* project. In 2013–14, the majority of reports related to incidents in which the person's race or nationality was believed to be the basis for the action. Of the people targeted, 16% were Aboriginal or Torres Strait Islanders; 16% were migrants or humanitarian entrants; and 15% were international students.

Concluding Observation 27 - Human rights education

Australian Curriculum

Australian Capital Territory

146. The ACT is committed to implementing the Foundation to Year 10 Australian Curriculum.

147. The curriculum includes the in-depth study of human rights from historical, contemporary and legal perspectives. It also allows students to explore different perspectives about Australia's national identity, including those of Aboriginal and Torres Strait Islanders, and a range of social and cultural values and beliefs.

148. The senior secondary Australian Curriculum builds on students' knowledge of social, cultural and political understandings, the origins and significance of human rights movements, and organisations and laws that have helped define the modern world.

**AUSTRALIA'S COMBINED 18th, 19th AND 20th REPORTS
UNDER THE CONVENTION ON THE ELIMINATION OF ALL
FORMS OF RACIAL DISCRIMINATION**

**APPENDIX 2
Non-Government Organisation Submissions**

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I. NON-GOVERNMENT ORGANISATION SUBMISSIONS

Consultation with Non-Government Organisations

1. The Australian Government values the important role that civil society and non-government organisations play in the United Nations human rights system; particularly in ensuring transparency and accountability in human rights treaty body reporting.
2. In August and December 2014 civil society was consulted on the ideal format for consultation on Australia's *Combined 18th, 19th and 20th Reports under the Convention on the Elimination of All Forms of Racial Discrimination* (CERD) and this informed the Government's consultation processes; led by the Department of Foreign Affairs and Trade (DFAT).
3. In February 2015 over eighty organisations were invited to express interest in reviewing the draft CERD report. This included a number of peak bodies, and organisations which represent a wide range of disadvantaged groups including indigenous organisations, disability organisations and refugee advocacy groups.
4. DFAT held a half-day roundtable discussion on the draft CERD report in Canberra on 8 May 2015.
5. DFAT also made the draft report available for consideration by NGOs and accepted written submissions for over six weeks, from 8 April to 25 May 2015.
6. Input from NGOs and civil society was then consolidated and shared across the federal, state and territory governments, and was integral to the finalisation of the report.

Non-Government Organisation Participants

7. The following list of organisations participated in the roundtable discussion on the CERD report in Canberra on 8 May 2015:

Amnesty International	Human Rights Law Centre
Australian Human Rights Commission	Law Council of Australia
Australian Council for Human Rights Education	National Association of Community Legal Centres (NACLC)
Civil Liberties Australia	Slavery Links Australia
Federation of Ethnic Communities' Councils of Australia (FECCA)	

Non-Government Organisation Submissions

8. The following list of organisations made written submissions on the draft CERD report in between May and July 2015:

Amnesty International	Federation of Ethnic Communities' Councils of Australia (FECCA)
Australian Council for Human Rights Education	Law Council of Australia
Australian Human Rights Commission	Refugee Council of Australia

**AUSTRALIA'S COMBINED 18th, 19th AND 20th REPORTS
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FORMS OF RACIAL DISCRIMINATION**

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I. MIGRATION LEGISLATION AMENDMENTS 2014

The Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 (Cth)

1. In December 2014, the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 (Cth) was passed. This Act reintroduced temporary protection visas for Illegal Maritime Arrivals (IMAs) who are found to engage Australia's protection obligations and meet all other visa criteria, including health, security, character and identity requirements.
2. The enactment of the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 (Cth)* has clarified Australia's international law obligations under the Refugees Convention. This Act makes it clear, through new section 197C, that the removal power under section 198 of the *Migration Act 1958 (Cth)* is available independent of assessments of Australia's non-refoulement obligations, where a non-citizen meets the circumstances specified in the express provisions of section 198. Section 197C does not, and is not intended, to take away opportunities set out elsewhere in the Migration Act which enable the Government to be satisfied that the removal of a person will not violate Australia's non-refoulement obligations.
3. The Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 also removes most references to the Refugees Convention from the Migration Act and instead creates a new, independent and self-contained statutory framework which articulates Australia's interpretation of its protection obligations under the Refugees Convention. It is not the intention of the Australian Government, however, to resile from Australia's protection obligations under the Refugees Convention, but rather to codify Australia's interpretation of these obligations within certain sections of the Migration Act.



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**Consideration of reports submitted by States parties under
article 9 of the Convention**

**Concluding observations of the Committee on the Elimination of Racial
Discrimination: Australia**

Addendum

**Information received from the Government of Australia on the
implementation of the concluding observations^{*}**

[29 August 2011]

**Reply to the recommendations contained in paragraph 11 of the
concluding observations**

The Australian Human Rights Commission's powers and functions

1. The Australian Human Rights Commission (AHRC) is an independent statutory authority that meets the criteria for independent human rights institutions set out in the Paris Principles. The AHRC currently holds an 'A status' accreditation from the International Coordinating Committee (ICC) Subcommittee on Accreditation.
2. The AHRC's functions include: education and awareness raising, investigating and conciliating complaints about unlawful discrimination, conducting national inquiries and reporting on issues of major human rights concerns. The AHRC also advises Government on existing and proposed legislation and its consistency with human rights standards recognised by Australia.

^{*} In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation service.

3. The project to consolidate Commonwealth/Australian anti-discrimination laws will review the design of the complaints handling process and the related role and functions of the AHRC.
4. The Australian Government acknowledges the valuable role the AHRC plays in promoting and protecting human rights in Australia. The Government works in partnership with the AHRC to build human rights capacities in Australia and abroad.
5. For example, as part of Australia's Human Rights Framework, the AHRC is:
 - (a) Contributing to the development of new human rights education materials and an evaluation strategy for the Human Rights Public Sector Education Program, and
 - (b) Providing advice about the targeting of grants under Australia's Human Rights Framework Education Grants Program.
6. The Government also works with the AHRC, the Asia Pacific Forum of National Human Rights Institutions, other governments, civil society and regional governmental organisations to establish and build the capacity of national human rights institutions across the region. In October 2010, the Government committed to extending its work with the AHRC to build the capacity of the Association of Southeast Asian Nations Intergovernmental Commission on Human Rights.

Funding

7. The Government is aware of concerns raised by the AHRC regarding its level of funding.
8. For the 2011-12 financial year, the AHRC received A\$16.49 million in appropriation funding and has an average of 118 full time staff members at any one time.
9. Australia's Human Rights Framework, released in April 2010, provides additional funding of A\$6.6 million from 2010 to 2014 to the AHRC to expand its human rights education role and enhance its capacity to respond to inquiries and conciliate complaints.
10. The AHRC has also received additional funding of A\$4.3 million over four years to continue its work addressing social marginalisation and alienation of international students, youth and women from new and emerging communities (such as African communities).
11. The Government will also provide A\$5.7 million over four years in new funding for the AHRC to:
 - (a) Restore the stand-alone positions of Race and Disability Discrimination Commissioners; and
 - (b) Fund Australia's first stand-alone Age Discrimination Commissioner, the Hon Susan Ryan AO, and a support team in AHRC.
12. The Australian Government will continue to adequately fund the AHRC.

Race Discrimination Commissioner

13. On 29 July 2011, the Australian Government appointed Dr Helen Szoke as Australia's stand-alone Race Discrimination Commissioner. Dr Szoke will commence this role on 5 September 2011.
14. As Race Discrimination Commissioner, Dr Szoke will work with the community, employers and the Government to combat racism and intolerance, promote racial equality and cultural diversity, and give a voice to those who have suffered discrimination.

15. Mr Graeme Innes will continue to perform the role of Race Discrimination Commissioner until Dr Szoke begins with the AHRC. Dr Szoke's appointment will allow Mr Innes to devote his attention to addressing the issues faced by Australians with disability.

Reply to the recommendations contained in paragraph 16 of the concluding observations

16. The Australian Government has fully reinstated people's rights and protections under the *Racial Discrimination Act 1975* (RDA) in relation to the Northern Territory Emergency Response (NTER). Under legislation that was passed by the Parliament on 21 June 2010, all of the provisions in the NTER legislation that suspended the operation of the RDA are removed. In addition, all of the provisions in the NTER legislation that deemed certain measures, such as income management, five-year leases and alcohol and pornography restrictions to be special measures have been repealed. The repeal of these provisions took effect from 31 December 2010. People now have the right to take appropriate proceedings under the RDA in the Australian Human Rights Commission and the courts. Whether there has been a breach of the RDA will be a matter for the Australian Human Rights Commission and the courts to consider.

17. A new non-discriminatory income management scheme was introduced on 1 July 2010. The new income management scheme is RDA compliant. Before introducing the legislation, the Government undertook extensive consultations with Indigenous people across the Northern Territory (NT).

18. The Australian Government acquired five year leases by legislation over 64 communities as part of the NTER, as an interim measure to ensure security of tenure for government facilities; the roll out of property and tenancy management reforms; and the implementation of government programs dependent on secure tenure. No resident or existing occupier of the areas covered by the leases were removed from the area as a result of the leases. The Australian Government is committed to making fair rent payments to the land owners of the five year lease communities. The rent payments were independently determined by the Northern Territory Valuer-General and the Australian Government commenced making rent payments in accordance with these determinations as required under the NTER legislation. The Australian Government has been working with the Northern Land Council, the Central Land Council and the Northern Territory Valuer-General in order to address concerns with rental amounts.

19. The Australian Government is not continuing the five year leases beyond their expiry in August 2012 and is working with communities on the negotiation of voluntary, longer term leases.

20. Leases recognise the rights of Indigenous people as owners of land, by negotiating agreed land use arrangements with traditional owners prior to the construction of new housing and infrastructure on Indigenous land. Ownership of leased land remains with the Indigenous owners. Creating tenure arrangements which provide security to landowners, investors and land users, through mechanisms such as voluntary long term leasing, is a critical step in recognising Indigenous ownership and making land users responsible for assets. In relation to community housing, leases ensure that governments, rather than land owners, take responsibility, and are accountable, for housing construction standards, for long term repairs and maintenance programs and tenancy management systems. Before leasing was introduced, responsibility for housing maintenance was often unclear.

21. Commercial investment on Indigenous land is hampered in that it is generally communal and inalienable, preventing landowners individually or corporately from raising

finance for commercial purposes and home ownership. However, voluntary long term leases have the potential to enable individuals to pursue home ownership and business opportunities on Indigenous land, as is available elsewhere in Australia.

22. The Australian Government has committed substantial funds to address social disadvantage of Indigenous people in the NT including \$A1.2 billion through the Northern Territory Emergency Response.

23. As at the end of 2010, this has enabled, for example, the provision of:

- More than 60 additional police
- 18 additional police stations
- Night patrols in 80 communities
- 22 safe houses
- 146 additional teachers in NT schools
- More than 7,000 meals each school day for school children in remote communities
- 92 community stores providing a better range of healthy food through being licensed, and
- A comprehensive program of over 10,600 child health checks and over 24,000 follow-up specialist services

24. In the extensive consultations undertaken in 2009, a common theme expressed was that children, the elderly and women were now feeling safer, were better fed and clothed, were getting a better night's sleep, and there was less inappropriate pressure on income support recipients for money. People felt that this was due to the combined effects of various NTER measures, including alcohol restrictions, community stores licensing, an increased police presence in remote communities and income management (which at the time of those consultations was an NTER measure).

25. Further, the Government has committed \$A1.7 billion for remote Indigenous housing in the NT over 10 years. As at mid May 2011, more than 1,050 Indigenous people have been employed in housing and construction works as a result of this investment.

26. In addition, 2,241 ongoing jobs were created in Australian and Northern Territory Government service delivery, moving people out of positions in Community Development Employment Projects into employment with wages, superannuation and other benefits.

27. Nothing in the NTER is intended to restrict Indigenous cultural development. The Closing the Gap agenda recognises and builds on the strengths of Indigenous cultures and identities, and the Australian Government continues to support Indigenous culture, languages, music and broadcasting through a range of funding and grants programs to arts and cultural organisations and individual artists from across Australia.

28. On 22 June 2011, the Government announced its next steps to improve the future of Indigenous Australians living in the Northern Territory. The Government will be undertaking consultations with Aboriginal people and communities on future plans to tackle disadvantage, with a particular focus on improved education for children, expanded employment opportunities and tackling alcohol abuse. The Government released a discussion paper, *Stronger Futures in the Northern Territory*, as the basis for consultations over the coming months. The paper invites community views on where the NTER worked, where it could be improved and what more needs to be done in future.

Reply to the recommendations contained in paragraph 23 of the concluding observations

29. The Australian Government would like to note the following points about safety concerns of international students and about the “racial motivation” attributed by the Committee to assaults against international students in Australia.

Death in the State of Victoria

30. The Committee comments on what it describes as a “series of racially motivated assaults of Indian students, including one death, in the State of Victoria”. The reference to one death is assumed to be the tragic murder of Indian student Mr Nitin Garg on 2 January 2010, which is still before the Victorian courts. In the series of court hearings on this murder held during 2010-11 there has been no evidence presented that would indicate that this crime included racial motivation. On 20 April 2011, an Australian teenager pleaded guilty to the murder and informed the Victorian Supreme Court that the motive was to steal Mr Garg's mobile phone. On 6 June 2011, prosecutor Amanda Forrester told the court that there was “no evidence of any racial motivation in this crime”. One person has already been convicted and sentenced for being an accessory to this offence. No evidence of racial motivation was presented in that case.

Alleged failure to address “racially motivated violence”

31. The Australian Government rejects the Committee's assertion that Australian governments at state and federal level, have failed “to address the racial motivation” of assaults on international students in Australia.

32. Australia has zero tolerance for racism. A small number of assaults in Australia, as in other countries, have racial overtones. Offenders face the full force of the law. The Australian Government and community condemn any assaults, irrespective of nationality or ethnicity. Such crimes are an affront to our values and are anathema to our view of modern Australia. In Australia, the rule of law is fundamental. We allow the processes of investigation, prosecution and sentencing to take their course.

33. Australian jurisdictions have legal provisions to address ethnic, racial and religious hatred whenever such crimes take place. Australian State and Territory law enforcement authorities have been particularly responsive to community and international concerns that any assaults on international students may have been racially, ethnically or religiously motivated.

34. Victoria hosts around one half of all Indian students in Australia. The Victorian Government has sought to further strengthen law enforcement in response to allegations of racial assaults on Indian students studying in Victoria. In 2009, Victoria strengthened sentencing laws to better ensure judges take into account hatred for, or prejudice against, a particular group when sentencing anyone accused of criminal assaults or other such attacks.

35. In April 2010, the Victorian Government announced police numbers would be increased by 1,966 over the next five years - the biggest one-off boost to police numbers in Victorian history. Approximately 600 additional police officers have already been deployed, including to crime hot spots and public transport. Police have also been given stronger powers to combat violence and antisocial behaviour, including additional search powers for weapons in designated areas.

36. The Australian Government also implements preventative measures to address racism. As part of the Government's new multicultural policy, for example, a National Anti-Racism Partnership and Strategy is being developed. The National Anti-Racism

Strategy will focus on five key areas: research and consultation, education resources, public awareness, youth engagement; and ongoing evaluation.

Lack of relevant national data on victims of crime

37. Australian Police forces do not routinely collect data on victims' nationality, ethnicity or immigration status, but the Australian Government has recognised the need for credible data on crimes against international students. An Australian Institute of Criminology (AIC) study on crimes against international students was already in progress prior to the consideration by the Committee on the Elimination of Racial Discrimination of this issue. The AIC study was released on 11 August 2011. We have provided a copy of the 172 page report with this response. The report is available on the AIC website (www.aic.gov.au).

38. The analysis was based on cross-matching Student visa data from the top five source countries (China, India, Republic of Korea, Malaysia, United States) for the period July 2004 to May 2010 with police data in each Australian jurisdiction. Australia's Department of Immigration and Citizenship submitted an application for a Public Interest Determination by the Privacy Commissioner to enable the use of Student visa data in the study and this was granted in May 2010. No personal information from the AIC's study was published. There was a 21-day period in which affected current and former students could opt out of the study.

39. The nature of the data did not allow the AIC to engage in specific analysis of racial motivation. That said, there was nothing in the overall findings that lends support to the view that Indian students have been singled out primarily for racial reasons.

40. Key findings from the study were that rates of assault for Indian students were lower than or on par with rates for the general Australian population. Rates of robbery against Indian students were higher than average for Australians in larger states for most years. The proportion of robberies against Indian students occurring at commercial locations was approximately double that recorded for students from other countries. Over half of robberies against Indian students on commercial premises occurred at service stations.

41. The report noted that robbery is an opportunistic crime. The higher rates of robbery against Indian students, compared with other international students, and Australian comparison populations, appeared to be more likely to occur because of a range of factors: in particular, differences in employment, with large numbers of Indian students working in higher-risk employment (taxi driving and in convenience/fast food stores and service stations), working evening/night shifts and their use of public transport.

42. As the data for the study did not include offender profiles, the AIC could not engage in specific analysis of racial motivation. The fact that assault rates on Indian students were either below or the same as the rates of assault for the general Australian community suggests that race was not a primary motivation.

43. The Australian Government will consider other options for collecting and analysing data on victims of crime. The AIC study will inform future work in this area.

International student welfare

44. In 2009, the Council of Australian Governments commissioned an International Students Strategy for Australia which was launched in October 2010. The Strategy outlines initiatives to address four key areas of concern including student wellbeing, consumer protection, the quality of education and the availability of better information for students. These initiatives include a student personal safety guide, information portal, a national community engagement strategy and a requirement for all international education providers

to develop a provider student safety plan. The initiatives build on actions already taken by Australian governments to ensure international students remain safe and come home with a first-class education and a great Australian experience.

45. In January 2010, the Victorian Government launched an International Student Care Service, a 24-hour service where international students can get greater access to accommodation, counselling, legal services, emergency and welfare assistance. In May 2011, the Victorian Government announced funding of \$A3.7 million over four years to maintain the International Student Care Service.

46. Australia's federal Minister for Tertiary Education, Skills, Jobs and Workplace Relations released an International Student Survey in December 2010. The key findings of the survey included that 84 per cent of international student respondents were 'satisfied' or 'very satisfied' with their study experience and 86 per cent were satisfied with their overall living experience in Australia. 85 per cent of tertiary student respondents indicated satisfaction with the level of support that they received on arrival to Australia. The large majority of international students indicated that they felt 'fairly safe' or 'very safe' on campus – a view expressed by 96.8 per cent of male and 95.6 per cent of female respondents.

47. The Australian Government continues to implement recommendations from the 2010 Review of the Education Services for Overseas Students (ESOS) Act by the Hon Bruce Baird AO, which complement the student welfare objectives of the International Students Strategy for Australia. Greater protection for international students will be available following the enactment of the first tranche of the legislative changes recommended by the Baird Review. The ESOS Amendment Act, which commenced on 8 April 2011, aims to protect international students by further strengthening education providers' registration requirements and expanding the role of the Commonwealth Ombudsman for external complaints by international students relating to private providers.

48. Also relevant to student welfare, the Australian Government appointed the Hon Michael Knight AO to undertake a strategic review of Australia's student visa program in 2011, and the report is being considered by government. Australia would be pleased to keep the Committee informed of new developments relevant to international student welfare in Australia.

**Australian Government response to 27 August 2010
Concluding Observations of the UN Committee on the
Elimination of Racial Discrimination (CERD)**

CERD Concluding Observation 11

While taking account of the State party's commitment to the Australian Human Rights Commission (AHRC), the Committee regrets the absence of a full-time Race Discrimination Commissioner since 1999 and notes with concern the challenges the AHRC faces regarding limited powers, capacity and funding (art. 2).

The Committee urges the State party to support the proper performance of the AHRC, through adequate financing and staffing, including through the appointment of a full-time Race Discrimination Commissioner. It also recommends that the State party consider expanding the powers, functions and funding of the AHRC.

The Australian Human Rights Commission's (AHRC) Powers and Functions

The Australian Human Rights Commission (AHRC) is an independent statutory authority that meets the criteria for independent human rights institutions set out in the *Paris Principles*. The AHRC currently holds an 'A status' accreditation from the International Coordinating Committee (ICC) Subcommittee on Accreditation.

The AHRC's functions include: education and awareness raising, investigating and conciliating complaints about unlawful discrimination, conducting national inquiries and reporting on issues of major human rights concerns. The AHRC also advises Government on existing and proposed legislation and its consistency with human rights standards recognised by Australia.

The project to consolidate Commonwealth/Australian anti-discrimination laws will review the design of the complaints handling process and the related role and functions of the AHRC.

The Australian Government acknowledges the valuable role the AHRC plays in promoting and protecting human rights in Australia. The Government works in partnership with the AHRC to build human rights capacities in Australia and abroad.

For example, as part of Australia's Human Rights Framework, the AHRC is:

- contributing to the development of new human rights education materials and an evaluation strategy for the Human Rights Public Sector Education Program, and
- providing advice about the targeting of grants under Australia's Human Rights Framework Education Grants Program.

The Government also works with the AHRC, the Asia Pacific Forum of National Human Rights Institutions, other governments, civil society and regional governmental organisations to establish and build the capacity of national human rights institutions across the region. In October 2010, the Government committed to extending its work with the AHRC to build the capacity of the Association of Southeast Asian Nations Intergovernmental Commission on Human Rights.

Funding

The Government is aware of concerns raised by the AHRC regarding its level of funding.

For the 2011-12 financial year, the AHRC received A\$16.49 million in appropriation funding and has an average of 118 full time staff members at any one time.

Australia's Human Rights Framework, released in April 2010, provides additional funding of A\$6.6 million from 2010 to 2014 to the AHRC to expand its human rights education role and enhance its capacity to respond to inquiries and conciliate complaints.

The AHRC has also received additional funding of A\$4.3 million over four years to continue its work addressing social marginalisation and alienation of international students, youth and women from new and emerging communities (such as African communities).

The Government will also provide A\$5.7 million over four years in new funding for the AHRC to:

- restore the stand-alone positions of Race and Disability Discrimination Commissioners; and
- fund Australia's first stand-alone Age Discrimination Commissioner, the Hon Susan Ryan AO, and a support team in AHRC.

The Australian Government will continue to adequately fund the AHRC.

Race Discrimination Commissioner

On 29 July 2011, the Australian Government appointed Dr Helen Szoke as Australia's stand-alone Race Discrimination Commissioner. Dr Szoke will commence this role on 5 September 2011.

As Race Discrimination Commissioner, Dr Szoke will work with the community, employers and the Government to combat racism and intolerance, promote racial equality and cultural diversity, and give a voice to those who have suffered discrimination.

Mr Graeme Innes will continue to perform the role of Race Discrimination Commissioner until Dr Szoke begins with the AHRC. Dr Szoke's appointment will allow Mr Innes to devote his attention to addressing the issues faced by Australians with disability.

CERD Concluding observation 16

The Committee expresses its concern that the package of legislation under the Northern Territory Emergency Response (NTER) continues to discriminate on the basis of race including through the use of so-called “special measures” by the State party. The Committee regrets the discriminatory impact this intervention has had on affected communities, including restrictions on Aboriginal rights to land, property, social security, adequate standards of living, cultural development, work and remedies. While noting that the State party will complete the reinstatement of the Racial Discrimination Act in December 2010, the Committee is concerned by the continuing difficulties in using the Act to challenge and provide remedies for racially discriminatory NTER measures (arts. 1, 2 and 5).

The Committee urges the State party to guarantee that all special measures in Australian law, in particular those regarding the NTER, are in accordance with the Committee's general recommendation No. 32 (2009) on the meaning and scope of special measures. It encourages the State party to strengthen its efforts to implement the NTER Review Board recommendations, namely that: it continue to address the unacceptably high level of disadvantage and social dislocation being experienced by Aboriginal Australians living in remote communities throughout the Northern Territory; that it reset the relationship with Aboriginal people based on genuine consultation, engagement and partnership; and that Government actions affecting the Aboriginal communities respect Australia's human rights obligations and conform with the Racial Discrimination Act.

The Australian Government has fully reinstated people's rights and protections under the *Racial Discrimination Act 1975* (RDA) in relation to the Northern Territory Emergency Response (NTER). Under legislation that was passed by the Parliament on 21 June 2010, all of the provisions in the NTER legislation that suspended the operation of the RDA are removed. In addition, all of the provisions in the NTER legislation that deemed certain measures, such as income management, five-year leases and alcohol and pornography restrictions to be special measures have been repealed. The repeal of these provisions took effect from 31 December 2010. People now have the right to take appropriate proceedings under the RDA in the Australian Human Rights Commission and the courts. Whether there has been a breach of the RDA will be a matter for the Australian Human Rights Commission and the courts to consider.

A new non-discriminatory income management scheme was introduced on 1 July 2010. The new income management scheme is RDA compliant. Before introducing the legislation, the Government undertook extensive consultations with Indigenous people across the Northern Territory (NT).

The Australian Government acquired five year leases by legislation over 64 communities as part of the NTER, as an interim measure to ensure security of tenure for government facilities; the roll out of property and tenancy management reforms; and the implementation of government programs dependent on secure tenure. No resident or existing occupier of the areas covered by the leases were removed from the area as a result of the leases. The Australian Government is committed to making fair rent payments to the land owners of the five year lease communities. The rent payments were independently determined by the Northern Territory Valuer-General and the Australian Government commenced making rent payments in accordance with these determinations as required under the NTER legislation. The Australian Government has been working with the Northern Land Council, the Central Land Council and the Northern Territory Valuer-General in order to address concerns with rental amounts.

The Australian Government is not continuing the five year leases beyond their expiry in August 2012 and is working with communities on the negotiation of voluntary, longer term leases.

Leases recognise the rights of Indigenous people as owners of land, by negotiating agreed land use arrangements with traditional owners prior to the construction of new housing and infrastructure on Indigenous land. Ownership of leased land remains with the Indigenous owners. Creating tenure arrangements which provide security to landowners, investors and land users, through mechanisms such as voluntary long term leasing, is a critical step in recognising Indigenous ownership and making land users responsible for assets. In relation to community housing, leases ensure that governments, rather than land owners, take responsibility, and are accountable, for housing construction standards, for long term repairs and maintenance programs and tenancy management systems. Before leasing was introduced, responsibility for housing maintenance was often unclear.

Commercial investment on Indigenous land is hampered in that it is generally communal and inalienable, preventing landowners individually or corporately from raising finance for commercial purposes and home ownership. However, voluntary long term leases have the potential to enable individuals to pursue home ownership and business opportunities on Indigenous land, as is available elsewhere in Australia.

The Australian Government has committed substantial funds to address social disadvantage of Indigenous people in the NT including \$A1.2 billion through the Northern Territory Emergency Response.

As at the end of 2010, this has enabled, for example, the provision of:

- more than 60 additional police,
- 18 additional police stations,
- night patrols in 80 communities,
- 22 safe houses,
- 146 additional teachers in NT schools,
- more than 7,000 meals each school day for school children in remote communities,
- 92 community stores providing a better range of healthy food through being licensed, and
- a comprehensive program of over 10,600 child health checks and over 24,000 follow-up specialist services.

In the extensive consultations undertaken in 2009, a common theme expressed was that children, the elderly and women were now feeling safer, were better fed and clothed, were getting a better night's sleep, and there was less inappropriate pressure on income support recipients for money. People felt that this was due to the combined effects of various NTER measures, including alcohol restrictions, community stores licensing, an increased police presence in remote communities and income management (which at the time of those consultations was an NTER measure).

Further the Government has committed \$A1.7 billion for remote Indigenous housing in the NT over 10 years. As at mid May 2011, more than 1,050 Indigenous people have been employed in housing and construction works as a result of this investment.

In addition, 2,241 ongoing jobs were created in Australian and Northern Territory Government service delivery, moving people out of positions in Community Development Employment Projects into employment with wages, superannuation and other benefits.

Nothing in the NTER is intended to restrict Indigenous cultural development. The Closing the Gap agenda recognises and builds on the strengths of Indigenous cultures and identities, and the

Australian Government continues to support Indigenous culture, languages, music and broadcasting through a range of funding and grants programs to arts and cultural organisations and individual artists from across Australia.

On 22 June 2011, the Government announced its next steps to improve the future of Indigenous Australians living in the Northern Territory. The Government will be undertaking consultations with Aboriginal people and communities on future plans to tackle disadvantage, with a particular focus on improved education for children, expanded employment opportunities and tackling alcohol abuse. The Government released a discussion paper, *Stronger Futures in the Northern Territory*, as the basis for consultations over the coming months. The paper invites community views on where the NTER worked, where it could be improved and what more needs to be done in future.

CERD Concluding Observation 23

The Committee is concerned by information related to the personal security of international students and, in particular, the series of racially motivated assaults of Indian students, including one death, in the State of Victoria. It regrets the failure by the Government and police (both at the state and federal levels) to address the racial motivation of these acts, as well as the lack of available national data on the prevalence of migrants as victims of crime (arts. 2, 4 and 5).

The Committee recommends that the State party further intensify its efforts to combat racially motivated violence, including by requiring law enforcement authorities to collect data on the nationality and ethnicity of victims of such crimes and ensuring that judges, prosecutors and the police consistently apply existing legal provisions which consider the motive of ethnic, racial or religious hatred or enmity as an aggravating circumstance. It recommends that the State party provide updated statistical data on the number and nature of reported hate crimes, prosecutions, convictions and sentences imposed on perpetrators, disaggregated by age, gender and national or ethnic origin of victims.

The Australian Government would like to note the following points about safety concerns of international students and about the “racial motivation” attributed by the Committee to assaults against international students in Australia.

Death in the State of Victoria

The Committee comments on what it describes as a “series of racially motivated assaults of Indian students, including one death, in the State of Victoria”. The reference to one death is assumed to be the tragic murder of Indian student Mr Nitin Garg on 2 January 2010, which is still before the Victorian courts. In the series of court hearings on this murder held during 2010-11 there has been no evidence presented that would indicate that this crime included racial motivation. On 20 April 2011, an Australian teenager pleaded guilty to the murder and informed the Victorian Supreme Court that the motive was to steal Mr Garg's mobile phone. On 6 June 2011, prosecutor Amanda Forrester told the court that there was “no evidence of any racial motivation in this crime”. One person has already been convicted and sentenced for being an accessory to this offence. No evidence of racial motivation was presented in that case.

Alleged failure to address “racially motivated violence”

The Australian Government rejects the Committee's assertion that Australian governments at state and federal level, have failed “to address the racial motivation” of assaults on international students in Australia.

Australia has zero tolerance for racism. A small number of assaults in Australia, as in other countries, have racial overtones. Offenders face the full force of the law. The Australian Government and community condemn any assaults, irrespective of nationality or ethnicity. Such crimes are an affront to our values and are anathema to our view of modern Australia. In Australia, the rule of law is fundamental. We allow the processes of investigation, prosecution and sentencing to take their course.

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Lack of relevant national data on victims of crime

Australian Police forces do not routinely collect data on victims' nationality, ethnicity or immigration status, but the Australian Government has recognised the need for credible data on crimes against international students. An Australian Institute of Criminology (AIC) study on crimes against international students was already in progress prior to CERD's consideration of this issue. The AIC study was released on 11 August 2011. We have provided a copy of the 172 page report with this response. The report is available on the AIC website (www.aic.gov.au).

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International Student Welfare

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9 March 2012

Excellency,

I wish to inform you that the Committee on the Elimination of All Forms of Racial Discrimination, in the course of its 80th session, considered the follow-up report submitted by the Government of Australia, pursuant to Rule 65(1) of the Rules of Procedure of the Committee.

The Committee welcomes the timely submission of the report, in response to its request to receive information within one year on the implementation of the recommendations contained in paragraphs 11, 16 and 23 of the Concluding Observations (CERD/C/AUS/CO/15-17) adopted following the consideration of the State party's fifteenth to seventeenth periodic reports in September 2010. The Committee appreciates the opportunity provided to continue its dialogue with the State party, and would like to draw the State party's attention to the observations mentioned below. The Committee requests that comments and responses on actions taken by the State party on these issues be included in its eighteenth and nineteenth periodic reports to be submitted in a single document by 30 October 2012.

Paragraph 11 of the concluding observations. The Committee takes note of the detailed information submitted by the State party with regard to the funding of the Australian Human Rights Commission and warmly welcomes the appointment of Dr Helen Szoke as the Race Discrimination Commissioner. The Committee requests further information on the project aimed at consolidating Australian anti-discrimination laws, including reviewing the design of the complaints handling process and the related role and functions of the Commission. It requests updated information on the revision of these laws and whether the State party intends to take additional measures in order to expand the powers and functions of the Commission.

His Excellency Mr. Peter Woolcott
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Permanent Mission of Australia
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Paragraph 16 of the concluding observations. The Committee thanks the State party for the extensive information provided. It welcomes, in particular, the reinstatement of the Racial Discrimination Act and the State party's commitment to organize consultations with Aboriginal peoples and communities on future plans to tackle disadvantage. Nevertheless, the Committee reiterates the need for the State party to always guarantee the free, prior and informed consent of the communities concerned notably by ensuring that these consultations are inclusive, translated into languages of indigenous peoples, and that they provide sufficient time for them to send their inputs.

The Committee requests further clarification on how the Northern Territory Emergency Response legislation enforcement and the income management scheme are implemented in practice, so as to avoid not only discrimination but any further negative impact on indigenous peoples. The Committee encourages the State party to monitor the effectiveness of these measures and review them if necessary.

Paragraph 23 of the Concluding Observations. While taking note of Australia's efforts to ensure international students' personal security, the Committee notes that the State party does not routinely collect data on victims' nationality, ethnicity or immigration status. The Committee recalls the importance of such statistics and reiterates its request that Australia take measures to ensure that police forces in all Australian jurisdictions collect data on the nationality and ethnicity of victims of crime.

The Committee notes that the State party has not submitted updated information on the application of legal provisions which consider the motive of ethnic, racial or religious hatred as an aggravating circumstance in criminal offences. Therefore, it requests Australia to do so in its next periodic report.

Finally, the Committee asks for further clarification on how the search powers of the police are implemented in practice, and how the State party makes sure that these stronger powers are not used disproportionately against ethnic minorities. The Committee reiterates its recommendation that the State party provide updated statistical data on the number and nature of reported hate crimes, prosecutions, convictions and sentences imposed on perpetrators, disaggregated by age, gender and national or ethnic origin of victims.

Rest assured, Excellency, that the Committee looks forward to continuing its constructive dialogue with the Government of Australia, with a view to providing it with assistance in its efforts to ensure the effective implementation of the Convention.

Yours sincerely,

Alexei Avtonomov
Chairperson of the Committee
on the Elimination of Racial Discrimination

消除种族歧视委员会
议事规则

**Rules of procedure of the
Committee on the Elimination of Racial Discrimination**

**Règlement intérieur du Comité pour l'élimination
de la discrimination raciale**

**Правила процедуры Комитета
по ликвидации расовой дискриминации**

**Reglamento del Comité para la Eliminación
de la Discriminación Racial**



联合国

UNITED NATIONS
NATIONS UNIES

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消除种族歧视委员会
议事规则

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导 言

1. 消除种族歧视委员会第一届和第二届会议通过了以秘书长编写的案文为基础的临时议事规则。¹
2. 委员会第四届会议通过第1(IV)号决定,对规则36(原为规则35)作了修正。²
3. 委员会第五届会议在第1(V)号决定中通过了规则64(原为规则64A)。³
4. 委员会同届会议在第2(V)号决定中通过了规则67(原为规则66A)。⁴
5. 委员会第七届会议通过第2(VII)号决定对规则13作了修正。⁵
6. 委员会同届会议通过第1(VII)号决定对规则58(原为规则56)作了修正。⁶
7. 委员会第十七届会议通过第1(XVII)号决定对规则34作了修正。⁷
8. 委员会同届会议通过第2(XVII)号决定对规则35(原为规则62)作了修正。⁸
9. 委员会第二十七届会议通过了规则80至93,但规则91的分段(a)和分段(b)第二部分除外,这两部分在第二十八届会议上通过(原为临时规则79至92)。⁹

¹ 《联大第二十五届会议正式记录,补编第27号》(A/8027),附件二。

² 《联大第二十六届会议正式记录,补编第18号》(A/8418),第七章,B节。

³ 《联大第二十七届会议正式记录,补编第18号》(A/8718),第九章,A节。

⁴ 同上。

⁵ 《联大第二十八届会议正式记录,补编第18号》(A/9018),第十章,A节。

⁶ 同上。

⁷ 《联大第三十三届会议正式记录,补编第18号》(A/33/18),第十章,A节。

⁸ 同上。

⁹ 《联大第三十八届会议正式记录,补编第18号》(A/38/18),附件三。

10. 委员会同届会议通过了规则 9 4 (原为规则 9 3) 第 1 至 4 段。¹⁰
11. 委员会第二十八届会议通过了上届会议遗留下来的规则 9 1 的分段(a)和分段(b)的第二部分, 以及规则 9 4 的第 5 和 6 段。¹¹
12. 委员会同届会议通过了规则 9 5 至 9 7 (原为临时规则 9 4 至 9 6)。¹²
13. 委员会第二十九届会议决定从“临时议事规则”中删去“临时”二字。¹³
14. 委员会同届会议对规则 2 7 和 2 8 作了修正。¹⁴
15. 委员会同届会议通过了规则 9 8。¹⁵
16. 委员会同届会议还作出下列决定:
 - (a) 在议事规则最后增加一个第三部分, 题为“解释和修正”, 在这一新的部分加上规则 9 9, 即临时规则 6 3。
 - (b) 除目录外, 还给每项议事规则加上标题。¹⁶

¹⁰ 同上。

¹¹ 同上。

¹² 同上。

¹³ 同上, 《第三十九届会议, 补编第 1 8 号》(A/39/18), 第三章。

¹⁴ 同上。

¹⁵ 同上。

¹⁶ 同上。

说 明

注意规则 9 8，这一项规定，各项规则的划线标题只为提及方便才加上的，在解释规则时不予考虑。

议事规则

第一部分 一般规则

一、会议

常会

规则 1

根据《消除一切形式种族歧视国际公约》（以下简称本公约）成立的消除种族歧视委员会（以下简称“委员会”）每年举行二次常会。

会期

规则 2

委员会常会的举行日期由委员会与联合国秘书长（以下简称秘书长）协商，并参照联大核准的会议日历决定。

特别会议

规则 3

1. 委员会特别会议的举行由委员会决定。在委员会闭会期间，主席可与委员会主席团其他成员协商召开特别会议。主席也可以

- (a) 应委员会多数成员的要求，
- (b) 应本公约某一缔约国的要求，召开特别会议。

2. 特别会议应尽快召开，其日期由主席与秘书长和委员会主席团其他成员共同协商，并参照联大核准的会议日历决定。

通知开会日期

规则 4

秘书长负责将每届会议第一次会议的日期和地点通知委员会成员。这种通知

在举行常会的情况下，必须至少提前30天发出；在召开特别会议的情况下，必须至少提前18天发出。

会议地点

规则 5

委员会会议一般应在联合国总部举行。另外的会议地点可由委员会与秘书长协商，并参照联合国关于这个问题的有关条例指定。

二、议程

常会临时议程

规则 6

每届常会的临时议程，应由秘书长与委员会主席协商，按照本公约第9、11、12、13、14、15条的有关规定编制，应包括：

- (a) 委员会在前一届会议上决定的任何项目；
- (b) 委员会主席建议的任何项目；
- (c) 本公约缔约国建议的任何项目；
- (d) 委员会成员建议的任何项目；
- (e) 秘书长建议的任何项目。

特别会议临时议程

规则 7

委员会特别会议临时议程应只包括提出供该届特别会议审议的项目。

通过议程

规则 8

除根据规则15选举主席团成员以外，任何会议临时议程的第一个项目均应为

通过议程。

修改议程

规则 9

委员会可在每届会议上修改议程，并可视情况增加、决定推迟审议或删除某些项目。

递送临时议程和主要文件

规则 10

秘书长应将临时议程和议程项目有关的主要文件尽快递送委员会成员。 特别会议的临时议程应由秘书长与根据规则 4 拟定的开会通知同时递送委员会成员。

三、委员会成员

成员

规则 11

委员会的成员应根据本公约第 8 条指定的 18 名专家。

任期的开始

规则 12

经第一次选举产生的委员会成员在委员会举行第一次会议时开始其任期。 经以后选举产生的委员会成员，在其替代的委员会成员的任期届满之日的次日开始其任期。

填补临时空缺

规则 13

1. 当委员会中出现临时空缺时，秘书长应立即要求其专家停止履行委员会成员职能的缔约国在两个月内在其国民中指定另一名专家来完成其前任剩下的任期。

指定专家的姓名应由秘书长通知委员会，由委员会以无记名投票方式批准。

2. 指定专家经委员会批准后，应由秘书长将填补临时空缺的专家的姓名通知各缔约国。

3. 除由于某一成员死亡或无能力而出现空缺的情况以外，秘书长和委员会只有在接到有关成员关于他决定不再履行委员会成员的职能的通知以后，才应按照本规则第1和2段的规定采取行动。

就职宣誓

规则 14

委员会每位成员在就职时，均应在委员会中公开作如下庄严宣誓：

“我庄严宣布，作为消除种族歧视委员会的成员，我决心正直、忠实、公正和认真地履行我的职责和行使我的权力。”

四、主席团成员

选举

规则 15

委员会在其本身成员中选举一名主席，三名副主席和一名报告员。

任期

规则 16

委员会主席团成员任期两年，可连选连任。但只要不再担任委员会成员，则不得继续任职。

主席在委员会中的地位

规则 17

主席在行使其职能时，处于委员会权力之下。

代理主席

规则 18

如果主席不能出席某个会议或其一部分，他应指定一名副主席代行其职责。

代理主席的权力和职责

规则 19

代理主席的副主席和主席具有同样的权力和职责。

更换主席团成员

规则 20

如果有任何委员会主席团成员停止履行或宣布不能继续履行委员会成员的职能，或由于某种原因，不能再担任主席团成员，即应另选一名主席团成员来完成其前任余下的任期。

五、秘书处

秘书长的职责

规则 21

委员会秘书处和委员会可能设立的附属机构的秘书处（以下简称“秘书处”）的人员由秘书长负责提供。

发言

规则 2 2

秘书长或其代表应出席委员会的一切会议。 根据规则 3 7，秘书长或其代表可以在委员会或其附属机构的会议上作口头或书面发言。

会议事务工作

规则 2 3

秘书长应负责为委员会及其附属机构的会议作好一切必要的安排。

使成员了解情况

规则 2 4

秘书长应负责使委员会成员经常了解可能提出请委员会审议的任何问题。

提案所涉经费问题

规则 2 5

委员会或其附属机构通过任何涉及经费问题的提案之前，秘书长应负责尽早编制并向其成员分发有关提案所涉费用的概算。 主席有责任提请各成员注意这种概算，并请他们在委员会或其附属机构审议提案时对概算进行讨论。

六、语文

正式语文和工作语文

规则 2 6

中文、英文、法文、俄文和西班牙文为正式语文，英文、法文、俄文和西班牙文为委员会的工作语文。

正式语文的翻译

规则 2 7

以任何正式语文所作的发言均应译成其他正式语文。

非正式语文的翻译

规则 2 8

出席委员会会议的任何人均可用正式语文以外的语文发言。在这种情况下，发言者要自行提供将所用语文译为一种正式语文的翻译。秘书处口译人员译成其他正式语文的翻译可依据第一种正式语文的翻译。

记录用语文

规则 2 9

委员会会议的简要记录以工作语文编写。

正式决定和正式文件的语文

规则 3 0

委员会所有正式决定均以正式语文提供。委员会所有正式文件均以工作语文发表，其中任何文件均可根据委员会的决定以其他正式语文发表。

七、公开和非公开会议

公开和非公开会议

规则 3 1

委员会及其附属机构的会议一般应公开举行，除非委员会另有决定，或依本公约有关规定，会议应以非公开形式举行。

非公开会议公报的发表

规则 3 2

每次非公开会议结束时，委员会或其附属机构可通过秘书长发表公报。

八、记录

临时简要记录的更正

规则 3 3

委员会及其附属机构会议的简要记录由秘书处编写。简要记录应以临时形式尽快向委员会成员及参加会议的任何其他人员散发。所有与会者可在收到临时简要记录后三个工作日之内，向秘书处提出更正意见。对任何有关这种更正的不同意见均应由委员会主席或记录与之有关的附属机构的主席作出处理决定。如仍有不同意见，则由委员会或其附属机构作出决定。

简要记录的分发

规则 3 4

1. 公开会议简要记录的最后文本应是普遍分发的文件。
2. 非公开会议的简要记录向委员会成员和其他与会者散发。简要记录也可以根据委员会的决定按委员会规定的时间和条件向其他人员提供。

九、委员会报告和其他正式文件的分发

正式文件的分发

规则 3 5

1. 在不违反上面规则 3 4 的规定以及在本条规则第 2 段和第 3 段规定的条件下，委员会及其附属机构的报告、正式决定和所有其他正式文件均为普遍分发的文件，除非委员会另有决定。
2. 委员会及其附属机构与公约第 11、12、13 和 14 条有关的报告、正式决

定和其他正式文件应由秘书处向委员会所有成员、有关缔约国以及委员会可能决定的其附属机构的成员和其他有关方面分发。

3. 缔约国根据本公约第9条提交的报告和补充资料应为普遍分发文件，除非有关缔约国另有要求。

十、事务的处理

法定人数

规则 3 6

委员会的多数成员即构成法定人数。但采取决定则需要委员会三分之二的成员出席。

主席的权力

规则 3 7

主席除行使本公约和本议事规则其他规定所授予的权力以外，还有权宣布委员会每次会议开始和终止，引导讨论，保证对本议事规则的遵守，授与发言权，将问题提付表决，以及宣布决定。根据本议事规则，主席要负责控制委员会会议事程序和维持会议秩序。在讨论某一项目的过程中，主席可以向委员会提议限制发言者的发言时间，限制每一发言者就任何问题的发言次数，停止发言报名。他应裁定程序问题。也可以建议暂停或终止辩论，休会或暂停会议。辩论应只限于提交委员会的问题，如果某一发言者的发言与正在讨论的问题无关，主席可以请他遵守规则。

程序问题

规则 3 8

在对任何事项的讨论过程中，委员会成员可在任何时候提出一个程序问题，主席应按照议事规则，就这种程序问题立即作出决定。必须将任何反对主席裁决的要求立即付诸表决。主席的裁决，除非被在座成员的多数否决，否则将继续有效。成员在提出程序问题时不得谈论所讨论问题的实质。

发言时间限制

规则 39

委员会可限制每个发言者就任何问题进行发言的时间。当辩论时间有限，而某一成员或代表超过分配给他的时间时，主席应立即请他遵守规则。

发言者名单

规则 40

在辩论过程中，主席可宣布发言者名单，并在委员会同意的条件下宣布发言报名停止。但是，如果在其宣布发言报名停止之后某一发言者所作的发言使得别人有必要作出答复，主席可授与任何成员或代表以答辩权。当就某一项目进行的辩论因没有其他发言者而停止时，主席应宣布结束辩论。这种结束与委员会同意的结束具有同等效力。

会议的暂停或休会

规则 41

在对任何问题的讨论过程中，每个成员均可提议会议暂停或休会。不允许对这种提议进行讨论，必须立即付诸表决。

暂停辩论

规则 42

在对任何问题的讨论过程中，每个成员均可提议暂停关于所讨论项目的辩论。提出这种建议之后，还可有一个发言表示赞成，一人发言表示反对，在此之后，需将所提建议立即付诸表决。

结束辩论

规则 4 3

无论是否有任何其他成员或代表表示希望发言，一个成员可在任何时候提议结束关于所讨论项目的辩论。只能允许两名反对结束辩论的发言者就结束辩论问题进行发言，在此之后应立即将提议付诸表决。

动议顺序

规则 4 4

根据规则 3 8，按下述顺序排列的下列动议优先于会议上提出的所有其他建议或动议：

- (a) 暂停会议；
- (b) 休会；
- (c) 暂停关于所讨论项目的辩论；
- (d) 结束关于所讨论项目的辩论。

提交提案

规则 4 5

除非委员会另有决定，否则，成员的提案和实质性修正案或动议均应以书面形式向秘书处提出。如果有任何成员要求审议，审议应推迟到第二天的下次会议上进行。

关于权限的决定

规则 4 6

根据规则 4 4，有成员提出动议，要求就委员会通过一项提案的权限作出裁决时，则应在对有关提案进行表决之前立即就此动议付诸表决。

撤销动议

规则 4 7

在对一项动议没有作出修正的条件下，提出动议的成员可在进行表决之前的任何时候撤销动议。已撤销的动议可由任何成员再次提出。

提案的重新审议

规则 4 8

一项提案被通过或否决之后，在同一届会议上不得重新审议，除非通过表决，委员会在座成员的三分之二多数同意重新审议。只能允许两名赞成重新审议的成员和两名反对重新审议的成员就此动议进行发言，在此之后应立即对此动议付诸表决。

十一、表决

表决权

规则 4 9

委员会每个成员均有一次表决权。

通过决定

规则 5 0

除本公约和本议事规则中另有规定外，委员会的决定均应通过表决并有在座成员的多数同意才能作出。就本议事规则而言，“在座成员和通过表决”意为投赞成票或反对票的成员。在表决中弃权的成员被视为没有投票。

表决票数相等

规则 5 1

如果就选举以外的问题进行表决的赞成票和反对票数相等，提案应视为被否决。

表决方法

规则 5.2

根据规则 5.8，委员会一般实行举手表决，在有任何成员要求的情况下，也可实行唱名表决，这种表决按委员会成员姓名的英文字母顺序进行。

唱名表决

规则 5.3

参加任何唱名表决的每个成员的投票情况将载入记录。

进行表决和关于投票的解释性发言

规则 5.4

表决开始后，不得打断，除非某一成员希望就实际进行表决有关的程序问题发言。在表决开始之前或完成表决之后，主席可允许成员仅就投票进行简短的解释性发言。

提案分部分表决

规则 5.5

如果某一成员要求将一提案分为若干部分，则该提案应按部分分别进行表决。提案已通过的部分应作为一个整体再付诸表决；如果一项提案的所有执行部分被否决，该提案即被视为整个被否决。

修正案的表决程序

规则 5.6

1. 当对某项提案提出一项修正案时，应首先对该修正案进行表决。当对某项提案提出两项或多项修正案时，委员会应首先对与原提案在实质上相差最大的修

正案进行表决，然后对相差较大的提案进行表决，以此类推，直至将所有修正案全部付诸表决。如一项或多项修正案被通过，然后应对经修正的提案进行表决。

2. 一项动议如果只是对某项提案的一部分进行增删或修正，则被视为一项修正案。

提案的表决程序

规则 5 7

1. 如果两项或多项提案都和同一问题有关，除非委员会另有决定，应按提出的先后顺序进行表决。

2. 在每次对一项提案进行表决之后，委员会可决定是否要对下一项提案进行表决。

3. 但是，任何要求不要就这类提案的实质作出决定的动议均应被视为先决问题，应在提案付诸表决之前进行表决。

十二、选举

选举办法

规则 5 8

除在选举只为填补一个职位而候选人只有一名的情况下委员会另有决定以外，选举一律以无记名投票方式进行。

只有一个需填补职位时的选举

规则 5 9

在只选举一人或一名成员且在第一次投票中没有候选人获得所要求多数票的情况下，则应进行第二次投票，且只对获得最多票数的两名候选人投票。如果第二次投票的票数均等，且要求达到多数，则由主席以抽签形式在两人中决定一名。如果要求三分之二多数，投票则应继续进行，直至一名候选人获得三分之二多数票，

但在第三次无结果的投票之后，即可对任何符合条件的成员投票。如果三次这样无限制的投票均无结果，以后三次投票则应只限于对在第三次无限制投票中获最多票数的两名候选人，再随后的三次投票也应是无限制的，以此类推，直至选出一个或一名成员。

有两个或更多需填补职位时的选举

规则 6 0

当在同样条件下通过一次选举填补两个或多个职位时，在第一次投票中获得所要求多数票的候选人即为当选者。如果获得这种多数票的候选人的人数少于要选出的人数或成员数，则应增加投票次数以填补余下的职位，投票应只限于对在前一次投票中得票最多者，其人数不得超过余下的职位数的两倍，但在第三次无结果的投票之后，即可对任何符合条件的人或成员投票。如果三次这种无限制投票均无结果，后三次投票应只限于对在第三次无限制投票中得票最多的候选人，其人数不得超过余下要填补职位数的两倍，再其后三次投票应为无限制投票，以此类推，直至所有职位得到填补。

十三、附属机构

附属机构的设立

规则 6 1

1. 委员会可按照本公约和规则 2 5 中的规定设立它认为必要的小组委员会和其他特别附属机构并规定其组成和职权。
2. 每一附属机构均应选出自己的主席团成员和通过自己的议事规则。

十四、委员会的年度报告

年度报告

规则 6 2

委员会应按照本公约的规定，通过秘书长，每年向联大提出报告。

第二部分. 有关委员会职能的规则

十五、 缔约国根据本公约第9条提交的报
告和资料

报告的形式和内容

规则 6 3

委员会可通过秘书长就根据本公约第9条应提交的定期报告的形式和内容向各缔约国提出它的希望。

缔约国参加对报告的审议

规项 6 4

委员会应通过秘书长（尽快）将审议缔约国报告会议的开会日期、会议持续时间和地点通知各有关缔约国。在审议缔约国报告时，有关缔约国的代表可出席委员会的会议。委员会也可通知它决定向其索取进一步资料的缔约国，可以授权其代表出席一指定会议。这样的代表应能回答委员会可能向他提出的问题，并就其国家已提交的报告进行发言，也可以提交来自其国家的补充资料。

要求补充资料

规则 6 5

根据本公约第9条第1款的规定，如果委员会决定要求某一缔约国提供补充报告或进一步资料，它可以说明提供这种补充报告或进一步资料的形式和时间，并应将其决定通知秘书长以便在两周内通知有关缔约国。

未收到报告

规则 6 6

1. 秘书长应在每届会议时将没有收到本公约第9条规定的报告和补充资料的

所有情况通知委员会。在这种情况下，委员会可通过秘书长向有关缔约国转交催促其提交报告或补充资料的信件。

2. 如果甚至在转交本规则第1段中所提到的催促信后有关缔约国仍不提交本公约第9条所要求的报告或补充资料，委员会应在其给联大的年度报告中提及此事。

意见和一般性建议

规则 6 7

1. 在审议缔约国根据第9条提交的报告时，委员会应首先判定报告是否提供了委员会有关通知中提到的资料。

2. 如果委员会认为有关缔约国的报告中没有提供足够的资料，委员会可要求该国提供补充资料。

3. 如果根据对有关缔约国所提供报告和资料的审议，委员会认为该国没有履行本公约规定的某些义务，委员会可根据本公约第9条第2款提出意见和一般性建议。

意见和一般性建议的转交

规则 6 8

1. 委员会根据对缔约国按照本公约第9条第2款提供的报告和资料的审议提出的意见和一般性建议应由委员会通过秘书长转交有关缔约国。

2. 委员会可根据需要说明缔约国应提出意见的期限。

3. 第1段中提到的委员会的意见和一般性建议应同缔约国的意见（如果有的话）向联大报告。

十六、缔约国根据本公约第11条的来文

处理缔约国来文的办法

规则 6 9

1. 当一缔约国根据本公约第11条第1款提请委员会注意某一问题时，委员

会应在非公开会议上对这个问题进行审议，然后通过秘书长将此问题通知有关缔约国。委员会在审议来文时应不考虑其实质。委员会在这一阶段所采取的和来文有关的任何行动均不得视为委员会对来文的实质内容表示意见。

2. 在委员会闭会期间，主席应将有关问题通知各成员，向他们转送来文的副本，请他们同意按照第11条第1款代表委员会将这种来文转送有关缔约国。主席也应为其答复规定一个三周的期限。

3. 在得到多数成员的同意之后，或在规定期限内没有得到答复，主席应通过秘书长立即将来文转送有关缔约国。

4. 在得到的答复代表委员会多数成员的意见的情况下，主席在按照这种答复采取行动的同时，还应注意代表委员会及时向有关缔约国转送来文这一要求的紧迫性。

5. 委员会或代表委员会的主席应提醒接收来文的缔约国，根据本公约，提交书面说明或声明的期限为三个月。

6. 委员会得到接收来文缔约国的说明或声明以后，应遵循上面规定的程序将这种说明或声明转送递交原来文的缔约国。

要求提供资料

规则 7.0

委员会可以要求有关缔约国提供与执行本公约第11条有关的资料。委员会可说明提供这种资料的形式和期限。

通知有关缔约国

规则 7.1

如果根据本公约第11条第2款有任何问题已提交委员会审议，在举行常会的情况下，主席应至少在委员会第一次会议前30天，通过秘书长把即将对有关问题审议之事通知有关缔约国，在举行特别会议的情况下，应至少在委员会第一次会议前18天。

十七、根据本公约第 1 2 条和第 1 3 条成
立的特设和解会及其职能

就和解会的组成进行协商

规则 7 2

关于符合本公约第 1 1 条第 2 款规定的某一争端，在委员会获得并核对了所有它认为必要的资料之后，主席应通知争端各方，并就按照本公约第 1 2 条成立的特设和解会的组成问题同它们进行协商。

任命和解会成员

规则 7 3

在得到争端各方关于和解会组成的一致意见以后，主席即应开始任命和解会的成员，并将其组成情况通知争端各方。

规则 7 4

1. 如果在接到主席按规则 7 2 的规定发出的通知后三个月内，争端各方未能就和解会的整个或部分组成达成协议，主席即应提请委员会注意这种情况，委员会应在下届会议时根据本公约第 1 2 条第 1 (b) 款采取行动。

2. 在选举完毕时，主席应将和解会的组成情况通知争端各方。

和解会成员的就职宣誓

规则 7 5

在就职时，和解会每位成员均应在和解会第一次会议上作如下宣誓：

“我庄严宣布，作为特设和解会的成员，我决心正直、忠实、公正和认真地履行我的职责和行使我的权力。”

和解会空缺的填补

规则 7 6

和解会无论何时出现空缺时，委员会主席均应尽快按照规则 7 2 至 7 4 所规定的程序尽快予以填补。他应在接到和解会的报告或秘书长的通知时开始进行填补空缺的工作。

向和解会成员传送资料

规则 7 7

委员会获得并经过核对的资料，应在通知和解会成员有关和解会第一次会议的日期的同时，由委员会主席通过秘书长向他们传送。

和解会的报告

规则 7 8

1. 委员会主席在接到本公约第 1 3 条中提到的和解会的报告之后尽快通知争端各方和委员会的成员。

2. 争端各方应当在接到和解会的报告之后三个月内通知委员会主席他们是否接受和解委员会报告中的建议。主席则应将争端各方的意见通知委员会成员。

3. 在上段规定的期限到期之后，委员会主席应将和解会的报告和有关缔约国的声明通知本公约的其他缔约国。

使委员会成员经常了解情况

规则 7 9

委员会主席应使委员会成员经常了解他根据规则 7 3 和 7 8 所采取的行动。

十八、根据《公约》第14条审议个人或
个人联名提交来文的程序

A. 一般规定

委员会的权限

规则8.0

1. 只有在至少有10个缔约国声明承认委员会根据本公约第14条第1款所具有的权限并承担约束时，委员会才有权接受和审议来文，以及行使本公约第14条所规定的职能。

2. 秘书长应向其他缔约国转送承认委员会权限的缔约国交存于他的声明之副本。

3. 对提交委员会来文的审议不应由于某一缔约国撤销根据本公约第14条所发声明而受影响。

4. 秘书长应将任何缔约国按照第14条第3款的规定所设立或指定的任何国家法律机关的名称、组成和职能通知其他缔约国。

国家机关

规则8.1

秘书长应使委员会经常了解按照第14条第2款设立或指定的，负责接受并审查自称为侵犯本公约所规定任何权利的受害者的个人或个人联名提出的请愿书的任何国家法律机关的名称、组成和职能。

请愿书登记册的正式副本

规则8.2

1. 秘书长应使委员会经常了解根据第14条交他存档的所有请愿书登记册正式副本的内容。

2. 秘书长可要求缔约国对其有关法律机关所发出的请愿书登记册正式副本予以澄清。

3. 送交秘书长的请愿书登记册正式副本的内容不得公开。

秘书长收到的来文的记录

规则 8.3

1. 对自称为侵犯本公约所规定任何权利的受害者并在受第 1.4 条所规定声明约束的一缔约国管辖之下的个人或联名要提交或似乎要提交委员会的所有来文，秘书长应保持记录。

2. 秘书长在他认为必要的情况下可要求来文作者说明他是否希望按照第 1.4 条将其来文送交委员会审议。在对来文作者的愿望有疑问的情况下，应使委员会了解来文。

3. 如果来文关系到某一未作出第 1.4 条第 1 款所规定的声明的缔约国，则不得将其提交委员会或根据下述规则 8.5 列入目录。

来文中应包括的情况

规则 8.4

1. 秘书长可要求来文作者说明其来文是否可实行第 1.4 条的规定，特别是：

- (a) 作者的姓名、住址、年龄和职业及其身份的核实；
- (b) 来文所针对缔约国的名称；
- (c) 来文的目的；
- (d) 自称被违反本公约的条款；
- (e) 申诉的事实；
- (f) 作者用尽所有国内补救办法，包括有关文件的步骤。
- (g) 同一问题在另一国际调查或国际解决程序中进行的程度。

2. 在要求说明或提供情况时，秘书长应向来文作者指定一个适当的期限以避免程序遭受不应有的拖延。

3. 委员会为要求来文作者提供上述情况可核准一个问题单。

4. 要求提供本规则第1段所提到的说明不得妨碍将来文列入下述规则8.5第1段所规定的目录。

5. 秘书长应将要遵循的程序通知来文作者，并通知他将把他的来文案文按照第1.4条第6(a)款秘密转送有关缔约国。

向委员会转送来文

规则 8.5

1. 秘书长应将这样收到的每一份来文进行摘要，并将其摘要以单独形式或以汇总目录形式连同有关国家的国家法律机关所保存并根据第1.4条第4款交秘书长存档的请愿书登记册的正式副本提交委员会下届常会。

2. 秘书长应提请委员会注意未收到请愿书登记册正式副本的案例。

3. 来文作者或有关缔约国对关于说明情况的要求的答复和随后提交的有关资料的内容应以适当形式提交委员会。

4. 每份来文摘要均应保存原件档案。已被提请委员会注意的任何来文的全文应根据要求向委员会的任何成员提供。

B. 决定来文是否可接受的程序

处理来文办法

规则 8.6

1. 委员会应按下述规则尽快根据本公约第1.4条确定来文是否可接受。

2. 除另有决定以外，委员会应按秘书处向其提交来文的顺序处理来文。委员会可在它认为适当的情况下同时处理两份或两份以上的来文。

设立一个工作组

规则 87

1. 根据规则 61, 委员会可设立一个工作组, 在委员会每届会议前不久, 或在由委员会与秘书长通过协商确定的其他适当时候举行会议, 就如何满足本公约第 14 条所规定的来文的可接受条件的问题向委员会提出建议, 并以委员会决定的任何形式协助委员会。

2. 工作组由不超过五名的委员会成员组成。工作组自行选出领导成员并制订自己的工作方法, 其会议尽可能实行委员会的议事规则。

会 议

规则 88

委员会或其工作组审议根据本公约第 14 条所提交来文的会议为非公开会议。委员会审议诸如实行第 14 条规定的程序等一般问题的会议经委员会决定可为公开会议。

某一成员不能参加对某一来文的审议

规则 89

1. 委员会成员中有下列情况者不得参加委员会或其工作组对来文的审议:

- (a) 有关案件涉及他的个人利益;
- (b) 他曾参与作出有关来文所涉案件的某一决定。

2. 由上述第 1 段可能引起的任何问题均应由委员会裁定, 有关成员不得参加。

成员的退席

规则 90

如果某一成员由于某种原因认为自己不能参加或继续参加对某一来文的审议, 他在退出审议前应通知主席。

接受来文的条件

规则 9.1

为了作出关于来文是否可接受的决定，委员会或其工作组应先确定：

- (a) 来文不是匿名的，并且是来自受本公约第 14 条承认委员会职权之某一缔约国管辖的个人或个人联名；
- (b) 来文个人自称为有关缔约国侵犯本公约规定权利的受害者。按照一般原则，来文应由有关个人本身或其亲属或指定代表递送；但在特殊情况下，即受害者看来不能亲自递送来文，且来文作者又证明他有理由代表受害者，委员会也可以接受并审议由其他人代表所称受害者递送的来文；
- (c) 来文符合本公约的规定；
- (d) 来文不是滥用第 14 条规定的递送来文的权利；
- (e) 有关个人确已用尽所有可用的国内补救办法，包括第 14 条第 2 款中所提到的可用办法。但补救办法拖延过久时，不在此例；
- (f) 来文是在确已用尽所有可用的国内补救办法，包括第 14 条第 2 款中所提到的可用办法以后六个月内提出的，经适当核实的特殊情况除外。

补充的资料、澄清和意见

规则 9.2

1. 委员会或根据规则 8.7 设立的工作组可通过秘书长要求有关缔约国或来文作者提交与来文是否可接受问题有关的补充书面资料和澄清。

2. 在这种要求中应说明，该要求并不意味着委员会已经就有关来文的是否可接受问题作出了决定。

3. 除非有关缔约国已收到有关来文的案文，并且已被给予机会提交本规则第 1 段规定的资料或意见，否则不得宣布接受该来文。

4. 为要求提交这种补充的资料或澄清，委员会或工作组可核准一个问题单。

5. 委员会或工作组可为提交这种补充资料或澄清规定一个最后期限。

6. 如果有关缔约国或来文作者未遵守最后期限, 委员会或工作组可根据现有资料决定审议来文是否可接受的问题。

7. 如果有关缔约国对某来文的作者关于确已用尽所有可用的国内补救办法的说法有不同意见, 应要求该缔约国详细说明在有关案件的特定情况下所称受害者可用的有效补救办法。

不能接受的来文

规则 9 3

1. 当委员会决定某来文不能接受, 或对来文的审议暂停或中止时, 委员会应通过秘书长将其决定尽快通知请愿人和有关缔约国。

2. 对委员会根据第 1 4 条第 7 (a) 款作出的关于某来文不可接受的决定, 可应有关请愿者的书面要求, 在晚些时候进行复审。这种书面要求中应包括可以说明第 1 4 条第 7 (a) 款中所提到的不可接受理由不再适用的文件证明。

9. 对来文的审议

可接受来文的处理办法

规则 9 4

1. 在决定来文可接受之后, 委员会应按第 1 4 条规定, 通过秘书长将来文的案文和有关资料秘密转交有关缔约国, 但非经有关个人明白表示同意, 不得透露其姓名。委员会还应通过秘书长将其决定通知有关请愿人。

2. 有关缔约国应于三个月内向委员会提出书面说明或声明, 解释正在审议的案件, 如已采取补救办法, 并说明所采办法。委员会认为必要时, 可向有关缔约国说明它希望得到何种资料。

3. 在审议来文过程中, 委员会在紧急情况下, 可以建议有关缔约国采取临时办法以避免可能对自称为所说违法行为的受害者造成无可挽回的损害。在这样做的同时, 委员会应向有关缔约国说明, 它所表示的关于采取临时办法的意见既不能预先决定它对来文的是非曲直的最终意见也不能预示其最后的建议。

4. 缔约国根据本规则提交的任何说明或声明均可通过秘书长转送有关请愿人，请愿人则可在委员会规定的期限内提交补充书面材料或意见。

5. 委员会可请请愿人或其代表以及有关缔约国的代表出席以便提供补充情况或回答关于来文是非曲直的问题。

6. 委员会可根据缔约国所提供的说明或声明撤销其关于某来文可接受的决定。但是，在委员会考虑撤销这种决定之前，必须将有关说明或声明转交请愿人，以便他能在委员会规定的期限内提交补充材料或意见。

委员会对可接受来文的意见及委员会的建议

规则 9 5

1. 委员会应根据请愿人和有关缔约国向它提交的所有资料对来文进行审议。委员会可将来文通知工作组以便得到协助。

2. 委员会或它为审议来文设立的工作组可在审查过程中的任何时候通过秘书长从联合国机构或专门机构获得有助于处理案件的任何文件。

3. 在对可接受来文进行审议之后，委员会应根据审议情况拟定意见。委员会的意见应和委员会可能希望提出的建议一起，通过秘书长转交给请愿人和有关缔约国。

4. 在向请愿人和有关缔约国转交委员会的意见时，委员会任何成员均可要求附上其个人的意见。

5. 应请有关缔约国及时将它根据委员会的建议所采取的行动通知委员会。

委员会年度报告中的摘要

规则 9 6

委员会应将所审议的来文的摘要，并视情况，将有关国家所提供说明和声明的摘要以及委员会的建议的摘要列入其年度报告。

新闻公报

规则 9 7

委员会还可通过秘书长发布关于其根据本公约第 1 4 条所进行活动的公报以供新闻机构及公众使用。

第三部分 解释和修正

十九、解释和修正

划线标题

规则 9.8

本规则的划线标题仅供参考之用，在解释规则时应不予考虑。

修 正

规则 9.9

本议事规则可由委员会决定修正。

附 件

第 2 (VI) 号决定 与国际劳工组织和联合国教育、
科学及文化组织的合作^a

消除种族歧视委员会在不影响其将来就国际劳工组织和联合国教育、科学及文化组织的代表参加其会议的可能性作出决定的条件下，兹决定：

1. 委员会授权联合国秘书长邀请国际劳工组织和教科文组织的代表参加委员会的会议。委员会将在其每次非公开会议上决定国际劳工组织和教科文组织的观察员是否可参加有关非公开会议。

2. 根据其议事规则规则 3 4 第 1 段和规则 3 5，委员会授权秘书长向国际劳工组织专家委员会和教科文组织执行局教育公约和建议委员会提供其公开会议的记录、报告案文、正式决定和其他正式文件。

3. 国际劳工组织和教科文组织提交的关于《1958 年歧视（就业及职业）公约和建议书》以及《1960 年取缔教育歧视公约和建议书》在《消除一切形式种族歧视国际公约》第 1 5 条第 2 (a) 款中提到的领土内的执行情况的书面说明，将按照《消除一切形式种族歧视国际公约》第 1 5 条第 4 款和消除种族歧视委员会 1970 年 1 月 2 9 日通过的《关于委员会按照公约第 1 5 条所应承担责任的说明》第 3 (c) 段的规定，通过联合国秘书长转交消除种族歧视委员会。

4. 国际劳工组织和教科文组织提交的关于《1958 年歧视（就业及职业）公约和建议书》以及《1960 年取缔教育歧视公约和建议书》在前一段中所提以外的领土内的执行情况的书面说明，将由联合国秘书长分发给消除种族歧视委员会的成员。

xx xx xx xx xx

^a 于 1972 年 8 月 2 1 日在委员会第 115 次会议（第六届）上通过。

RULES OF PROCEDURE
OF THE
COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

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Annex

Decision 2 (VI). Co-operation with the International Labour Organisation (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO)

INTRODUCTION

1. At its first and second sessions, the Committee on the Elimination of Racial Discrimination adopted 78 provisional rules of procedure based on texts prepared by the Secretary-General. 1/
2. At its fourth session, the Committee, by decision 1 (IV), amended rule 36 (previously provisional rule 35). 2/
3. At its fifth session, the Committee, by decision 1 (V), adopted rule 64 (previously provisional rule 64 A). 3/
4. At the same session, the Committee, by decision 2 (V), adopted rule 67 (previously provisional rule 66 A). 4/
5. At its seventh session, the Committee, by decision 2 (VII), amended rule 13. 5/
6. At the same session, the Committee, by decision 1 (VII), amended rule 58 (previously provisional rule 56). 6/
7. At its seventeenth session, the Committee, by decision 1 (XVII), amended rule 34. 7/
8. At the same session, the Committee, by decision 2 (XVII), amended rule 35 (previously provisional rule 62). 8/

1/ Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 27 (A/8027), annex II.

2/ Ibid., Twenty-sixth Session, Supplement No. 18 (A/8418), chap. VII, sect. B.

3/ Ibid., Twenty-seventh Session, Supplement No. 18 (A/8718), chap. IX, sect. A.

4/ Ibid.

5/ Ibid., Twenty-eighth Session, Supplement No. 18 (A/9018), chap. X, sect. A.

6/ Ibid.

7/ Ibid., Thirty-third Session, Supplement No. 18 (A/33/18), chap. X, sect. A.

8/ Ibid.

9. At its twenty-seventh session, the Committee adopted rules 80 to 93, with the exception of subparagraph (a) and the second part of subparagraph (b) of rule 91 which were adopted at the twenty-eighth session (previously provisional rules 79 to 92). 9/
10. At the same session, the Committee adopted paragraphs 1 to 4 of rule 94 (previously provisional rule 93). 10/
11. At its twenty-eighth session, the Committee adopted subparagraph (a) and the second part of subparagraph (b) of rule 91 and paragraphs 5 and 6 of rule 94 which had been left pending at its twenty-seventh session. 11/
12. At the same session, the Committee adopted rules 95 to 97 (previously provisional rules 94 to 96). 12/
13. At its twenty-ninth session, the Committee decided to delete the word "provisional" in its rules of procedure. 13/
14. At the same session, the Committee amended rules 27 and 28. 14/
15. At the same session, the Committee adopted rule 98. 15/
16. At the same session, the Committee also took the following decisions:
 - (a) To include a new part three entitled "Interpretation and amendments" at the end of its rules of procedure, incorporating under this new part provisional rule 63 which became rule 99, and
 - (b) To incorporate titles to the rules of procedure as well as a table of contents. 16/

9/ Ibid., Thirty-eighth Session, Supplement No. 18 (A/38/18), annex III.

10/ Ibid.

11/ Ibid.

12/ Ibid.

13/ Ibid., Thirty-ninth Session, Supplement No. 18 (A/39/18), chap. III.

14/ Ibid.

15/ Ibid.

16/ Ibid.

EXPLANATORY NOTE

Attention is drawn to rule 98, which provides that the underlined headings of the rules, which were inserted for reference purposes only, shall be disregarded in the interpretation of the rules.

RULES OF PROCEDURE

PART ONE. GENERAL RULES

I. SESSIONS

Regular sessions

Rule 1

The Committee on the Elimination of Racial Discrimination (hereinafter referred to as "the Committee"), established under the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as "the Convention"), shall hold two regular sessions each year.

Dates of sessions

Rule 2

Regular sessions of the Committee shall be convened at dates decided by the Committee in consultation with the Secretary-General of the United Nations (hereinafter referred to as "the Secretary-General"), taking into account the calendar of conferences as approved by the General Assembly.

Special sessions

Rule 3

1. Special sessions of the Committee shall be convened by decision of the Committee. When the Committee is not in session, the Chairman may convene special sessions of the Committee in consultation with the other officers of the Committee. The Chairman of the Committee shall also convene special sessions:

(a) At the request of a majority of the members of the Committee;

(b) At the request of a State party to the Convention.

2. Special sessions shall be convened as soon as possible at a date fixed by the Chairman in consultation with the Secretary-General and with the other officers of the Committee, taking into account the calendar of conferences as approved by the General Assembly.

Notification of opening date of sessions

Rule 4

The Secretary-General shall notify the members of the Committee of the date and place of the first meeting of each session. Such notifications shall be sent, in the case of regular sessions, at least 30 days in advance, and in the case of a special session, at least 18 days in advance, of the first meeting.

Place of sessions

Rule 5

Sessions of the Committee shall normally be held at the Headquarters of the United Nations. Another place for a session may be designated by the Committee in consultation with the Secretary-General, taking into account the relevant rules of the United Nations on the subject.

II. AGENDA

Provisional agenda for regular sessions

Rule 6

The provisional agenda of each regular session shall be prepared by the Secretary-General in consultation with the Chairman of the Committee, in conformity with the relevant provisions of articles 9, 11, 12, 13, 14 and 15 of the Convention, and shall include:

- (a) Any item decided upon by the Committee at a previous session;
- (b) Any item proposed by the Chairman of the Committee;
- (c) Any item proposed by a State party to the Convention;
- (d) Any item proposed by a member of the Committee;
- (e) Any item proposed by the Secretary-General.

Provisional agenda for special sessions

Rule 7

The provisional agenda for a special session of the Committee shall consist only of those items which are proposed for its consideration at that special session.

Adoption of the agenda

Rule 8

The first item on the provisional agenda of any session shall be the adoption of the agenda, except for the election of the officers when required under rule 15.

Revision of the agenda

Rule 9

During a session, the Committee may revise the agenda and may, as appropriate, add, defer or delete items.

Transmission of the provisional agenda and basic documents

Rule 10

The provisional agenda and basic documents relating to items appearing thereon shall be transmitted to the members of the Committee by the Secretary-General as early as possible. The provisional agenda of a special session shall be transmitted to the members of the Committee by the Secretary-General simultaneously with the notification of the meeting under rule 4.

III. MEMBERS OF THE COMMITTEE

Members

Rule 11

Members of the Committee shall be the 18 experts designated in accordance with article 8 of the Convention.

Beginning of term of office

Rule 12

The members of the Committee elected at the first election shall begin their term of office on the date of the first meeting of the Committee. In the case of members of the Committee elected at subsequent elections, their term of office shall begin on the day following the date of the expiration of the term of office of the members of the Committee whom they replace.

Filling of casual vacancies

Rule 13

1. When a casual vacancy occurs in the Committee the Secretary-General shall immediately request the State party whose expert has ceased to function as a member of the Committee to appoint another expert from among its nationals within two months to serve for the remainder of his predecessor's term. The name of the expert so appointed shall be submitted by the Secretary-General to the Committee for approval by secret ballot.
2. After the approval of the expert by the Committee, the Secretary-General shall notify the **States parties** to the Convention of the name of the member of the Committee filling a casual vacancy.

3. Except in the case of a vacancy arising from a member's death or disability, the Secretary-General and the Committee shall act in accordance with the provisions of paragraphs 1 and 2 of the present rule only after receiving, from the member concerned, written notification of his decision to cease to function as a member of the Committee.

Solemn declaration

Rule 14

Upon assuming his duties, each member of the Committee shall make the following solemn declaration in open Committee:

"I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee on the Elimination of Racial Discrimination honourably, faithfully, impartially and conscientiously".

IV. OFFICERS

Elections

Rule 15

The Committee shall elect from among its own members a Chairman, three Vice-Chairmen and a Rapporteur.

Term of office

Rule 16

The officers of the Committee shall be elected for a term of two years. They shall be eligible for re-election. None of them, however, may hold office if he ceases to be a member of the Committee.

Position of Chairman in relation to the Committee

Rule 17

In exercising his functions as Chairman, the Chairman shall remain under the authority of the Committee.

Acting Chairman

Rule 18

If the Chairman is unable to be present at a meeting or any part thereof, he shall designate one of the Vice-Chairmen to act in his place.

Powers and duties of the Acting Chairman

Rule 19

A Vice-Chairman acting as Chairman shall have the same powers and duties as the Chairman.

Replacement of officers

Rule 20

If any of the officers of the Committee ceases or declares his inability to function as a member of the Committee or, for any reason, is no longer able to act as an officer, a new officer shall be elected for the unexpired term of his predecessor.

V. SECRETARIAT

Duties of the Secretary-General

Rule 21

The secretariat of the Committee and of such subsidiary bodies as may be established by the Committee (hereinafter referred to as "the Secretariat") shall be provided by the Secretary-General.

Statements

Rule 22

The Secretary-General or his representative shall be present at all meetings of the Committee. He or his representative may, subject to rule 37, make either oral or written statements to the meetings of the Committee or its subsidiary bodies.

Servicing of meetings

Rule 23

The Secretary-General shall be responsible for all the necessary arrangements for meetings of the Committee and its subsidiary bodies.

Keeping the members informed

Rule 24

The Secretary-General shall be responsible for keeping the members of the Committee informed of any questions which may be brought before it for consideration.

Financial implications of proposals

Rule 25

Before any proposal which involves expenditures is approved by the Committee or by any of its subsidiary bodies, the Secretary-General shall prepare and circulate to its members, as early as possible, an estimate of the cost involved in the proposal. It shall be the duty of the Chairman to draw the attention of members to this estimate and to invite discussions on it when the proposal is considered by the Committee or by a subsidiary body.

VI. LANGUAGES

Official and working languages

Rule 26

Chinese, English, French, Russian and Spanish shall be the official languages and English, French, Russian and Spanish the working languages of the Committee.

Interpretation from an official language

Rule 27

Speeches made in any of the official languages shall be interpreted into the other official languages.

Interpretation from an unofficial language

Rule 28

Any person appearing before the Committee, may make a speech in a language other than the official languages. In this case, he shall himself provide for interpretation into one of the official languages. Interpretation into the other official languages by the interpreters of the Secretariat may be based on the interpretation in the first official language.

Languages of records

Rule 29

Summary records of meetings of the Committee shall be drawn up in the working languages.

Languages of formal decisions and official documents

Rule 30

All formal decisions of the Committee shall be made available in the official languages. All official documents of the Committee shall be issued in the working languages, and any of them may be issued in the other official language upon the decision of the Committee.

VII. PUBLIC AND PRIVATE MEETINGS

Public and private meetings

Rule 31

The meetings of the Committee and its subsidiary bodies shall be held in public, unless the Committee decides otherwise, or it appears from the relevant provisions of the Convention that the meeting should be held in private.

Issue of communiqués concerning private meetings

Rule 32

At the close of each private meeting the Committee or its subsidiary body may issue a communiqué through the Secretary-General.

VIII. RECORDS

Correction of provisional summary records

Rule 33

Summary records of the public and private meetings of the Committee and its subsidiary bodies shall be prepared by the Secretariat. They shall be distributed in provisional form as soon as possible to the members of the Committee, and to any others participating in the meetings. All such participants may, within three working days of the receipt of the provisional records of the meetings, submit corrections to the Secretariat. Any disagreement concerning such corrections shall be decided by the Chairman of the Committee or the Chairman of the subsidiary body to which the record relates or, in case of continued disagreement, by decision of the Committee or of the subsidiary body.

Distribution of summary records

Rule 34

1. The summary records of public meetings in their final form shall be documents for general distribution.
2. The summary records of private meetings shall be distributed to the members of the Committee and to other participants in the meetings. They may be made available to others upon decision of the Committee at such time and under such conditions as the Committee may decide.

IX. DISTRIBUTION OF REPORTS AND OTHER OFFICIAL DOCUMENTS OF THE COMMITTEE

Distribution of official documents

Rule 35

1. Without prejudice to the provisions of rule 34 of these rules of procedure and subject to paragraphs 2 and 3 of the present rule, reports, formal decisions and all other official documents of the Committee and its subsidiary bodies shall be documents for general distribution, unless the Committee decides otherwise.
2. Reports, formal decisions and other official documents of the Committee and its subsidiary bodies relating to articles 11, 12 and 13 and article 14 of the Convention shall be distributed by the Secretariat to all members of the Committee, to the States parties concerned and, as may be decided by the Committee, to members of its subsidiary bodies and to others concerned.

3. Reports and additional information submitted by States parties under article 9 of the Convention shall be documents for general distribution, unless the State party concerned requests otherwise.

X. CONDUCT OF BUSINESS

Quorum

Rule 36

A majority of the members of the Committee shall constitute a quorum. The presence of two thirds of the members of the Committee is, however, required for a decision to be taken.

Powers of the Chairman

Rule 37

In addition to exercising the powers conferred upon him by the Convention and elsewhere by these rules, the Chairman shall declare the opening and closing of each meeting of the Committee, shall direct the discussion, ensure observance of these rules, accord the right to speak put questions to the vote and announce decisions. The Chairman, subject to these rules, shall have control of the proceedings of the Committee and over the maintenance of order at its meetings. The Chairman may, in the course of the discussion of an item, propose to the Committee the limitation of the time to be allowed to speakers, the limitation of the number of times each speaker may speak on any question and the closure of the list of speakers. He shall rule on points of order. He may also propose the adjournment or the closure of the debate or the adjournment or the suspension of a meeting. Debate shall be confined to the question before the Committee, and the Chairman may call a speaker to order if his remarks are not relevant to the subject under discussion.

Points of order

Rule 38

During the discussion of any matter, a member may, at any time, raise a point of order, and such point of order shall immediately be decided upon by the Chairman in accordance with the rules of procedure. Any appeal against the ruling of the Chairman shall immediately be put to the vote, and the ruling of the Chairman shall stand unless overruled by a majority of the members present and voting. A member raising a point of order may not speak on the substance of the matter under discussion.

Time-limit for statements

Rule 39

The Committee may limit the time allowed to each speaker on any question. When debate is limited and a member or representative exceeds his allotted time, the Chairman shall call him to order without delay.

List of speakers

Rule 40

During the course of a debate, the Chairman may announce the list of speakers and, with the consent of the Committee, declare the list closed. The Chairman may, however, accord the right of reply to any member or representative if a speech delivered after he has declared the list closed makes this desirable. When the debate on an item is concluded because there are no other speakers, the Chairman shall declare the debate closed. Such closure shall have the same effect as closure by the consent of the Committee.

Suspension or adjournment of meetings

Rule 41

During the discussion of any matter, a member may move the suspension or the adjournment of the meeting. No discussion on such motions shall be permitted, and they shall immediately be put to the vote.

Adjournment of debate

Rule 42

During the discussion of any matter, a member may move the adjournment of the debate on the item under discussion. In addition to the proposer of the motion, one member may speak in favour of and one against the motion, after which the motion shall immediately be put to the vote.

Closure of debate

Rule 43

A member may, at any time, move the closure of the debate on the item under discussion, whether or not any other member or representative has signified his wish to speak. Permission to

speak on the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall immediately be put to the vote.

Order of motions

Rule 44

Subject to rule 38, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

- (a) To suspend the meeting;
- (b) To adjourn the meeting;
- (c) To adjourn the debate on the item under discussion;
- (d) For the closure of the debate on the item under discussion.

Submission of proposals

Rule 45

Unless otherwise decided by the Committee, proposals and substantive amendments or motions submitted by members shall be introduced in writing and handed to the Secretariat, and their consideration shall, if so requested by any member, be deferred until the next meeting on a following day.

Decisions on competence

Rule 46

Subject to rule 44, any motion by a member calling for a decision on the competence of the Committee to adopt a proposal submitted to it shall be put to the vote immediately before a vote is taken on the proposal in question.

Withdrawal of motions

Rule 47

A motion may be withdrawn by the member who proposed it at any time before voting on it has commenced, provided that the motion has not been amended. A motion which has thus been withdrawn may be reintroduced by any member.

Reconsiderations of proposals

Rule 48

When a proposal has been adopted or rejected, it may not be reconsidered at the same session unless the Committee, by a two-thirds majority of its members present and voting, so decides. Permission to speak on a motion to reconsider shall be accorded only to two speakers in favour of the motion and to two speakers opposing the motion, after which it shall be immediately put to the vote.

XI. VOTING

Voting rights

Rule 49

Each member of the Committee shall have one vote.

Adoption of decisions

Rule 50

Except as otherwise provided in the Convention and elsewhere in these rules, decisions of the Committee shall be made by a majority of the members present and voting. For the purpose of these rules, "members present and voting" means members casting an affirmative or negative vote. Members who abstain from voting are considered as not voting.

Equally divided votes

Rule 51

If a vote is equally divided on matters other than elections, the proposal shall be regarded as rejected.

Method of voting

Rule 52

Subject to rule 58, the Committee normally shall vote by show of hands, except that any member may request a roll-call, which shall be taken in the English alphabetical order of the names of the members of the Committee.

Roll-call votes

Rule 53

The vote of each member participating in any roll-call shall be inserted in the record.

Conduct during voting and explanation of votes

Rule 54

After the voting has commenced, there shall be no interruption of the voting except on a point of order by a member in connection with the actual conduct of the voting. Brief statements by members consisting solely in explanations of their votes may be permitted by the Chairman before the voting has commenced or after the voting has been completed.

Division of proposals

Rule 55

Parts of a proposal shall be voted on separately if a member requests that the proposal be divided. Those parts of the proposal which have been approved shall then be put to the vote as a whole; if all the operative parts of a proposal have been rejected, the proposal shall be considered to have been rejected as a whole.

Order of voting on amendments

Rule 56

1. When an amendment to a proposal is moved, the amendment shall be voted on first. When two or more amendments to a proposal are moved, the Committee shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on, until all amendments have been put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon.

2. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal.

Order of voting on proposals

Rule 57

1. If two or more proposals relate to the same question, the Committee shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

2. The Committee may, after each vote on a proposal, decide whether to vote on the next proposal.

3. Any motions requiring that no decision be taken on the substance of such proposals, however, shall be considered as previous questions and shall be put to the vote before them.

XII. ELECTIONS

Method of elections

Rule 58

Elections shall be held by secret ballot, unless the Committee decides otherwise in the case of elections to fill a place for which there is only one candidate.

Conduct of elections when only one elective place is to be filled

Rule 59

When only one person or member is to be elected and no candidate obtains in the first ballot the majority required, a second ballot shall be taken, which shall be restricted to the two candidates obtaining the largest number of votes. If in the second ballot the votes are equally divided, and a majority is required, the Chairman shall decide between the candidates by drawing lots. If a two-thirds majority is required, the balloting shall be continued until one candidate secures two thirds of the votes cast, provided that, after the third inconclusive ballot, votes may be cast for any eligible member. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the two candidates who obtain the greatest number of votes in the third of the unrestricted ballots, and the following three ballots thereafter shall be unrestricted, and so on until a person or member is elected.

Conduct of elections when two or more elective places are to be filled

Rule 60

When two or more elective places are to be filled at one time under the same conditions, those candidates obtaining in the first ballot the majority required shall be elected. If the number of candidates obtaining such majority is less than the number of persons or members to be elected, there shall be additional ballots to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous

ballot, to a number not more than twice the places remaining to be filled, provided that, after the third inconclusive ballot votes may be cast for any eligible person or member. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the candidates who obtain the greatest number of votes in the third of the unrestricted ballots, to a number not more than twice the places remaining to be filled, and the following three ballots thereafter shall be unrestricted, and so on until all the places have been filled.

XIII. SUBSIDIARY BODIES

Establishment of subsidiary bodies

Rule 61

1. The Committee may, in accordance with the provisions of the Convention and subject to the provisions of rule 25, set up such sub-committees and other ad hoc subsidiary bodies as it deems necessary and define their composition and mandates.
2. Each subsidiary body shall elect its own officers and adopt its own rules of procedure.

XIV. ANNUAL REPORT OF THE COMMITTEE

Annual report

Rule 62

The Committee shall report annually through the Secretary-General to the General Assembly, as provided in the Convention.

PART TWO. RULES RELATING TO THE FUNCTIONS
OF THE COMMITTEE

XV. REPORTS AND INFORMATION FROM STATES PARTIES UNDER
ARTICLE 9 OF THE CONVENTION

Form and contents of reports

Rule 63

The Committee may, through the Secretary-General, inform the States parties of its wishes regarding the form and contents of the periodic reports required to be submitted under article 9 of the Convention.

Attendance by States parties at examination of reports

Rule 64

The Committee shall, through the Secretary-General, notify the States parties (as early as possible) of the opening date, duration and place of the session at which their respective reports will be examined. Representatives of the States parties may be present at the meetings of the Committee when their reports are examined. The Committee may also inform a State party from which it decides to seek further information that it may authorize its representative to be present at a specified meeting. Such a representative should be able to answer questions which may be put to him by the Committee and make statements on reports already submitted by his State, and may also submit additional information from his State.

Request for additional information

Rule 65

If the Committee decides to request an additional report or further information from a State party under the provisions of article 9, paragraph 1, of the Convention, it may indicate the manner as well as the time within which such additional report or further information shall be supplied and shall transmit its decision to the Secretary-General for communication, within two weeks, to the State party concerned.

Non-receipt of reports

Rule 66

1. At each session, the Secretary-General shall notify the Committee of all cases of non-receipt of reports or additional information, as the case may be, provided for under article 9 of

the Convention. The Committee, in such cases, may transmit to the State party concerned, through the Secretary-General, a reminder concerning the submission of the report or additional information.

2. If even after the reminder, referred to in paragraph 1 of this rule, the State party does not submit the report or additional information required under article 9 of the Convention, the Committee shall include a reference to this effect in its annual report to the General Assembly.

Suggestions and general recommendations

Rule 67

1. When considering a report submitted by a State party under article 9, the Committee shall first determine whether the report provides the information referred to in the relevant communications of the Committee.

2. If a report of the State party to the Convention, in the opinion of the Committee, does not contain sufficient information, the Committee may request that State to furnish additional information.

3. If, on the basis of its examination of the reports and information supplied by the State party, the Committee determines that some of the obligations of that State under the Convention have not been discharged, it may make suggestions and general recommendations in accordance with article 9, paragraph 2, of the Convention.

Transmission of suggestions and general recommendations

Rule 68

1. Suggestions and general recommendations made by the Committee based on the examination of the reports and information received from States parties under article 9, paragraph 2, of the Convention shall be communicated by the Committee through the Secretary-General to the States parties for their comments.

2. The Committee may, where necessary, indicate a time-limit within which comments from States parties are to be received.

3. Suggestions and general recommendations of the Committee, referred to in paragraph 1, shall be reported to the General Assembly, together with comments, if any, from States parties.

XVI. COMMUNICATIONS FROM STATES PARTIES UNDER
ARTICLE 11 OF THE CONVENTION

Method of dealing with communications from States parties

Rule 69

1. When a matter is brought to the attention of the Committee by a State party in accordance with article 11, paragraph 1, of the Convention, the Committee shall examine it at a private meeting and shall then transmit it to the State party concerned through the Secretary-General. The Committee in examining the communications shall not consider its substance. Any action at this stage by the Committee in respect of the communication shall in no way be construed as an expression of its views on the substance of the communication.
2. If the Committee is not in session, the Chairman shall bring the matter to the attention of its members by transmitting copies of the communication and requesting their consent to transmit such communication on behalf of the Committee, to the State party concerned in compliance with article 11, paragraph 1. The Chairman shall also specify a time-limit of three weeks for their replies.
3. Upon receipt of the consent of the majority of the members, or, if within the specified time-limit no replies are received, the Chairman shall transmit the communication to the State party concerned, through the Secretary-General, without delay.
4. In the event of any replies being received which represent the views of the majority of the Committee, the Chairman, while acting in accordance with such replies, shall bear in mind the requirement of urgency in transmitting the communication to the State party concerned on behalf of the Committee.
5. The Committee, or the Chairman on behalf of the Committee, shall remind the receiving State that the time-limit for submission of its written explanations or statement under the Convention is three months.
6. When the Committee receives the explanations or statements of the receiving State, the procedure laid down above shall be followed with respect to the transmission of those explanations or statements to the State party submitting the initial communication.

Request for information

Rule 70

The Committee may call upon the States parties concerned to supply information relevant to the application of article 11 of the Convention. The Committee may indicate the manner as well as the time within which such information shall be supplied.

Notification to the States parties concerned

Rule 71

If any matter is submitted for consideration by the Committee under paragraph 2 of article 11 of the Convention, the Chairman, through the Secretary-General, shall inform the States parties concerned of the forthcoming consideration of this matter not later than 30 days in advance of the first meeting of the Committee, in the case of a regular session, and at least 18 days in advance of the first meeting of the Committee, in the case of a special session.

XVII. ESTABLISHMENT AND FUNCTIONS OF THE AD HOC CONCILIATION
COMMISSION UNDER ARTICLES 12 AND 13 OF THE CONVENTION

Consultations on the composition of the Commission

Rule 72

After the Committee has obtained and collated all the information it thinks necessary as regards a dispute that has arisen under article 11, paragraph 2, of the Convention, the Chairman shall notify the States parties to the dispute and undertake consultations with them concerning the composition of the Ad Hoc Conciliation Commission (hereinafter referred to as "the Commission"), in accordance with article 12 of the Convention.

Appointment of members of the Commission

Rule 73

Upon receiving the unanimous consent of the States parties to the dispute regarding the composition of the Commission, the Chairman shall proceed to the appointment of the members of the Commission and shall inform the States parties to the dispute of the composition of the Commission.

Rule 74

1. If within three months of the Chairman's notification as provided in rule 72 above, the States parties to the dispute fail to reach agreement on all or part of the composition of the Commission, the Chairman shall then bring the situation to the attention of the Committee which shall proceed according to article 12, paragraph 1 (b), of the Convention at its next session.

2. Upon the completion of the election, the Chairman shall inform the States parties to the dispute of the composition of the Commission.

Solemn declaration by members of the Commission

Rule 75

Upon assuming his duties, each member of the Commission shall make the following solemn declaration at the first meeting of the Commission:

"I solemnly declare that I will perform my duties and exercise my powers as a member of the Ad Hoc Conciliation Commission honourably, faithfully, impartially and conscientiously".

Filling of vacancies in the Commission

Rule 76

Whenever a vacancy arises in the Commission, the Chairman of the Committee shall fill the vacancy as soon as possible in accordance with procedures laid down in rules 72 to 74. He shall proceed with filling such vacancy upon receipt of a report from the Commission or upon a notification by the Secretary-General.

Transmission of information to members of the Commission

Rule 77

The information obtained and collated by the Committee shall be made available by its Chairman, through the Secretary-General, to the members of the Commission at the time of notifying the members of the Commission of the date of the first meeting of the Commission.

Report of the Commission

Rule 78

1. The Chairman of the Committee shall communicate the report of the Commission referred to in article 13 of the Convention as soon as possible after its receipt to each of the States parties to the dispute and to the members of the Committee.
2. The States parties to the dispute, shall, within three months after the receipt of the Commission's report, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission. The Chairman shall transmit the information received from the States parties to the dispute to the members of the Committee.
3. After the expiry of the time-limit provided for in the preceding paragraph, the Chairman of the Committee shall communicate the report of the Commission and any declaration of States parties concerned to the other States parties to the Convention.

Keeping members of the Committee informed

Rule 79

The Chairman of the Committee shall keep the members of the Committee informed of his actions under rules 75 to 78.

XVIII. PROCEDURE FOR CONSIDERING COMMUNICATIONS FROM
INDIVIDUALS OR GROUPS OF INDIVIDUALS UNDER
ARTICLE 14 OF THE CONVENTION

A. General provisions

Competence of the Committee

Rule 80

1. The Committee shall be competent to receive and consider communications and exercise the functions provided for in article 14 of the Convention only when at least 10 States parties are bound by declarations recognizing the competence of the Committee in conformity with paragraph 1 thereof.
2. The Secretary-General shall transmit to the other States parties copies of the declarations deposited with him by States parties recognizing the competence of the Committee.
3. Consideration of communications pending before the Committee shall not be affected by the withdrawal of a declaration made under article 14 of the Convention.

4. The Secretary-General shall inform the other States parties of the name, composition and functions of any national legal body which has been established or indicated by a State party, in conformity with paragraph 3 of article 14.

National bodies

Rule 81

The Secretary-General shall keep the Committee informed of the name, composition and functions of any national legal body established or indicated under paragraph 2 of article 14 as competent to receive and consider petitions from individuals or groups of individuals claiming to be victims of a violation of any of the rights set forth in the Convention.

Certified copies of registers of petitions

Rule 82

1. The Secretary-General shall keep the Committee informed of the contents of all certified copies of the register of petitions filed with him in accordance with paragraph 4 of article 14.
2. The Secretary-General may request clarifications from the States parties concerning the certified copies of the registers of petitions emanating from the national legal bodies responsible for such registers.
3. The contents of the certified copies of the registers of petitions transmitted to the Secretary-General shall not be publicly disclosed.

Record of communications received by the Secretary-General

Rule 83

1. The Secretary-General shall keep a record of all communications which are or appear to be submitted to the Committee by individuals or groups of individuals claiming to be victims of a violation of any of the rights set forth in the Convention and who are subject to the jurisdiction of a State party bound by a declaration under article 14.
2. The Secretary-General may, if he deems it necessary, request clarification of the author of a communication as to his wish to have his communication submitted to the Committee for consideration under article 14. In case of doubt as to the wish of the author, the Committee shall be seized of the communication.

3. No communication shall be received by the Committee or included in a list under rule 85 below if it concerns a State party which has not made a declaration as provided for in paragraph 1 of article 14.

Information to be contained in a communication

Rule 84

1. The Secretary-General may request clarification from the author of a communication concerning the applicability of article 14 to his communication, in particular:

(a) The name, address, age and occupation of the author and the verification of his identity;

(b) The name(s) of the State party or States parties against which the communication is directed;

(c) The object of the communication;

(d) The provision or provisions of the Convention alleged to have been violated;

(e) The facts of the claim;

(f) Steps taken by the author to exhaust domestic remedies, including pertinent documents;

(g) The extent to which the same matter is being examined under another procedure of international investigation or settlement.

2. When requesting clarification or information, the Secretary-General shall indicate an appropriate time-limit to the author of the communication with a view to avoiding undue delays in the procedure.

3. The Committee may approve a questionnaire for the purpose of requesting the above-mentioned information from the author of the communication.

4. The request for clarification referred to in paragraph 1 of the present rule shall not preclude the inclusion of the communication in the list provided for in rule 85, paragraph 1, below.

5. The Secretary-General shall inform the author of a communication of the procedure that will be followed and that the text of his communication shall be transmitted confidentially to the State party concerned in accordance with paragraph 6 (a) of article 14.

Transmission of communications to the Committee

Rule 85

1. The Secretary-General shall summarize each communication thus received and shall place the summaries, individually or in composite lists of communications, before the Committee at its next regular session, together with the relevant certified copies of the registers of petitions kept by the national legal body of the country concerned and filed with the Secretary-General in compliance with paragraph 4 of article 14.

2. The Secretary-General shall draw the attention of the Committee to those cases for which certified copies of the registers of petitions have not been received.

3. The contents of replies to requests for clarification and relevant subsequent submissions from either the author of the communication or the State party concerned shall be placed before the Committee in a suitable form.

4. An original case file shall be kept for each summarized communication. The full text of any communication brought to the attention of the Committee shall be made available to any member of the Committee upon request.

B. Procedure for determining admissibility of communications

Method of dealing with communications

Rule 86

1. In accordance with the following rules, the Committee shall decide as soon as possible whether or not a communication is admissible in conformity with article 14 of the Convention.

2. The Committee shall, unless it decides otherwise, deal with communications in the order in which they have been placed before it by the Secretariat. The Committee may, if it deems appropriate, decide to consider jointly two or more communications.

Establishment of a working group

Rule 87

1. The Committee may, in accordance with rule 61, set up a Working Group to meet shortly before its sessions, or at any other convenient time to be decided by the Committee in consultation with the Secretary-General, for the purpose of making recommendations to the Committee regarding the fulfilment of the conditions of admissibility of communications laid down in article 14 of the Convention and assisting the Committee in any manner which the Committee may decide.
2. The Working Group shall not comprise more than five members of the Committee. The Working Group shall elect its own officers, develop its own working methods, and apply as far as possible the rules of procedure of the Committee to its meetings.

Meetings

Rule 88

Meetings of the Committee or its Working Group during which communications under article 14 of the Convention will be examined shall be closed. Meetings during which the Committee may consider general issues such as procedures for the application of article 14 may be public if the Committee so decides.

Inability of a member to take part in the examination of a communication

Rule 89

1. A member of the Committee shall not take part in the examination of a communication by the Committee or its Working Group:
 - (a) If he has any personal interest in the case; or
 - (b) If he has participated in any capacity in the making of any decision on the case covered by the communication.
2. Any question which may arise under paragraph 1 above shall be decided by the Committee without the participation of the member concerned.

Withdrawal of a member

Rule 90

If, for any reason, a member considers that he should not take part or continue to take part in the examination of a communication, he shall inform the Chairman of his withdrawal.

Conditions for admissibility of communications

Rule 91

With a view to reaching a decision on the admissibility of a communication, the Committee or its Working Group shall ascertain:

(a) That the communication is not anonymous and that it emanates from an individual or group of individuals subject to the jurisdiction of a State party recognizing the competence of the Committee under article 14 of the Convention;

(b) That the individual claims to be a victim of a violation by the State party concerned of any of the rights set forth in the Convention. As a general rule, the communication should be submitted by the individual himself or by his relatives or designated representatives; the Committee may, however, in exceptional cases accept to consider a communication submitted by others on behalf of an alleged victim when it appears that the victim is unable to submit the communication himself, and the author of the communication justifies his acting on the victim's behalf;

(c) That the communication is compatible with the provisions of the Convention;

(d) That the communication is not an abuse of the right to submit a communication in conformity with article 14;

(e) That the individual has exhausted all available domestic remedies, including, when applicable, those mentioned in paragraph 2 of article 14. However, this shall not be the rule where the application of the remedies is unreasonably prolonged;

(f) That the communication is, except in the case of duly verified exceptional circumstances, submitted within six months after all available domestic remedies have been exhausted, including, when applicable, those indicated in paragraph 2 of article 14.

Additional information, clarifications and observations

Rule 92

1. The Committee or the Working Group established under rule 87 may request, through the Secretary-General, the State party concerned or the author of the communication to submit additional written information or clarifications relevant to the question of admissibility of the communication.
2. Such requests shall contain a statement to the effect that the request does not imply that a decision has been reached on the question of admissibility of the communication by the Committee.
3. A communication may not be declared admissible unless the State party concerned has received the text of the communication and has been given an opportunity to furnish information or observations as provided in paragraph 1 of this rule, including information relating to the exhaustion of domestic remedies.
4. The Committee or the Working Group may adopt a questionnaire for requesting such additional information or clarifications.
5. The Committee or the Working Group shall indicate a deadline for the submission of such additional information or clarification.
6. If the deadline is not kept by the State party concerned or the author of a communication, the Committee or the Working Group may decide to consider the admissibility of the communication in the light of available information.
7. If the State party concerned disputes the contention of the author of a communication that all available domestic remedies have been exhausted, the State party is required to give details of the effective remedies available to the alleged victim in the particular circumstances of the case.

Inadmissible communications

Rule 93

1. When the Committee decides that a communication is inadmissible, or its consideration is suspended or discontinued, the Committee shall transmit its decisions as soon as possible, through the Secretary-General, to the petitioner and to the State party concerned.
2. A decision taken by the Committee, in conformity with paragraph 7 (a) of article 14, that a communication is inadmissible,

may be reviewed at a later date by the Committee upon a written request by the petitioner concerned. Such written request shall contain documentary evidence to the effect that the reasons for inadmissibility referred to in paragraph 7 (a) of article 14 are no longer applicable.

C. Consideration of communications on their merits

Method of dealing with admissible communications

Rule 94

1. After it has been decided that a communication is admissible in conformity with article 14, the Committee shall transmit, confidentially, through the Secretary-General, the text of the communication and other relevant information to the State party concerned without revealing the identity of the individual unless he has given his express consent. The Committee shall also inform, through the Secretary-General, the petitioner of the communication of its decision.
2. The State party concerned shall submit within three months to the Committee written explanations or statements clarifying the case under consideration and the remedy, if any, that may have been taken by that State party. The Committee may indicate, if it deems it necessary, the type of information it wishes to receive from the State party concerned.
3. In the course of its consideration, the Committee may inform the State party of its views on the desirability, because of urgency, of taking interim measures to avoid possible irreparable damage to the person or persons who claim to be victim(s) of the alleged violation. In doing so, the Committee shall inform the State party concerned that such expression of its views on interim measures does not prejudice either its final opinion on the merits of the communication or its eventual suggestions and recommendations.
4. Any explanations or statements submitted by a State party pursuant to this rule may be transmitted, through the Secretary-General, to the petitioner of the communication who may submit any additional written information or observations within such time-limit as the Committee shall decide.
5. The Committee may invite the presence of the petitioner or his representative and the presence of representatives of the State party concerned in order to provide additional information or to answer questions on the merits of the communication.

6. The Committee may revoke its decision that a communication is admissible in the light of any explanations or statements submitted by the State party. However, before the Committee considers revoking that decision, the explanations or statements concerned must be transmitted to the petitioner so that he may submit additional information or observations within the time-limit set by the Committee.

Opinion of the Committee on admissible communications and the Committee's suggestions and recommendations

Rule 95

1. Admissible communications shall be considered by the Committee in the light of all information made available to it by the petitioner and the State party concerned. The Committee may refer the communication to the Working Group in order to be assisted in this task.

2. The Committee or the working group set up by it to consider a communication may at any time, in the course of the examination, obtain through the intermediary of the Secretary-General any documentation that may assist in the disposal of the case from United Nations bodies or the specialized agencies.

3. After consideration of an admissible communication, the Committee shall formulate its opinion thereon. The opinion of the Committee shall be forwarded, through the Secretary-General, to the petitioner and to the State party concerned, together with any suggestions and recommendations the Committee may wish to make.

4. Any member of the Committee may request that a summary of his individual opinion be appended to the opinion of the Committee when it is forwarded to the petitioner and to the State party concerned.

5. The State party concerned shall be invited to inform the Committee in due course of the action it takes in conformity with the Committee's suggestions and recommendations.

Summaries in the Committee's annual report

Rule 96

The Committee shall include in its annual report a summary of the communications examined and, where appropriate, a summary of the explanations and statements of the States parties concerned and of its own suggestions and recommendations.

Press communiqués

Rule 97

The Committee may also issue communiqués, through the Secretary-General, for the use of information media and the general public regarding the activities of the Committee under article 14 of the Convention.

PART THREE. INTERPRETATION AND AMENDMENTS

XIX. INTERPRETATION AND AMENDMENTS

Underlined headings

Rule 98

The underlined headings of these rules, which were inserted for reference purposes only, shall be disregarded in the interpretation of the rules.

Amendments

Rule 99

These rules of procedure may be amended by a decision of the Committee.

Annex

Decision 2 (VI). Co-operation with the International Labour
Organisation (ILO) and the United Nations
Educational, Scientific and Cultural
Organization (UNESCO) a/

Without prejudice to such decisions as the Committee on the Elimination of Racial Discrimination may take in the future regarding the possibility of participation in its meetings by representatives of the International Labour Organisation and the United Nations Educational, Scientific and Cultural Organization under certain circumstances, the Committee decides that:

1. The Committee authorizes the Secretary-General of the United Nations to invite representatives of ILO and of UNESCO to attend the meetings of the Committee. The Committee shall decide at any private meeting it holds whether the observers of ILO and UNESCO may attend the private meeting in question.
2. In accordance with rules 34, paragraph 1, and 35 of its rules of procedure, the Committee authorizes the Secretary-General to make the records of its public meetings and the texts of its reports, formal decisions and other official documents available to the ILO Committee of Experts and the UNESCO Executive Board's Committee on Conventions and Recommendations in Education.
3. Written statements submitted by ILO and UNESCO, providing information on the application of the Discrimination (Employment and Occupation) Convention and Recommendation, 1958, and the Convention and Recommendation against Discrimination in Education, 1960, in the territories mentioned in paragraph 2 (a) of article 15 of the International Convention on the Elimination of All Forms of Racial Discrimination shall be transmitted by the Secretary-General of the United Nations to the Committee on the Elimination of Racial Discrimination, in accordance with paragraph 4 of article 15 of the International Convention on the Elimination of All Forms of Racial Discrimination and paragraph 3 (b) of the "Statement of the responsibilities of the Committee under article 15 of the Convention", adopted by the Committee on the Elimination of Racial Discrimination on 29 January 1970.

a/ Adopted by the Committee at its 115th meeting (sixth session) on 21 August 1972.

4. Written statements submitted by ILO and UNESCO, providing information on the application of the Discrimination (Employment and Occupation) Convention and Recommendation, 1958, and the Convention and Recommendation against Discrimination in Education, 1960, in territories other than those mentioned in the preceding paragraph shall be distributed by the Secretary-General of the United Nations to the members of the Committee on the Elimination of Racial Discrimination.

REGLEMENT INTERIEUR
DU
COMITE POUR L'ELIMINATION
DE LA DISCRIMINATION RACIALE

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INTRODUCTION

1. A ses première et deuxième sessions, le Comité pour l'élimination de la discrimination raciale a adopté un règlement intérieur provisoire composé de 78 articles à partir de textes établis par le Secrétaire général 1/.
2. A sa quatrième session, le Comité, par sa décision 1 (IV), a modifié l'article 36 (ancien article 35 du règlement intérieur provisoire) 2/.
3. A sa cinquième session, le Comité, par sa décision 1 (V), a adopté l'article 64 (ancien article 64 A du règlement intérieur provisoire) 3/.
4. A la même session, le Comité par sa décision 2 (V), a adopté l'article 67 (ancien article 66 A du règlement intérieur provisoire) 4/.
5. A sa septième session, le Comité, par sa décision 2 (VII) a modifié l'article 13 5/.
6. A la même session, le Comité, par sa décision 1 (VII), a modifié l'article 58 (ancien article 56 du règlement intérieur provisoire) 6/.
7. A sa dix-septième session, le Comité, par sa décision 1 (XVII), a modifié l'article 34 7/.

1/ Documents officiels de l'Assemblée générale, vingt-cinquième session, Supplément No 27 (A/8027), annexe II.

2/ Ibid., Vingt-sixième session, Supplément No 18 (A/8418), chap. VII, sect. B.

3/ Ibid., Vingt-septième session, Supplément No 18 (A/8718), chap. IX, sect. A.

4/ Ibid.

5/ Ibid., Vingt-huitième session, Supplément No 18 (A/9018), chap. X, sect. A.

6/ Ibid.

7/ Ibid., Trente-troisième session, Supplément No 18 (A/33/18), chap. X, sect. A.

8. A la même session, le Comité, par sa décision 2 (XVII), a modifié l'article 35 (ancien article 62 du règlement intérieur provisoire) 8/.
9. A sa vingt-septième session, le Comité a adopté les articles 80 à 93, à l'exception de l'alinéa a) et de la seconde partie de l'alinéa b) de l'article 91 qui ont été adoptés à la vingt-huitième session (anciens articles 79 à 92 du règlement intérieur provisoire) 9/.
10. A la même session, le Comité a adopté les paragraphes 1 à 4 de l'article 94 (ancien article 93 du règlement intérieur provisoire) 10/.
11. A sa vingt-huitième session, le Comité a adopté l'alinéa a) et la seconde partie de l'alinéa b) de l'article 91, et les paragraphes 5 et 6 de l'article 94 laissés en suspens à la vingt-septième session 11/.
12. A la même session, le Comité a adopté les articles 95 à 97 (anciens articles 94 à 96 du règlement intérieur provisoire) 12/.
13. A sa vingt-neuvième session, le Comité a décidé de supprimer l'adjectif "provisoire" du texte de son règlement intérieur 13/.
14. A la même session, le Comité a modifié les articles 27 et 28 14/.

8/ Ibid.

9/ Ibid., Trente-huitième session, Supplément No 18
(A/38/18), annexe III.

10/ Ibid.

11/ Ibid.

12/ Ibid.

13/ Ibid., Trente-neuvième session, Supplément No 18
(A/39/18), chap. III.

14/ Ibid.

15. A la même session, le Comité a adopté l'article 98 15/.
16. A la même session, le Comité a décidé aussi :
- a) d'ajouter, à la fin de son règlement intérieur, une troisième partie, nouvelle, intitulée "Interprétation et amendements", dans laquelle a été incorporé l'ancien article 63 du règlement intérieur provisoire qui est devenu l'article 99;
 - b) de donner des titres aux articles et d'ajouter une table des matières 16/.

15/ Ibid.

16/ Ibid.

NOTE EXPLICATIVE

On notera que l'article 98 dispose que les rubriques soulignées, insérées à seule fin de faciliter la consultation du texte, ne seront pas prises en considération pour l'interprétation des articles.

REGLEMENT INTERIEUR

PREMIERE PARTIE : DISPOSITIONS GENERALES

I. SESSIONS

Sessions ordinaires

Article premier

Le Comité pour l'élimination de la discrimination raciale (ci-après dénommé "le Comité"), constitué en vertu de la Convention internationale sur l'élimination de toutes les formes de discrimination raciale (ci-après dénommée "la Convention"), tient deux sessions ordinaires par an.

Dates des sessions

Article 2

Les sessions ordinaires du Comité sont convoquées aux dates fixées par le Comité en consultation avec le Secrétaire général de l'Organisation des Nations Unies (ci-après dénommé "le Secrétaire général"), compte tenu du calendrier des conférences approuvé par l'Assemblée générale.

Sessions extraordinaires

Article 3

1. Des sessions extraordinaires du Comité sont convoquées sur la décision du Comité. Lorsque le Comité n'est pas en session, le Président peut convoquer des sessions extraordinaires en consultation avec les autres membres du Bureau. Le Président du Comité convoque aussi des sessions extraordinaires :

- a) Sur la demande de la majorité des membres du Comité;
- b) Sur la demande d'un Etat partie à la Convention.

2. Les sessions extraordinaires sont convoquées aussitôt que possible pour une date fixée par le Président en consultation avec le Secrétaire général et les autres membres du Bureau du Comité, compte tenu du calendrier des conférences approuvé par l'Assemblée générale.

Notification de la date d'ouverture des sessions

Article 4

Le Secrétaire général fait connaître aux membres du Comité la date de la première séance de chaque session et le lieu où elle doit se tenir. Cette notification est envoyée, dans le cas d'une session ordinaire, trente jours au moins à l'avance et, dans le cas d'une session extraordinaire, dix-huit jours au moins à l'avance.

Lieu des sessions

Article 5

Les sessions du Comité se tiennent normalement au Siège de l'Organisation des Nations Unies. Le Comité peut, en consultation avec le Secrétaire général et compte tenu des règles appliquées en la matière par l'Organisation des Nations Unies, décider de tenir une session en un autre lieu.

II. ORDRE DU JOUR

Ordre du jour provisoire des sessions ordinaires

Article 6

L'ordre du jour provisoire de chaque session ordinaire est établi par le Secrétaire général en consultation avec le Président du Comité, conformément aux dispositions des articles 9, 11, 12, 13, 14 et 15 de la Convention applicables en la matière, et comporte :

- a) Toute question que le Comité, lors d'une session précédente, a décidé d'inscrire à son ordre du jour;
- b) Toute question proposée par le Président du Comité;
- c) Toute question proposée par un Etat partie à la Convention;
- d) Toute question proposée par un membre du Comité;
- e) Toute question proposée par le Secrétaire général.

Ordre du jour provisoire des sessions extraordinaires

Article 7

L'ordre du jour provisoire d'une session extraordinaire du Comité comporte seulement les questions qu'il est proposé d'examiner à cette session extraordinaire.

Adoption de l'ordre du jour

Article 8

L'adoption de l'ordre du jour constitue le premier point de l'ordre du jour provisoire d'une session, sauf s'il y a lieu d'élire les membres du Bureau conformément à l'article 15 du présent règlement.

Révision de l'ordre du jour

Article 9

Au cours d'une session, le Comité peut réviser l'ordre du jour et, s'il y a lieu, ajouter, ajourner ou supprimer des points.

Distribution de l'ordre du jour provisoire et des documents essentiels

Article 10

L'ordre du jour provisoire et les documents essentiels relatifs à chaque point de celui-ci sont distribués aux membres du Comité par le Secrétaire général aussitôt que possible. L'ordre du jour provisoire d'une session extraordinaire est distribué aux membres du Comité par le Secrétaire général en même temps que la notification de la séance prévue à l'article 4 du présent règlement.

III. MEMBRES DU COMITE

Membres

Article 11

Les membres du Comité sont les dix-huit experts désignés conformément à l'article 3 de la Convention.

Début du mandat

Article 12

Le mandat des membres du Comité élus lors de la première élection entrera en vigueur à la date de la première séance du Comité. Le mandat des membres du Comité élus lors des élections ultérieures entrera en vigueur le jour suivant la date d'expiration du mandat des membres du Comité qu'ils remplaceront.

Vacance fortuite

Article 13

1. En cas de vacance fortuite au sein du Comité, le Secrétaire général priera immédiatement l'Etat partie dont l'expert a cessé d'exercer ses fonctions de membre du Comité de désigner dans un délai de deux mois un autre expert choisi parmi ses ressortissants, qui achèvera le terme du mandat de membre du Comité. Le nom de l'expert ainsi désigné est soumis par le Secrétaire général à l'approbation du Comité, qui se prononce au scrutin secret.

2. Lorsque le choix de l'expert a été approuvé par le Comité, le Secrétaire général avise les Etats parties à la Convention du nom du membre désigné pour remplir la vacance fortuite.

3. Sauf en cas de vacance due au décès ou à l'invalidité d'un membre du Comité, le Secrétaire général et le Comité n'appliqueront les dispositions des paragraphes 1 et 2 du présent article qu'après avoir reçu directement du membre intéressé une notification écrite de sa décision de cesser d'exercer ses fonctions de membre du Comité.

Engagement solennel

Article 14

Tout membre du Comité doit, lors de son entrée en fonctions, prendre en séance publique l'engagement solennel ci-après :

"Je déclare solennellement que j'exercerai tous mes devoirs et attributions de membre du Comité pour l'élimination de la discrimination raciale en tout honneur et dévouement, en pleine et parfaite impartialité et en toute conscience."

IV. BUREAU

Elections

Article 15

Ce comité élit parmi ses membres un président, trois vice-présidents et un rapporteur.

Durée du mandat

Article 16

Les membres du Bureau du Comité sont élus pour une période de deux ans. Ils sont rééligibles. Aucun d'eux ne peut, toutefois, exercer ses fonctions s'il cesse d'être membre du Comité.

Position du Président par rapport au Comité

Article 17

Dans l'exercice de ses fonctions, le Président demeure sous l'autorité du Comité.

Président par intérim

Article 18

Si le Président est empêché d'assister à tout ou partie d'une séance, il désigne un des vice-présidents pour le remplacer.

Droits et devoirs du Président par intérim

Article 19

Un vice-président agissant en qualité de président a les mêmes droits et les mêmes devoirs que le Président.

Remplacement des membres du Bureau

Article 20

Si l'un quelconque des membres du Bureau cesse d'exercer ou déclare qu'il n'est plus en mesure d'exercer les fonctions de membre du Comité ou n'est plus en mesure, pour quelque raison que ce soit, de siéger au Bureau, un nouveau membre du Bureau est élu pour la durée du mandat de son prédécesseur qui reste à courir.

V. SECRETARIAT

Devoirs du Secrétaire général

Article 21

Le Secrétaire général assure le secrétariat du Comité et ces organes subsidiaires qui peuvent être créés par le Comité (ci-après dénommé "le Secrétariat").

Exposés

Article 22

Le Secrétaire général ou son représentant assiste à toutes les séances du Comité. Sous réserve des dispositions de l'article 37 du présent règlement, lui-même ou son représentant peut présenter des exposés oraux ou écrits aux séances du Comité ou de ses organes subsidiaires.

Service des réunions

Article 23

Le Secrétaire général est chargé de prendre toutes les dispositions voulues pour les réunions du Comité et de ses organes subsidiaires.

Information des membres

Article 24

Le Secrétaire général est chargé de porter à la connaissance des membres du Comité toutes les questions dont le Comité peut être saisi aux fins d'examen.

Incidences financières des propositions

Article 25

Avant que le Comité ou l'un de ses organes subsidiaires n'approuve une proposition entraînant des dépenses, le Secrétaire général dresse et fait distribuer, aussitôt que possible, aux membres du Comité ou de l'organe subsidiaire, un état estimatif des dépenses entraînées par la proposition. Il incombe au Président d'appeler sur cet état estimatif l'attention des membres pour qu'ils le discutent lorsque la proposition est examinée par le Comité ou par l'organe subsidiaire.

VI. LANGUES

Langues officielles et de travail

Article 26

L'anglais, le chinois, l'espagnol, le français et le russe sont les langues officielles du Comité. L'anglais, l'espagnol, le français et le russe sont les langues de travail.

Interprétation d'une langue officielle

Article 27

Les discours prononcés dans l'une des langues officielles sont interprétés dans les autres langues officielles.

Interprétation d'une langue autre qu'une langue officielle

Article 28

Toute personne comparaissant devant le Comité peut prendre la parole dans une langue autre que les langues officielles. Dans ce cas, il assure l'interprétation dans une des langues officielles. Les interprètes du Secrétariat peuvent prendre pour base de leur interprétation dans les autres langues officielles celle qui a été faite dans la première langue officielle utilisée.

Langues des comptes rendus

Article 29

Les comptes rendus analytiques des séances du Comité sont établis dans les langues de travail.

Langues des décisions officielles et des documents officiels

Article 30

Toutes les décisions officielles du Comité sont communiquées dans les langues officielles. Tous les documents officiels du Comité sont publiés dans les langues de travail et, si le Comité en décide ainsi, tout document officiel peut être publié dans l'autre langue officielle.

VII. SEANCES PUBLIQUES ET PRIVEES

Séances publiques et privées

Article 31

Les séances du Comité et de ses organes subsidiaires sont publiques à moins que le Comité n'en décide autrement ou qu'il ne ressorte des dispositions pertinentes de la Convention que la séance doit être privée.

Publication de communiqués au sujet des séances privées

Article 32

A l'issue de chaque séance privée, le Comité ou son organe subsidiaire peut faire publier un communiqué par l'intermédiaire du Secrétaire général.

VIII. COMPTES RENDUS

Rectifications des comptes rendus analytiques provisoires

Article 33

Le Secrétariat établit le compte rendu analytique des séances publiques et privées du Comité et de ses organes subsidiaires. Il le distribue aussitôt que possible, sous forme provisoire, aux membres du Comité et à tous autres participants à la séance. Tous ces participants peuvent, dans les trois jours ouvrables suivant la réception du compte rendu provisoire de la séance, soumettre des rectifications au Secrétariat. En cas de contestation au sujet de ces rectifications, c'est le Président du Comité ou le Président de l'organe subsidiaire auquel se rapporte le compte rendu qui tranche le désaccord, ou, si le désaccord persiste, le Comité ou l'organe subsidiaire qui décide.

Distribution des comptes rendus analytiques

Article 34

1. Les comptes rendus analytiques des séances publiques sous leur forme définitive sont des documents de distribution générale.
2. Les comptes rendus analytiques des séances privées sont distribués aux membres du Comité et aux autres participants aux séances. Ils peuvent être communiqués à d'autres personnes sur décision du Comité, au moment et dans les conditions fixés le cas échéant par celui-ci.

IX. DISTRIBUTION DES RAPPORTS ET AUTRES DOCUMENTS
OFFICIELS DU COMITE

Distribution des documents officiels

Article 35

1. Sans préjudice des dispositions de l'article 34 du présent règlement intérieur et sous réserve des paragraphes 2 et 3 du présent article, les rapports, les décisions officielles et tous les autres documents officiels du Comité et de ses organes subsidiaires sont des documents de distribution générale, à moins que le Comité n'en décide autrement.

2. Les rapports, les décisions officielles et les autres documents officiels du Comité et de ses organes subsidiaires relatifs aux articles 11, 12 et 13 et à l'article 14 de la Convention sont distribués par le Secrétariat à tous les membres du Comité et aux Etats parties intéressés et, selon la décision du Comité, aux membres de ses organes subsidiaires et à d'autres destinataires intéressés.

3. Les rapports et les renseignements supplémentaires présentés par les Etats parties conformément à l'article 9 de la Convention sont des documents de distribution générale, à moins que l'Etat partie intéressé ne demande qu'il en soit autrement.

X. CONDUITE DES DEBATS

Quorum

Article 36

Le quorum est constitué par la majorité des membres du Comité. La présence des deux tiers des membres du Comité est toutefois requise pour l'adoption d'une décision.

Pouvoirs du Président

Article 37

En sus des pouvoirs qui lui sont conférés par la Convention et en vertu d'autres dispositions du présent règlement, le Président a charge de prononcer l'ouverture et la clôture de chaque séance du Comité; il dirige les débats, assure l'application du présent règlement, donne la parole, met les questions aux voix et proclame les décisions. Sous réserve des dispositions du présent règlement, le Président règle les débats du Comité et assure le maintien de l'ordre au cours des séances. Le Président peut, au cours de la discussion d'un point de l'ordre du jour, proposer au Comité de limiter le temps de parole de chaque orateur, ainsi que

Le nombre des interventions de chaque orateur sur une même question, et de clore la liste des orateurs. Il statue sur les motions d'ordre. Il a aussi le pouvoir de proposer l'ajournement ou la clôture du débat ainsi que la levée ou la suspension d'une séance. Les débats portent uniquement sur la question dont est saisi le Comité et le Président peut rappeler à l'ordre un orateur dont les remarques n'ont pas trait au sujet en discussion.

Motions d'ordre

Article 38

Au cours de la discussion de toute question, un membre peut, à tout moment, présenter une motion d'ordre sur laquelle le Président prend immédiatement une décision conformément au règlement. S'il en est appelé de la décision du Président, l'appel est immédiatement mis aux voix et la décision du Président, si elle n'est pas annulée par la majorité des membres présents et votants, est maintenue. Un membre qui présente une motion d'ordre ne peut, dans son intervention, traiter du fond de la question en discussion.

Limitation du temps de parole

Article 39

Le Comité peut limiter le temps de parole de chaque orateur sur toute question. Lorsque les débats sont limités et qu'un membre ou un représentant dépasse le temps qui lui a été accordé, le Président le rappelle immédiatement à l'ordre.

Liste des orateurs

Article 40

Au cours d'un débat, le Président peut donner lecture de la liste des orateurs et, avec l'assentiment du Comité, déclarer cette liste close. Le Président peut cependant accorder le droit de réponse à un membre ou représentant quelconque lorsqu'un discours prononcé après la clôture de la liste des orateurs rend cette décision opportune. Lorsque la discussion portant sur un point est terminée du fait qu'il n'y a pas d'autres orateurs inscrits, le Président prononce la clôture du débat. En pareil cas, la clôture du débat a le même effet que si elle était approuvée par le Comité.

Suspension ou levée des séances

Article 41

Au cours de la discussion de toute question, un membre peut demander la suspension ou la levée de la séance. Les motions en ce sens ne doivent pas faire l'objet d'un débat, mais sont immédiatement mises aux voix.

Ajournement du débat

Article 42

Au cours de la discussion de toute question, un membre peut demander l'ajournement du débat sur la question en discussion. Outre l'auteur de la motion, deux orateurs peuvent prendre la parole, l'un en faveur de la motion et l'autre contre, après quoi la motion est immédiatement mise aux voix.

Clôture du débat

Article 43

A tout moment, un membre peut demander la clôture du débat sur la question en discussion, même si d'autres membres ou représentants ont manifesté le désir de prendre la parole. L'autorisation de prendre la parole au sujet de la clôture du débat n'est accordée qu'à deux orateurs opposés à la clôture, après quoi la motion est immédiatement mise aux voix.

Ordre des motions

Article 44

Sous réserve des dispositions de l'article 38 du présent règlement, les motions suivantes ont, dans l'ordre indiqué ci-après, priorité sur toutes les autres propositions ou motions présentées :

- a) Suspension de la séance;
- b) Levée de la séance;
- c) Ajournement du débat sur le point en discussion;
- d) Clôture du débat sur le point en discussion.

Soumission des propositions

Article 45

A moins que le Comité n'en décide autrement, les propositions et les amendements ou motions de fond présentés par les membres sont remis par écrit au secrétariat; si un membre en fait la demande, leur examen est remis à la première séance qui doit se tenir postérieurement au jour où ils ont été présentés.

Décisions sur la compétence

Article 46

Sous réserve des dispositions de l'article 44 du présent règlement, toute motion présentée par un membre tendant à ce que le Comité décide s'il est compétent pour adopter une proposition dont il est saisi est mise aux voix immédiatement avant le vote sur la proposition en cause.

Retrait des motions

Article 47

L'auteur d'une motion peut toujours la retirer avant qu'elle n'ait été mise aux voix, à condition qu'elle n'ait pas fait l'objet d'un amendement. Une motion qui est ainsi retirée peut être présentée à nouveau par un membre quelconque.

Nouvel examen des propositions

Article 48

Lorsqu'une proposition est adoptée ou rejetée, elle ne peut être examinée à nouveau au cours de la même session, sauf décision contraire du Comité, prise à la majorité des deux tiers des membres présents et votants. L'autorisation de prendre la parole à l'occasion d'une motion tendant à un nouvel examen n'est accordée qu'à deux orateurs favorables à la motion et à deux orateurs opposés à la motion, après quoi elle est immédiatement mise aux voix.

XI. VOTE

Droit de vote

Article 49

Chaque membre du Comité dispose d'une voix.

Adoption des décisions

Article 50

Sauf dans les cas où la Convention ou d'autres articles du présent règlement en disposent autrement, les décisions du Comité sont prises à la majorité des membres présents et votants. Aux fins du présent règlement, l'expression "membres présents et votants" s'entend des membres qui votent pour ou contre. Les membres qui s'abstiennent de voter sont considérés comme non votants.

Partage des voix

Article 51

En cas de partage égal des voix lors d'un vote ne portant pas sur des élections, la proposition est considérée comme repoussée.

Modalités du vote

Article 52

Sous réserve des dispositions de l'article 58 du présent règlement, le Comité vote normalement à main levée à moins qu'un membre ne demande le vote par appel nominal, lequel a lieu alors dans l'ordre alphabétique anglais des noms des membres du Comité.

Vote par appel nominal

Article 53

En cas de vote par appel nominal, le vote de chaque membre participant au scrutin est consigné au compte rendu.

Règles à observer durant le scrutin et explications de vote

Article 54

Quand le scrutin est commencé, il ne peut être interrompu sauf si un membre présente une motion d'ordre relative à la manière dont s'effectue le scrutin. Le Président peut permettre aux membres d'intervenir brièvement, soit avant que le scrutin commence, soit quand il est terminé, mais uniquement pour expliquer leur vote.

Division des propositions

Article 55

La division des propositions est de droit si elle est demandée. Les parties de la proposition qui ont été adoptées sont ensuite mises aux voix en bloc; si toutes les parties du dispositif d'une proposition ont été repoussées, la proposition est considérée comme repoussée dans son ensemble.

Ordre du vote sur les amendements

Article 56

1. Lorsqu'une proposition fait l'objet d'un amendement, l'amendement est mis aux voix en premier lieu. Si une proposition fait l'objet de deux ou de plusieurs amendements, le Comité vote d'abord sur celui qui s'éloigne le plus, quant au fond, de la proposition primitive. Il vote ensuite sur l'amendement qui, après ce premier amendement, s'éloigne le plus de la proposition, et ainsi de suite jusqu'à ce que tous les amendements aient été mis aux voix. Si en ce plusieurs amendements sont adoptés, il vote ensuite sur la proposition modifiée.

2. Une motion est considérée comme un amendement à une proposition si elle comporte simplement une addition, une suppression ou une modification intéressant une partie de ladite proposition.

Ordre du vote sur les propositions

Article 57

1. Si la même question fait l'objet de deux ou de plusieurs propositions, le Comité, à moins qu'il n'en décide autrement, vote sur ces propositions dans l'ordre où elles ont été présentées.

2. Après chaque vote, le Comité peut décider s'il votera sur la proposition suivante.

3. Toutefois, les motions qui tendent à ce que le Comité ne se prononce pas sur le fond des propositions sont considérées comme des questions préalables et mises aux voix avant lesdites propositions.

XII. ELECTIONS

Modalités des élections

Article 58

Les élections ont lieu au scrutin secret, à moins que le Comité n'en décide autrement lorsqu'il s'agit d'élections à un poste pour lequel un seul candidat a été proposé.

Cas où un seul poste électif est à pourvoir

Article 59

Lorsqu'il s'agit d'élire une seule personne ou un seul membre et qu'aucun candidat ne recueille au premier tour la majorité requise, on procède à un second tour de scrutin, mais le vote ne porte plus que sur les deux candidats qui ont obtenu le plus grand nombre de voix. Si les deux candidats recueillent le même nombre de voix à ce second tour et si la majorité est requise, le Président décide entre les candidats en tirant au sort. Dans le cas où la majorité des deux tiers est requise, le scrutin continue jusqu'à ce qu'un des candidats recueille les deux tiers des suffrages exprimés; toutefois, après le troisième tour de scrutin non décisif, les membres ont le droit de voter pour tout membre éligible. Si trois tours de scrutin ont lieu selon cette dernière procédure sans donner de résultats, les trois scrutins suivants ne portent plus que sur les deux candidats ayant obtenu le plus grand nombre de voix au troisième des scrutins qui ont eu lieu selon ladite procédure; aux trois tours de scrutin suivants, les membres ont de nouveau le droit de voter pour tout membre éligible, et ainsi de suite jusqu'à ce qu'une personne ou un membre soit élu.

Cas où plusieurs postes électifs sont à pourvoir

Article 60

Lorsque deux ou plusieurs postes doivent être pourvus par voie d'élection en même temps et dans les mêmes conditions, les candidats qui, au premier tour, obtiennent la majorité requise sont élus. Si le nombre des candidats qui ont obtenu cette majorité est inférieur au nombre des personnes ou des membres à élire, on procède à d'autres tours de scrutin afin de pourvoir les postes encore vacants, le vote ne portant que sur les candidats qui ont obtenu le plus grand nombre de suffrages au scrutin précédent et dont le nombre ne doit pas dépasser le double

de celui des postes restant à pourvoir; toutefois, après le troisième tour de scrutin non décisif, les membres ont le droit de voter pour toute personne ou membre éligible. Si trois tours de scrutin ont lieu selon cette dernière procédure sans donner de résultat, les trois scrutins suivants ne portent plus que sur les candidats ayant obtenu le plus grand nombre de voix au troisième des scrutins qui ont eu lieu selon ladite procédure, le nombre de ces candidats ne devant pas dépasser le double de celui des postes restant à pourvoir; aux trois tours de scrutin suivants, les membres ont de nouveau le droit de voter pour toute personne ou membre éligible, et ainsi de suite jusqu'à ce que tous les postes aient été pourvus.

XIII. ORGANES SUBSIDIAIRES

Création d'organes subsidiaires

Article 61

1. Le Comité peut, conformément aux dispositions de la Convention et sous réserve des dispositions de l'article 25 du présent règlement, créer les sous-comités et autres organes subsidiaires ad hoc qu'il juge nécessaires et fixer leur composition et leurs attributions.

2. Chaque organe subsidiaire élit son bureau et adopte son règlement intérieur.

XIV. RAPPORT ANNUEL DU COMITÉ

Rapport annuel

Article 62

Le Comité soumet chaque année un rapport à l'Assemblée générale par l'intermédiaire du Secrétaire général, comme prévu dans la Convention.

DEUXIEME PARTIE - ARTICLES RELATIFS AUX FONCTIONS DU COMITE

XV. RAPPORTS ET RENSEIGNEMENTS COMMUNIQUEES PAR LES ETATS PARTIES
EN APPLICATION DE L'ARTICLE 9 DE LA CONVENTION

Forme et contenu des rapports

Article 63

Le Comité peut, par l'intermédiaire du Secrétaire général, informer les Etats parties de ses désirs concernant la forme et le fond des rapports périodiques qui doivent être soumis conformément à l'article 9 de la Convention.

Présence des Etats parties lors de l'examen de leurs rapports

Article 64

Le Comité fait connaître (le plus tôt possible) aux Etats parties, par l'intermédiaire du Secrétaire général, la date d'ouverture, la durée et le lieu de la session à laquelle leurs rapports respectifs seront examinés. Les représentants des Etats parties peuvent assister aux séances du Comité auxquelles leurs rapports sont étudiés. Le Comité peut également informer un Etat partie auquel il décide de demander des renseignements supplémentaires qu'il peut autoriser son représentant à assister à une séance déterminée. Ce représentant doit être en mesure de répondre aux questions qui pourront lui être posées par le Comité et de faire des déclarations au sujet de rapports déjà présentés par son pays et il peut également fournir des renseignements supplémentaires émanant de son pays.

Demande de renseignements complémentaires

Article 65

Si le Comité décide, conformément aux dispositions du paragraphe 1 de l'article 9 de la Convention, de demander à un Etat partie un rapport additionnel ou des renseignements complémentaires, il pourra indiquer de quelle manière et dans quel délai ledit rapport ou lesdits renseignements devront être présentés et il communiquera sa décision au Secrétaire général, lequel la transmettra dans un délai de deux semaines à l'Etat partie intéressé.

Non-présentation des rapports

Article 66

1. Le Secrétaire général fera part au Comité, à chaque session, de tous les cas de non-présentation des rapports ou, selon le cas, des renseignements complémentaires prévus à l'article 9 de la Convention. En pareil cas, le Comité pourra adresser à l'Etat partie intéressé, par l'intermédiaire du Secrétaire général, un rappel concernant la présentation du rapport ou des renseignements complémentaires.

2. Si, même après le rappel visé au paragraphe 1 du présent article, l'Etat partie ne présente pas le rapport ou les renseignements complémentaires demandés en vertu de l'article 9 de la Convention, le Comité signale le fait dans son rapport annuel à l'Assemblée générale.

Suggestions et recommandations d'ordre général

Article 67

1. Lorsqu'il examine un rapport présenté par un Etat partie en application de l'article 9 de la Convention, le Comité doit tout d'abord s'assurer que tous les renseignements visés dans les communications pertinentes du Comité figurent bien dans ledit rapport.

2. Si, de l'avis du Comité, un rapport présenté par un Etat partie à la Convention ne contient pas des renseignements suffisants, le Comité peut demander à cet Etat de fournir des renseignements supplémentaires.

3. Si, à la suite de l'examen des rapports et des renseignements soumis par un Etat partie, le Comité décide que cet Etat partie ne s'est pas acquitté de certaines des obligations qui lui incombent en vertu de la Convention, il peut faire des suggestions et des recommandations d'ordre général conformément au paragraphe 2 de l'article 9 de la Convention.

Communication des suggestions et recommandations d'ordre général

Article 68

1. Le Comité, par l'intermédiaire du Secrétaire général, communique aux Etats parties, pour observations, les suggestions et les recommandations d'ordre général fondées sur l'examen des rapports et des renseignements reçus des Etats parties, qu'il a faites en vertu du paragraphe 2 de l'article 9 de la Convention.

2. Le Comité peut, le cas échéant, indiquer le délai dans lequel les observations des Etats parties doivent lui parvenir.

3. Le Comité porte à la connaissance de l'Assemblée générale les suggestions et recommandations d'ordre général mentionnées au paragraphe 1 avec, le cas échéant, les observations des Etats parties.

XVI. COMMUNICATIONS ADRESSEES PAR LES ETATS PARTIES
EN APPLICATION DE L'ARTICLE 11 DE LA CONVENTION

Procédures applicables aux communications émanant des Etats parties

Article 69

1. Lorsqu'un Etat partie appelle l'attention du Comité sur une question, conformément au paragraphe 1 de l'article 11 de la Convention, le Comité examine la communication en séance privée et la transmet ensuite à l'Etat partie intéressé par l'intermédiaire du Secrétaire général. En examinant la communication, le Comité ne l'étudie pas quant au fond. Les mesures que le Comité peut prendre à ce stade à l'égard de la communication ne seront en aucun cas considérées comme traduisant ses vues sur le fond de la communication.

2. Si le Comité n'est pas en session, le Président appelle l'attention des membres du Comité sur la question en leur transmettant copie de la communication et en demandant leur assentiment pour transmettre ladite communication, au nom du Comité, à l'Etat partie intéressé conformément au paragraphe 1 de l'article 11. Le Président fixe également un délai de trois semaines pour leurs réponses.

3. Dès réception de l'assentiment de la majorité des membres, ou s'il n'est pas reçu de réponses dans le délai fixé, le Président transmet sans délai la communication à l'Etat partie intéressé par l'intermédiaire du Secrétaire général.

4. S'il est reçu des réponses qui représentent l'opinion de la majorité du Comité, le Président tout en agissant conformément à ces réponses, tient compte des considérations d'urgence en transmettant la communication à l'Etat partie intéressé au nom du Comité.

5. Le Comité, ou le Président, agissant au nom du Comité, rappelle à l'Etat destinataire que le délai fixé par la Convention pour l'envoi de ses explications ou déclarations écrites, est de trois mois.

6. Lorsque le Comité reçoit les explications ou déclarations de l'Etat destinataire, il applique la procédure établie ci-dessus pour la transmission de ces explications ou déclarations à l'Etat partie qui a adressé la communication initiale.

Demande de renseignements

Article 70

Le Comité peut demander aux Etats parties en présence de lui fournir des renseignements intéressant l'application de l'article 11 de la Convention. Le Comité peut indiquer de quelle manière et dans quel délai ces renseignements seront fournis.

Notification aux Etats parties intéressés

Article 71

Si le Comité est saisi d'une question en application du paragraphe 2 de l'article 11 de la Convention, le Président, par l'intermédiaire du Secrétaire général, avise les Etats parties intéressés que le Comité va examiner la question; cette notification est envoyée trente jours au moins avant la première séance du Comité dans le cas d'une session ordinaire et dix-huit jours au moins avant la première séance du Comité dans le cas d'une session extraordinaire.

XVII. DESIGNATION ET FONCTIONS DE LA COMMISSION DE CONCILIATION AD HOC PREVUE AUX ARTICLES 12 ET 13 DE LA CONVENTION

Consultations sur la composition de la Commission

Article 72

Une fois que le Comité a obtenu et dépouillé tous les renseignements qu'il juge nécessaires à propos d'un différend dont il a été saisi en vertu du paragraphe 2 de l'article 11 de la Convention, le Président adresse une notification aux Etats parties au différend et engage des consultations avec eux au sujet de la composition de la Commission de conciliation ad hoc (ci-après dénommée "la Commission"), conformément à l'article 12 de la Convention.

Désignation des membres de la Commission

Article 73

Lorsqu'il a obtenu l'assentiment unanime des Etats parties au différend en ce qui concerne la composition de la Commission, le Président procède à la désignation des membres de la Commission et informe les Etats parties au différend de la composition de celle-ci.

Article 74

1. Si, dans un délai de trois mois à compter de la date de la notification du Président prévue à l'article 71 du présent règlement, les Etats parties au différend ne parviennent pas à une entente sur tout ou partie de la composition de la Commission, le Président porte alors la situation à l'attention du Comité, qui applique, à sa session suivante, la procédure prévue à l'alinéa b) du paragraphe 1 de l'article 12 de la Convention.

2. Après l'élection, le Président informe les Etats parties au différend de la composition de la Commission.

Engagement solennel pris par les membres de la Commission

Article 75

Tout membre de la Commission doit, lors de son entrée en fonctions, prendre à la première séance de la Commission l'engagement solennel ci-après :

"Je déclare solennellement que j'exercerai tous mes devoirs et attributions de membre de la Commission de conciliation ad hoc en tout honneur et dévouement, en pleine et parfaite impartialité et en toute conscience."

Vacance au sein de la Commission

Article 76

Si une vacance se produit au sein de la Commission, le Président du Comité pourvoit le poste vacant aussitôt que possible selon la procédure prévue aux articles 72 à 74. Il fait le nécessaire en vue de pourvoir cette vacance au reçu d'un rapport de la Commission ou d'une notification du Secrétaire général.

Transmission des renseignements aux membres de la Commission

Article 77

Les renseignements obtenus et dépouillés par le Comité sont mis à la disposition des membres de la Commission par le Président, agissant par l'intermédiaire du Secrétaire général, au moment où leur est notifiée la date de la première séance de la Commission.

Rapport de la Commission

Article 78

1. Le Président du Comité transmet le rapport de la Commission visé à l'article 13 de la Convention à chacun des Etats parties au différend ainsi qu'aux membres du Comité aussitôt que possible après l'avoir reçu.
2. Les Etats parties au différend font savoir au Président du Comité, dans un délai de trois mois à compter de la date de réception du rapport de la Commission, s'ils acceptent, ou non, les recommandations contenues dans le rapport de la Commission. Le Président communique aux membres du Comité les réponses reçues des Etats parties au différend.
3. Une fois expiré le délai prévu au paragraphe précédent, le Président du Comité communique le rapport de la Commission et les déclarations des Etats parties intéressés aux autres Etats parties à la Convention.

Information des membres du Comité

Article 79

Le Président du Comité tient les membres du Comité au courant des mesures qu'il prend en application des articles 73 à 78 du présent règlement.

XVIII. PROCEDURE D'EXAMEN DES COMMUNICATIONS RECUES DE PERSONNES
OU DE GROUPES DE PERSONNES EN APPLICATION DE L'ARTICLE 14
DE LA CONVENTION

A. Dispositions générales

Compétence du Comité

Article 80

1. Le Comité n'a compétence pour recevoir et examiner des communications et exercer les fonctions prévues à l'article 14 de la Convention que si au moins dix Etats parties ont fait une déclaration reconnaissant sa compétence conformément au paragraphe 1 dudit article.
2. Le Secrétaire général communique aux autres Etats parties copie des déclarations déposées auprès de lui par les Etats parties reconnaissant la compétence du Comité.
3. Le retrait d'une déclaration faite conformément à l'article 14 de la Convention n'affecte pas l'examen des communications dont le Comité est déjà saisi.
4. Le Secrétaire général informe les autres Etats parties du nom, de la composition et des fonctions de tout organisme juridique national, créé ou désigné par un Etat partie, conformément au paragraphe 3 de l'article 14.

Organismes nationaux

Article 81

Le Secrétaire général informe le Comité du nom, de la composition et des fonctions de tout organisme juridique national pouvant avoir été créé ou désigné conformément au paragraphe 2 de l'article 14 pour recevoir et examiner les pétitions émanant de personnes ou de groupes de personnes qui se plaignent d'être victimes d'une violation de l'un quelconque des droits énoncés dans la Convention.

Copies certifiées des registres des pétitions

Article 82

1. Le Secrétaire général informe le Comité du contenu de toutes les copies certifiées conformes des registres des pétitions déposées auprès de lui conformément au paragraphe 4 de l'article 14.

2. Le Secrétaire général peut prier les Etats parties de fournir des éclaircissements au sujet des copies certifiées conformes des registres des pétitions émanant des organismes juridiques nationaux chargés de tenir lesdits registres.

3. Le contenu des copies certifiées conformes des registres des pétitions déposées auprès du Secrétaire général n'est pas divulgué au public.

Enregistrement des communications reçues par le Secrétaire général

Article 83

1. Le Secrétaire général enregistre toutes les communications qui sont ou semblent être adressées au Comité par des personnes ou des groupes de personnes relevant de la juridiction d'un Etat partie ayant fait la déclaration prévue à l'article 14 qui se plaignent d'être victimes d'une violation de l'un quelconque des droits énoncés dans la Convention.

2. Le Secrétaire général peut, s'il le juge nécessaire, demander à l'auteur d'une communication de préciser s'il désire que sa communication soit soumise au Comité pour examen conformément à l'article 14. S'il existe un doute quant au désir de l'auteur, le Comité est saisi de la communication.

3. Le Comité ne reçoit ni n'inscrit sur une liste établie en application de l'article 85 ci-après aucune communication concernant un Etat partie qui n'a pas fait la déclaration prévue au paragraphe 1 de l'article 14.

Renseignements que devraient contenir les communications

Article 84

1. Le Secrétaire général peut demander à l'auteur d'une communication de fournir des éclaircissements concernant l'applicabilité de la Convention à sa communication, et de préciser en particulier :

- a) Son nom, adresse, âge et profession en justifiant de son identité;
- b) Le nom de l'Etat ou des Etats parties visés par la communication;
- c) L'objet de la communication;
- d) La ou les dispositions de la Convention prétendument violées;

- e) Les moyens de fait;
- f) Les dispositions prises par l'auteur pour épuiser les recours internes, y compris les documents pertinents;
- g) La mesure dans laquelle la même affaire est en cours d'examen en application d'une autre procédure internationale d'enquête ou de règlement.

2. Lorsqu'il demande des éclaircissements ou des renseignements, le Secrétaire général fixe un délai approprié à l'auteur de la communication en vue d'éviter des retards indus dans la procédure.

3. Le Comité peut adopter un questionnaire aux fins de demander à l'auteur de la communication les renseignements susmentionnés.

4. La demande d'éclaircissements visée au paragraphe 1 du présent article n'empêche pas l'inscription de la communication sur la liste prévue au paragraphe 1 de l'article 85 ci-après.

5. Le Secrétaire général indique à l'auteur de la communication la procédure qui sera suivie et l'informe que le texte de leur communication sera porté, à titre confidentiel, à l'attention de l'Etat partie intéressé, conformément à l'alinéa a) du paragraphe 6 de l'article 14.

Transmission des communications au Comité

Article 85

1. Le Secrétaire général résume chacune des communications ainsi reçues et met ces résumés, séparément ou réunis dans une liste des communications, à la disposition du Comité lors de sa session ordinaire suivante, accompagnée des copies certifiées conformes des registres des pétitions tenus par les organismes juridiques nationaux des pays concernés qui ont été déposés auprès du Secrétaire général conformément au paragraphe 4 de l'article 14.

2. Le Secrétaire général attire l'attention du Comité sur les affaires au sujet desquelles il n'a pas reçu de copies certifiées conformes des registres des pétitions.

3. Le contenu des réponses aux demandes d'éclaircissements et les déclarations pertinentes pouvant émaner ultérieurement de l'auteur de la communication ou de l'Etat partie concerné sont soumis au Comité sous une forme appropriée.

4. Un dossier individuel est ouvert pour chaque communication résumée. Le texte intégral de toute communication portée à l'attention du Comité est mis à la disposition de tout membre du Comité qui en fait la demande.

B. Procédure visant à déterminer la recevabilité
des communications

Procédures applicables aux communications

Article 86

1. Conformément aux dispositions ci-après, le Comité décide, dans les meilleurs délais possibles, si la communication est ou n'est pas recevable en vertu de l'article 14 de la Convention.

2. A moins qu'il n'en décide autrement, le Comité examine les communications dans l'ordre où il en a été saisi par le Secrétariat. Le Comité peut, s'il le juge bon, décider d'examiner conjointement deux ou plusieurs communications.

Constitution d'un groupe de travail

Article 87

1. Le Comité peut, conformément à l'article 61, constituer un groupe de travail qui se réunira brièvement avant ses sessions, ou à tout autre moment opportun que le Comité arrêtera en consultation avec le Secrétaire général, en vue de faire au Comité des recommandations touchant l'exécution des conditions de recevabilité des communications stipulées à l'article 14 de la Convention et d'aider le Comité de toutes les manières que celui-ci jugera appropriées.

2. Le Groupe de travail sera composé de cinq membres du Comité au plus. Il élira son propre bureau et mettra au point ses propres méthodes de travail. Le règlement intérieur du Comité s'appliquera dans la mesure du possible aux réunions du Groupe de travail.

Séances

Article 88

Les séances du Comité ou de son Groupe de travail au cours desquelles sont examinées les communications soumises en vertu de l'article 14 de la Convention se tiennent à huis clos. Les séances au cours desquelles le Comité peut examiner des questions d'ordre général telles que les procédures d'application de l'article 14 peuvent être publiques si le Comité en décide ainsi.

Empêchement de participer à l'examen d'une communication

Article 89

1. Aucun membre du Comité ne prend part à l'examen d'une communication par le Comité ou par son Groupe de travail :

- a) s'il a un intérêt personnel quelconque dans l'affaire; ou
- b) s'il a participé à un titre quelconque à l'adoption d'une décision quelconque relative à l'affaire sur laquelle porte la communication.

2. Toute question relative à l'application du paragraphe 1 ci-dessus est tranchée par le Comité sans la participation du membre intéressé.

Retrait d'un membre

Article 90

Si, pour une raison quelconque, un membre considère qu'il ne devrait pas prendre part ou continuer à prendre part à l'examen d'une communication, il informe le Président de sa décision de se retirer.

Conditions de recevabilité des communications

Article 91

Afin de décider de la recevabilité d'une communication, le Comité, ou son Groupe de travail, s'assure :

- a) que la communication n'est pas anonyme et qu'elle émane d'un particulier ou d'un groupe de particuliers relevant de la juridiction d'un Etat partie qui reconnaît la compétence du Comité en vertu de l'article 14 de la Convention;
- b) que le plaignant allègue être victime d'une violation, par cet Etat partie, de l'un quelconque des droits énoncés dans la Convention. Normalement, la communication doit être présentée par le plaignant lui-même ou par des parents ou des représentants désignés; dans des cas exceptionnels, le Comité peut toutefois accepter d'examiner une communication présentée au nom d'une prétendue victime lorsqu'il appert que celle-ci est dans l'incapacité de présenter elle-même la communication et que l'auteur de la communication peut justifier qu'il agit au nom de la victime;

c) que la communication est compatible avec les dispositions de la Convention;

d) que la communication ne constitue pas un abus du droit de présenter une communication en vertu de l'article 14;

e) que le particulier a épuisé tous les recours internes disponibles, y compris, lorsque cela s'applique, ceux qui sont mentionnés au paragraphe 2 de l'article 14. Toutefois, cette règle ne s'applique pas lorsque la procédure de recours se prolonge au-delà d'une période raisonnable;

f) que la communication est soumise, sauf circonstances exceptionnelles dûment constatées, dans les six mois suivant l'épuisement de tous les recours internes disponibles, y compris, lorsque cela s'applique, ceux qui sont indiqués au paragraphe 2 de l'article 14.

Renseignements supplémentaires, éclaircissements et observations.

Article 92

1. Le Comité ou le Groupe de travail, constitué en vertu de l'article 87, peut, par l'intermédiaire du Secrétaire général, demander à l'Etat partie intéressé ou à l'auteur ou aux auteurs de la communication de lui soumettre par écrit des renseignements ou éclaircissements supplémentaires se rapportant à la question de la recevabilité de la communication.

2. Une telle demande doit contenir une déclaration indiquant que ladite demande ne signifie pas qu'une décision a été prise sur la question de la recevabilité de la communication par le Comité.

3. Une communication ne peut être déclarée recevable qu'à condition que l'Etat partie intéressé ait reçu le texte de la communication et que la possibilité lui ait été donnée de soumettre des renseignements ou des observations conformément au paragraphe 1 du présent article, y compris des renseignements sur l'épuisement des recours internes.

4. Le Comité ou le Groupe de travail peut adopter un questionnaire dont il se servira pour demander les renseignements ou éclaircissements supplémentaires susmentionnés.

5. Le Comité ou le Groupe de travail fixera un délai pour la soumission de ces renseignements ou éclaircissements supplémentaires.

6. Si le délai n'est pas observé par l'Etat partie intéressé ou par l'auteur d'une communication, le Comité ou le Groupe de travail peut décider d'examiner la question de la recevabilité de la communication à la lumière des renseignements disponibles.

7. Si l'Etat partie intéressé conteste l'affirmation de l'auteur d'une communication selon laquelle tous les recours internes disponibles ont été épuisés, l'Etat partie est prié de donner des détails sur les recours effectifs qui sont à la disposition de la victime présumée dans les circonstances de l'espèce.

Communications irrecevables

Article 93

1. Si le Comité décide qu'une communication est irrecevable ou que l'examen doit en être suspendu ou interrompu, il fait connaître sa décision le plus tôt possible, par l'intermédiaire du Secrétaire général, au pétitionnaire et à l'Etat partie intéressé.

2. Si le Comité a déclaré une communication irrecevable en vertu de l'alinéa a) du paragraphe 7 de l'article 14, il peut reconsidérer cette décision à une date ultérieure s'il est saisi par le pétitionnaire intéressé d'une demande écrite. Cette demande écrite doit contenir la preuve littérale que les motifs d'irrecevabilité visés au paragraphe 7 a) de l'article 14 ne sont plus applicables.

C. Examen des communications quant au fond

Procédures applicables aux communications recevables

Article 94

1. Après avoir décidé qu'une communication est recevable conformément à l'article 14, le Comité transmet confidentiellement par l'intermédiaire du Secrétaire général, le texte de la communication et les autres renseignements pertinents à l'Etat partie intéressé sans révéler l'identité du particulier à moins que celui-ci n'ait donné son consentement exprès. Le pétitionnaire est également informé, par l'intermédiaire du Secrétaire général, de la décision du Comité.

2. Dans les trois mois qui suivent, l'Etat partie intéressé soumet par écrit au Comité des explications ou déclarations éclaircissant la question à l'examen et indiquant, le cas échéant, les mesures qu'il a pu prendre pour remédier à la situation. Le Comité peut indiquer, s'il le juge nécessaire, le type d'informations qu'il souhaite recevoir de l'Etat partie intéressé.

3. Au cours de son examen, le Comité peut informer cet Etat de ses vues sur l'opportunité, vu l'urgence, de prendre des mesures conservatoires pour éviter éventuellement un préjudice irréparable à la personne ou aux personnes qui invoquent la violation. Ce faisant, le Comité précise à l'Etat intéressé que l'expression de ses vues sur l'adoption des mesures provisoires ne préjuge ni de son opinion finale sur le fond de la communication ni de ses suggestions et recommandations éventuelles.

4. Toutes les explications ou déclarations soumises par un Etat partie en application du présent article peuvent être communiquées, par l'intermédiaire du Secrétaire général, au pétitionnaire, qui peut soumettre par écrit tous renseignements ou observations supplémentaires dans un délai fixé par le Comité.

5. Le Comité peut inviter le pétitionnaire ou ses représentants et les représentants de l'Etat partie intéressé à se présenter devant lui pour lui fournir des renseignements supplémentaires et répondre à des questions sur le fond de la communication.

6. Ce Comité peut révoquer la décision par laquelle il a déclaré une communication recevable, à la lumière des explications ou déclarations présentées par l'Etat partie. Toutefois, avant que le Comité n'envisage de révoquer cette décision, les explications ou déclarations pertinentes doivent être communiquées au pétitionnaire pour qu'il puisse soumettre tous renseignements ou observations supplémentaires dans le délai fixé par le Comité.

Opinion du Comité sur les communications recevables et suggestions et recommandations du Comité

Article 95

1. Les communications recevables sont examinées par le Comité à la lumière de tous les renseignements que le pétitionnaire et l'Etat partie intéressé lui ont communiqués. Le Comité peut renvoyer la communication au Groupe de travail pour que ce dernier l'aide dans sa tâche.

2. Le Comité ou le Groupe de travail constitué par lui pour examiner une communication peut à tout moment, au cours de l'examen, obtenir par l'intermédiaire du Secrétaire général toute documentation qui peut contribuer au règlement de l'affaire, auprès d'organes des Nations Unies ou auprès des institutions spécialisées.

3. Après examen d'une communication recevable, le Comité formule son opinion la concernant. L'opinion du Comité est communiquée, par l'intermédiaire du Secrétaire général, au pétitionnaire et à l'Etat partie intéressé, en même temps que toutes suggestions et recommandations que le Comité peut souhaiter faire.

4. Tout membre du Comité peut demander qu'un résumé de son opinion individuelle soit joint en annexe à l'opinion du Comité lorsque celle-ci est transmise au pétitionnaire et à l'Etat partie intéressé.

5. Le Comité invite l'Etat partie intéressé à l'informer en temps voulu des mesures qu'il prend conformément aux suggestions et recommandations du Comité.

Résumés dans le rapport annuel du Comité

Article 96

Le Comité inclut dans son rapport annuel un résumé des communications examinées et, le cas échéant, un résumé des explications et déclarations des Etats parties intéressés et de ses propres suggestions et recommandations.

Communiqués de presse

Article 97

Le Comité peut également publier par l'intermédiaire du Secrétaire général, à l'intention des médias et du grand public, des communiqués concernant ses activités relevant de l'article 14 de la Convention.

TROISIEME PARTIE - INTERPRETATION ET AMENDEMENTS

XIX. INTERPRETATION ET AMENDEMENTS

Rubriques soulignées

Article 98

Aux fins de l'interprétation des présents articles, il ne sera pas tenu compte des rubriques soulignées, qui ont été insérées à titre purement indicatif.

Amendements

Article 99

Le présent règlement intérieur peut être modifié par décision du Comité.

Annexe

Décision 2 (VI). Coopération avec l'Organisation internationale du Travail (OIT) et l'Organisation des Nations Unies pour l'éducation, la science et la culture (UNESCO) a/

Sans préjudice de toutes décisions que le Comité pour l'élimination de la discrimination raciale pourra prendre à l'avenir en ce qui concerne la possibilité d'une participation à ses réunions de représentants de l'Organisation internationale du Travail et de l'Organisation des Nations Unies pour l'éducation, la science et la culture dans certaines circonstances, le Comité décide que :

1. Le Comité autorise le Secrétaire général de l'Organisation des Nations Unies à inviter des représentants de l'OIT et de l'UNESCO à assister aux séances publiques du Comité. S'il tient des séances privées, le Comité décidera si les observateurs de l'OIT et de l'UNESCO sont autorisés à assister à la séance privée en question.
2. Conformément aux dispositions des articles 34, paragraphe 1, et 35 de son règlement intérieur, le Comité autorise le Secrétaire général à mettre à la disposition de la Commission d'experts de l'OIT et du Comité sur les conventions et les recommandations dans le domaine de l'éducation du Conseil exécutif de l'UNESCO les comptes rendus de ses séances publiques ainsi que les textes de ses rapports, décisions officielles et autres documents officiels.
3. Les exposés écrits présentés par l'OIT et l'UNESCO pour fournir des renseignements sur l'application de la Convention et de la Recommandation concernant la discrimination en matière d'emploi et de profession (1958) ainsi que sur l'application de la Convention et de la Recommandation concernant la lutte contre la discrimination dans le domaine de l'enseignement (1960), dans les territoires mentionnés à l'alinéa a) du paragraphe 2 de l'article 15 de la Convention internationale sur l'élimination de toutes les formes de discrimination raciale, seront transmis au Comité pour l'élimination de la discrimination raciale par le Secrétaire général de l'Organisation des Nations Unies, conformément aux dispositions du paragraphe 4 de l'article 15 de la Convention internationale sur l'élimination de toutes les formes de discrimination raciale et aux dispositions de l'alinéa b)

a/ Décision adoptée par le Comité à sa 115ème séance (sixième session), le 21 août 1972.

du paragraphe 3 de la "Déclaration sur les responsabilités qui incombent au Comité en vertu de l'article 15 de la Convention", adoptée par le Comité pour l'élimination de la discrimination raciale le 29 janvier 1970.

4. Les exposés écrits présentés par l'OIT et l'UNESCO pour fournir des renseignements sur l'application de la Convention et de la Recommandation concernant la discrimination en matière d'emploi et de profession (1958) ainsi que sur l'application de la Convention et de la Recommandation concernant la lutte contre la discrimination dans le domaine de l'enseignement (1960), dans les territoires autres que ceux visés au paragraphe précédent, seront distribués aux membres du Comité pour l'élimination de la discrimination raciale par le Secrétaire général de l'Organisation des Nations Unies.

**ПРАВИЛА ПРОЦЕДУРЫ КОМИТЕТА
ПО ЛИКВИДАЦИИ РАСОВОЙ ДИСКРИМИНАЦИИ**

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ВВЕДЕНИЕ

1. На первой и второй сессиях Комитет по ликвидации расовой дискриминации принял 78 временных правил процедуры на основе текстов, подготовленных Генеральным секретарем 1/.
2. На четвертой сессии Комитет решением 1 (IV) внес поправки в правило 36 (ранее временное правило 35) 2/.
3. На пятой сессии Комитет решением 1 (V) принял правило 64 (ранее временное правило 64 A) 3/.
4. На той же сессии Комитет решением 2 (V) принял правило 67 (ранее временное правило 66 A) 4/.
5. На седьмой сессии Комитет решением 2 (VII) внес поправки в правило 13 5/.
6. На той же сессии Комитет решением 1 (VII) внес поправки в правило 58 (ранее временное правило 56) 6/.
7. На семнадцатой сессии Комитет решением 1 (XVII) внес поправки в правило 34 7/.
8. На той же сессии Комитет решением 2 (XVII) внес поправки в правило 35 (ранее временное правило 62) 8/.

1/ Официальные отчеты Генеральной Ассамблеи, двадцать пятая сессия, Дополнение № 27 (A/8027), приложение II.

2/ Там же, двадцать шестая сессия, Дополнение № 18 (A/8418), глава VII, раздел B.

3/ Там же, двадцать седьмая сессия, Дополнение № 18 (A/87-8), глава IX, раздел A.

4/ Там же.

5/ Там же, двадцать восьмая сессия, Дополнение № 18 (A/90-8), глава X, раздел A.

6/ Там же.

7/ Там же, тридцать третья сессия, Дополнение № 18 (A/33-8), глава X, раздел A.

8/ Там же.

9. На двадцать седьмой сессии Комитет принял правила 80-93, за исключением подпункта а) и второй части подпункта b) правила 91, которые были приняты на двадцать восьмой сессии (ранее временные правила 79-92) 9/.
10. На той же сессии Комитет принял пункты 1-4 правила 94 (ранее временное правило 93) 10/.
11. На двадцать восьмой сессии Комитет принял подпункт а) и вторую часть подпункта b) правила 91, а также пункты 5 и 6 правила 94, рассмотрение которых было перенесено с двадцать седьмой сессии 11/.
12. На той же сессии Комитет принял правила 95-97 (ранее временные правила 94-96) 12/.
13. На двадцать девятой сессии Комитет постановил исключить слов "временные" из его правил процедуры 13/.
14. На той же сессии Комитет внес поправки в правила 27-28^{14/}.
15. На той же сессии Комитет принял правило ~~98~~^{15/}.
16. На той же сессии Комитет также принял следующие решения:
 - a) включить в его правила процедуры новую третью часть, озаглавленную "Толкование и поправки", в конце правил процедуры, включить в эту новую часть временное правило 63, которое стало правилом 99, и
 - b) включить заголовки к правилам процедуры, а также раздел "Содержание" 16/.

9/ Там же, тридцать восьмая сессия, Дополнение № 18 (A/38/18), приложение III.

10/ Там же.

11/ Там же.

12/ Там же.

13/ Там же, тридцать девятая сессия, Дополнение № 18 (A/39/18).

14/ Там же.

15/ Там же.

16/ Там же.

ПОЯСНИТЕЛЬНОЕ ПРИМЕЧАНИЕ

Внимание обращается на правило 98, которое предусматривает, что подчеркнутые заголовки правил, которые были включены исключительно для ссылок, не принимаются во внимание при толковании правил.

ПРАВИЛА ПРОЦЕДУРЫ

ПЕРВАЯ ЧАСТЬ. ОБЩИЕ ПРАВИЛА

I. СЕССИИ

Очередные сессии

Правило 1

Комитет по ликвидации расовой дискриминации (в дальнейшем именуемый "Комитетом"), учрежденный в соответствии с Международной конвенцией о ликвидации всех форм расовой дискриминации (в дальнейшем именуемой "Конвенцией"), проводит две очередные сессии ежегодно.

Время проведения сессий

Правило 2

Очередные сессии Комитета созываются во время, установленное Комитетом в консультации с Генеральным секретарем Организации Объединенных Наций (в дальнейшем именуемым "Генеральным секретарем"), с учетом расписания конференций, утвержденного Генеральной Ассамблеей.

Специальные сессии

Правило 3

1. Специальные сессии Комитета созываются по решению Комитета. В перерыве между сессиями Комитета Председатель может созывать специальные сессии Комитета в консультации с другими должностными лицами Комитета. Председатель Комитета также созывает специальные сессии:

- а) по требованию большинства членов Комитета;
- б) по требованию одного из государств-участников Конвенции.

2. Специальные сессии созываются в возможно короткий срок в день, установленный Председателем в консультации с Генеральным секретарем и с другими должностными лицами Комитета, с учетом расписания конференций, утвержденного Генеральной Ассамблеей.

Уведомление о времени первого заседания каждой сессии

Правило 4

Генеральный секретарь уведомляет членов Комитета о времени и месте первого заседания каждой сессии. Такие уведомления направляются в случае очередных сессий по крайней мере за тридцать дней и в случае специальных сессий по крайней мере за восемнадцать дней до первого заседания.

Место проведения сессий

Правило 5

Сессии Комитета обычно проводятся в центральных учреждениях Организации Объединенных Наций. Другое место для проведения сессии может быть назначено Комитетом в консультации с Генеральным секретарем с учетом соответствующих правил Организации Объединенных Наций по этому вопросу.

II. ПОВЕСТКА ДНЯ

Предварительная повестка дня очередных сессий

Правило 6

Предварительная повестка дня каждой очередной сессии подготавливается Генеральным секретарем в консультации с Председателем Комитета и на основании соответствующих положений статей 9, 11, 12, 13, 14 и 15 Конвенции и включает:

- а) любой пункт, который Комитет решил включить на предыдущей сессии;
- б) любой пункт, предложенный председателем Комитета;
- в) любой пункт, предложенный государством-участником Конвенции;
- г) любой пункт, предложенный одним из членов Комитета;
- е) любой пункт, предложенный Генеральным секретарем.

Предварительная повестка дня специальных сессий

Правило 7

Предварительная повестка дня специальной сессии Комитета состоит только из тех пунктов, которые предлагаются для их рассмотрения на этой специальной сессии.

Утверждение повестки дня

Правило 8

Первым пунктом предварительной повестки дня любой сессии является утверждение повестки дня, за исключением избрания должностных лиц, когда это требуется в соответствии с правилом 15.

Пересмотр повестки дня

Правило 9

Во время сессии Комитет может пересмотреть повестку дня и может в случае необходимости добавлять, откладывать или исключать пункты.

Препровождение предварительной повестки дня и основных документов

Правило 10

Предварительная повестка дня и основные документы, относящиеся к включенным в нее пунктам, как можно раньше препровождаются Генеральным секретарем членам Комитета. Предварительная повестка дня специальной сессии препровождается Генеральным секретарем членам Комитета одновременно с уведомлением о заседании в соответствии с правилом 4.

III. ЧЛЕНЫ КОМИТЕТА

Члены Комитета

Правило 11

Членами Комитета являются восемнадцать экспертов, назначаемых в соответствии со статьей 8 Конвенции.

Начало срока полномочий

Правило 12

Срок полномочий членов Комитета, избранных на первых выборах, начинается с даты первого заседания Комитета. Срок полномочий членов Комитета, избранных на последующих выборах, начинается на следующий день после истечения срока полномочий членов Комитета, которых они заменяют.

Заполнение непредвиденных вакансий

Правило 13

1. Когда в Комитете открывается непредвиденная вакансия, Генеральный секретарь немедленно просит государство-участник, эксперт которого прекратил функционирование в качестве члена Комитета, назначить другого эксперта из числа его граждан в течение двух месяцев на истекающий срок полномочий его предшественника. Фамилия назначенного таким образом эксперта представляется Генеральным секретарем Комитета для утверждения тайным голосованием.
2. После утверждения этого эксперта Комитетом Генеральный секретарь сообщает государствам-участникам Конвенции фамилию члена Комитета, заполняющего непредвиденную вакансию.
3. За исключением случая, когда вакансия образуется в результате смерти или болезни, Генеральный секретарь и Комитет действуют в соответствии с положениями пунктов 1 и 2 настоящего правила только после получения непосредственно от данного члена письменного уведомления о его решении прекратить выполнять функции члена Комитета.

Торжественное заявление

Правило 14

Приступив к исполнению своих обязанностей, каждый член Комитета делает следующее торжественное заявление на открытом заседании Комитета:

"Я торжественно заявляю, что буду исполнять свои обязанности и осуществлять свои полномочия в качестве члена Комитета по ликвидации расовой дискриминации с достоинством, преданно, беспристрастно и добросовестно".

IV. ДОЛЖНОСТНЫЕ ЛИЦА

Выборы должностных лиц

Правило 15

Комитет избирает из числа своих членов председателя, трех заместителей председателя и докладчика.

Срок полномочий

Правило 16

Должностные лица Комитета избираются сроком на два года. Они могут быть переизбраны. Однако никто из них не может оставаться в должности, если он перестал быть членом Комитета.

Положение председателя в Комитете

Правило 17

При выполнении своих функций председатель остается подчиненным Комитету.

Временное выполнение функций председателя

Правило 18

Если председатель не может присутствовать на заседании или на какой-либо его части, он назначает одного из заместителей председателя выполнять свои функции.

Права и обязанности лица, временно выполняющего функции председателя

Правило 19

Заместитель председателя, действующий в качестве председателя, имеет те же права и обязанности, что и председатель.

Замена должностных лиц

Правило 20

Если кто-либо из должностных лиц Комитета перестает или заявляет о невозможности функционировать в качестве члена Комитета или по какой-либо причине не может более действовать в качестве должностного лица, то на оставшийся срок полномочий его предшественника избирается новое должностное лицо.

V. СЕКРЕТАРИАТ

Обязанности Генерального секретаря

Правило 21

Секретариат Комитета и таких вспомогательных органов, которые могут быть учреждены Комитетом (в дальнейшем именуемый "секретариатом"), предоставляется Генеральным секретарем.

Заявления

Правило 22

Генеральный секретарь или его представитель присутствуют на всех заседаниях Комитета. Он или его представитель могут в соответствии с правилом 36 делать устные или письменные заявления на заседаниях Комитета или его вспомогательных органов.

Обслуживание заседаний

Правило 23

Генеральный секретарь несет ответственность за все необходимые мероприятия по организации заседаний Комитета и его вспомогательных органов.

Информирование членов Комитета

Правило 24

Генеральный секретарь несет ответственность за информирование членов Комитета о любых вопросах, которые могут быть переданы на рассмотрение Комитета.

Финансовые последствия предложений

Правило 25

До утверждения Комитетом или каким-либо из его вспомогательных органов предложения, связанного с расходованием средств, Генеральный секретарь составляет и рассылает членам Комитета по возможности заранее смету расходов, связанных с этим предложением. Председатель обязан обращать внимание членов на эту смету и ставить ее на обсуждение, когда данное предложение рассматривается Комитетом или вспомогательным органом.

VI. ЯЗЫКИ

Официальные и рабочие языки

Правило 26

Английский, испанский, китайский, русский и французский языки являются официальными языками, а английский, испанский, русский и французский языки являются рабочими языками Комитета.

Устный перевод с официального языка

Правило 27

Речи, произносимые на одном из официальных языков, переводятся устно на другие официальные языки.

Устный перевод с языка, не являющегося официальным

Правило 28

Любое лицо, выступающее в Комитете, может произносить речь на языке, не являющемся официальным. В этом случае оно само обеспечивает устный перевод на один из официальных языков. Устные переводчики секретариата при переводе на один из других официальных языков могут принять за основу устный перевод на первый официальный язык.

Языки кратких отчетов

Правило 29

Краткие отчеты о заседаниях Комитета составляются на рабочих языках.

Языки официальных решений и официальных документов

Правило 30

Все официальные решения Комитета выпускаются на официальных языках. Все официальные документы Комитета выпускаются на рабочих языках, и любой из них может быть выпущен на другом официальном языке по решению Комитета.

VII. ОТКРЫТИЕ И ЗАКРЫТИЕ ЗАСЕДАНИЯ

Открытие и закрытие заседания

Правило 31

Заседания Комитета и его вспомогательных органов проводятся открыто, если Комитет не решит иначе или если из соответствующих положений Конвенции не вытекает, что заседание должно быть закрытым.

Опубликование коммюнике о закрытых заседаниях

Правило 32

В конце каждого закрытого заседания Комитет или его вспомогательный орган может выпустить коммюнике через посредство Генерального секретаря.

VIII. ОТЧЕТЫ О ЗАСЕДАНИЯХ

Исправление предварительных кратких отчетов

Правило 33

Краткие отчеты об открытых и закрытых заседаниях Комитета и его вспомогательных органов составляются секретариатом. Они распространяются в предварительной редакции в возможно кратчайший срок среди членов Комитета и любых других лиц, участвующих в заседаниях. Все такие участники могут в течение трех рабочих дней по получении предварительных отчетов о заседаниях представить исправления в секретариат. Все разногласия относительно таких исправлений разрешаются председателем Комитета или председателем того вспомогательного органа, к которому относится данный отчет, или в случае продолжающегося разногласия решением Комитета или вспомогательного органа.

Распространение кратких отчетов

Правило 34

1. Краткие отчеты об открытых заседаниях в окончательном виде являются документами, подлежащими общему распространению.
2. Краткие отчеты о закрытых заседаниях распространяются среди членов Комитета, а также среди других участников заседаний. Они могут быть предоставлены в распоряжение других по решению Комитета, причем в такое время и при таких условиях, которые может определять Комитет.

IX. РАСПРОСТРАНЕНИЕ ДОКЛАДОВ И ДРУГИХ ОФИЦИАЛЬНЫХ ДОКУМЕНТОВ КОМИТЕТА

Распространение официальных документов

Правило 35

1. Сохраняя в силе положения, изложенные в правиле 34 настоящих правил процедуры, а также при условии соблюдения пунктов 2 и 3 настоящего правила, доклады, официальные решения, а также другие официальные документы Комитета и его вспомогательных органов являются документами, подлежащими общему распространению, если только Комитет не примет иного решения.
2. Доклады, официальные решения, а также другие официальные документы Комитета и его вспомогательных органов, относящиеся к статьям 11, 12 и 13, а также к статье 14 Конвенции, распространяются секретариатом среди всех членов Комитета, среди заинтересованных государств-участников и по решению Комитета среди всех членов его вспомогательных органов, а также среди других заинтересованных органов и лиц.

3. Доклады и дополнительная информация, представленные государствами-участниками согласно статье 9 Конвенции, являются документами, подлежащими общему распространению в том случае, если заинтересованное государство-участник не выразит иного мнения.

Х. ПОРЯДОК ВЕДЕНИЯ ЗАСЕДАНИЙ

Кворум

Правило 36

Большинство членов Комитета составляют кворум. Однако для принятия решения необходимо присутствие двух третей членов Комитета.

Полномочия председателя

Правило 37

Помимо осуществления полномочий, которые предоставляются ему Конвенцией и настоящими правилами, председатель открывает и закрывает каждое заседание Комитета, направляет дискуссию, обеспечивает соблюдение настоящих правил, предоставляет слово, ставит вопросы на голосование и объявляет решения. Председатель при условии соблюдения настоящих правил контролирует работу Комитета и поддерживает порядок на его заседаниях. В ходе обсуждения любого пункта председатель может предложить Комитету ограничить время, предоставляемое ораторам, ограничить число выступлений каждого оратора по любому вопросу и прекратить запись ораторов. Он выносит постановления по порядку ведения заседания. Он может также вносить предложения о приостановлении или прекращении прений или о том, чтобы закрыть или прервать заседание. Прения ограничиваются вопросом, находящимся на рассмотрении Комитета, и председатель может призвать оратора к порядку, если его замечания не относятся к обсуждаемому вопросу.

Выступление по порядку ведения заседания

Правило 38

Во время обсуждения любого вопроса каждый член Комитета в любое время может взять слово по порядку ведения заседания и поднятый им вопрос немедленно решается председателем в соответствии с правилами процедуры. Любое возражение против постановления председателя немедленно ставится на голосование, и постановление председателя остается в силе, если оно не отменяется большинством присутствующих и участвующих в голосовании членов Комитета. Член Комитета, выступающий по порядку ведения заседания, не может говорить по существу обсуждаемого вопроса.

Ограничение времени выступлений

Правило 39

Комитет может ограничить время, предоставляемое каждому оратору по любому вопросу. Когда прения ограничиваются и член Комитета или председатель превышают предоставленное им время, председатель немедленно призывает их к порядку.

Список ораторов

Правило 40

В ходе прений председатель может огласить список ораторов и с согласия Комитета объявить о прекращении записи ораторов. Председатель может, однако, предоставить слово для ответа любому члену Комитета или представителю, если речь, произнесенная после объявления о прекращении записи ораторов, делает это целесообразным. Когда прения по какому-либо вопросу заканчиваются из-за отсутствия других ораторов, председатель объявляет о прекращении прений. В этом случае прекращение прений имеет такое же значение, как и прекращение прений с согласия Комитета.

Перерыв или закрытие заседаний

Правило 41

Во время обсуждения любого вопроса каждый член Комитета может внести предложение о перерыве или закрытии заседания. Такие предложения не подлежат обсуждению и немедленно ставятся на голосование.

Приостановление прений

Правило 42

При обсуждении любого вопроса каждый член Комитета может внести предложение о приостановлении прений по обсуждаемому вопросу. Кроме лица, внесшего такое предложение, один член Комитета может высказаться за предложение и один – против него, после чего предложение немедленно ставится на голосование.

Прекращение прений

Правило 43

Каждый член Комитета может в любое время внести предложение о прекращении прений по обсуждаемому вопросу, независимо от того, выразил ли какой-либо другой член Комитета или представитель желание выступить. Разрешение высказаться относительно прекращения прений предоставляется только двум ораторам, возражающим против прекращения прений, после чего это предложение немедленно ставится на голосование.

Порядок рассмотрения предложений

Правило 44

С соблюдением правила 38 нижеследующие предложения имеют приоритет в указанном порядке перед всеми другими рассматриваемыми на заседании предложениями:

- а) прервать заседание;
- б) закрыть заседание;
- с) приостановить прения по обсуждаемому пункту;
- д) прекратить прения по обсуждаемому пункту.

Представление предложений

Правило 45

Предложения и существенные поправки или предложения, вносимые членами Комитета, представляются в письменной форме и передаются в секретариат, и их рассмотрение, когда поступила такая просьба от любого члена Комитета, откладывается до очередного заседания на следующий день, если Комитет не решит иначе.

Решения о компетентности

Правило 46

С соблюдением правила 44 любое предложение члена Комитета, требующее решения вопроса о компетентности Комитета принять какое-либо внесенное в Комитет предложение, ставится на голосование непосредственно перед голосованием по внесенному предложению.

Снятие предложений

Правило 47

Любое предложение, внесенное членом Комитета, может быть снято в любое время до начала голосования при условии, что это предложение не было изменено. Предложение, которое было таким образом снято, может быть вновь внесено любым членом Комитета.

Пересмотр предложений

Правило 48

После того как предложение принято или отклонено, оно не может рассматриваться вновь на той же сессии, иначе как по соответствующему решению Комитета, принятому большинством в две трети присутствующих и участвующих в голосовании членов Комитета. Разрешение высказаться относительно предложения о новом рассмотрении предоставляется только двум ораторам, выступающим за это предложение, и двум ораторам, выступающим против предложения, после чего оно немедленно ставится на голосование.

XI. ГОЛОСОВАНИЕ

Право голоса

Правило 49

Каждый член Комитета имеет один голос.

Принятие решений

Правило 50

Решения Комитета принимаются большинством голосов членов Комитета, присутствующих и участвующих в голосовании, если в Конвенции или в настоящих правилах не предусмотрено иное. В настоящих правилах выражение "члены Комитета, присутствующие и участвующие в голосовании" относится к членам Комитета, голосующим за или против. Члены Комитета, которые воздерживаются от голосования, рассматриваются как не участвующие в голосовании.

Равное разделение голосов

Правило 51

Если по каким-либо вопросам, не относящимся к выборам, голоса разделяются поровну, то предложение считается отклоненным.

Порядок голосования

Правило 52

С соблюдением правила 58 голосование в Комитете обычно производится поднятием рук, за исключением тех случаев, когда какой-либо член Комитета может потребовать поименного голосования, которое производится в английском алфавитном порядке фамилий членов Комитета.

Поименное голосование

Правило 53

При поименном голосовании в протоколе отмечается, как голосует каждый участвующий в голосовании член Комитета.

Проведение голосования и заявление по мотивам голосования

Правило 54

После того как голосование началось, его нельзя прерывать, за исключением случаев, когда кто-либо из членов Комитета поднимает вопрос по порядку ведения заседания в связи с проведением данного голосования. До начала голосования и после окончания голосования председатель может разрешить членам Комитета сделать краткие заявления исключительно по мотивам голосования.

Раздельное голосование по частям предложения

Правило 55

Части любого предложения голосуются раздельно, если какой-либо член Комитета требует разделить это предложение. Принятые части предложения ставятся затем на голосование как одно целое; если все постановляющие части предложения отклоняются, предложение считается отклоненным в целом.

Порядок голосования по поправкам

Правило 56

1. Когда в предложение вносится одна поправка, то сначала ставится на голосование эта поправка. Когда в предложение вносятся две или более поправок, то сначала Комитет ставит на голосование поправку, наиболее отличающуюся по существу от первоначального предложения, затем следующую по степени отличия поправку и так до тех пор, пока не будут поставлены на голосование все поправки. Если принимается одна или более поправок, то проводится голосование по измененному предложению.
2. Предложение считается поправкой к другому предложению, если оно лишь добавляет что-либо к нему, исключает что-либо из него или пересматривает часть этого предложения.

Порядок голосования по предложениям

Правило 57

1. Если два или более предложений относятся к одному и тому же вопросу, то Комитет, если не будет принято иного решения, ставит на голосование эти предложения в порядке их внесения.
2. Комитет после каждого голосования по одному предложению может решить, будет ли он проводить голосование по следующему предложению.
3. Любые инициативы, требующие, чтобы по существу данных предложений никакого решения не принималось, рассматриваются, однако, как внесенные на голосование ранее, и ставятся на голосование прежде вышележащих предложений.

XII. ВЫБОРЫ

Порядок выборов

Правило 58

Выборы производятся тайным голосованием, если Комитет не примет другого решения в случае выборов на должность, на которую выдвинута только одна кандидатура.

Проведение выборов, когда необходимо заполнить только одно место

Правило 59

Когда необходимо избрать только одно лицо или одного члена Комитета и ни один кандидат не получает при первом голосовании требуемого большинства, проводится второе голосование, ограниченное двумя кандидатами, получившими наибольшее число голосов. Если при втором голосовании голоса разделяются поровну, а требуется большинство, председатель определяет жребием, кто из кандидатов является избранным. Если требуется большинство в две трети голосов, то голосование продолжается до тех пор, пока один из кандидатов не получит двух третей поданных голосов, причем после третьего безрезультатного голосования голоса могут подаваться за любого члена Комитета, имеющего право быть избранным. Если три неограниченных в указанном выше смысле голосования не дают требуемых результатов, то следующие три голосования ограничиваются двумя кандидатами, получившими наибольшее число голосов при третьем неограниченном голосовании, после чего проводятся три следующих неограниченных голосования и т.д. до тех пор, пока какое-либо лицо или член Комитета не окажется избранным.

Проведение выборов, когда необходимо заполнить два или несколько мест

Правило 60

Если путем выборов необходимо заполнить одновременно и при одинаковых условиях два или несколько мест, то избираются те кандидаты, которые при первом голосовании получили требуемое большинство голосов. Если число кандидатов, получивших такое большинство голосов, оказывается менее числа лиц или членов Комитета, подлежащих избранию, то для заполнения оставшихся мест проводятся дополнительные голосования, причем эти голосования ограничиваются кандидатами, получившими наибольшее число голосов при предыдущем голосовании, и число их не должно превышать более чем вдвое число подлежащих заполнению мест, однако после третьего безрезультатного голосования голоса могут подаваться за любое лицо или любого члена Комитета, имеющего право быть избранным. Если три не ограниченных в указанном выше смысле голосования не дают требуемых результатов, следующие три голосования ограничиваются кандидатами, получившими наибольшее число голосов при третьем неограниченном голосовании, и число их не должно превышать более чем вдвое число подлежащих заполнению мест; после этого проводятся три следующих неограниченных голосования и т.д. до тех пор, пока все места не будут заполнены.

XIII. ВСПОМОГАТЕЛЬНЫЕ ОРГАНЫ

Учреждение вспомогательных органов

Правило 61

1. В соответствии с положениями Конвенции и с соблюдением положений правила 25 Комитет может учреждать такие подкомитеты и другие специальные вспомогательные органы, которые он сочтет необходимыми, и определять их состав и полномочия.
2. Каждый вспомогательный орган сам избирает своих должностных лиц и утверждает свои правила процедуры.

XIV. ЕЖЕГОДНЫЙ ДОКЛАД КОМИТЕТА

Ежегодный доклад Комитета

Правило 62

Комитет через Генерального секретаря ежегодно представляет доклады Генеральной Ассамблее, как это предусмотрено в Конвенции.

ВТОРАЯ ЧАСТЬ. ПРАВИЛА, ОТНОСЯЩИЕСЯ К ФУНКЦИЯМ КОМИТЕТА

XV. ДОКЛАДЫ И ИНФОРМАЦИЯ ОТ ГОСУДАРСТВ-УЧАСТНИКОВ,
ПРЕДСТАВЛЯЕМЫЕ В СООТВЕТСТВИИ
СО СТАТЬЕЙ 9 КОНВЕНЦИИ

Форма и содержание докладов

Правило 63

Комитет может через Генерального секретаря информировать государства-участники о своих пожеланиях в отношении формы и содержания периодических докладов, подлежащих представлению в соответствии со статьей 9 Конвенции.

Присутствие представителей государств-участников при рассмотрении докладов

Правило 64

Комитет через посредство Генерального секретаря сообщает государствам-участникам как можно быстрее о дате открытия, продолжительности и месте проведения сессии, на которой будут рассматриваться их соответствующие доклады. Представители соответствующих государств-участников могут присутствовать на заседаниях Комитета, когда рассматриваются доклады этих государств. Комитет может также сообщать государству-участнику, к которому он решит обратиться за дополнительной информацией, что оно может уполномочить своего представителя присутствовать на определенном заседании. Такой представитель должен быть готовым отвечать на вопросы, которые может задать ему Комитет, и делать заявления по докладам, уже представленным его государством; он может также представлять дополнительную информацию от его государства.

Запрос о дополнительной информации

Правило 65

Если Комитет в соответствии с положениями пункта 1 статьи 9 Конвенции решит запросить у государства-участника дополнительный доклад или дальнейшую информацию, он может указать характер, а также срок, в течение которого такой дополнительный доклад или дальнейшая информация должны быть представлены, и направляет свое решение Генеральному секретарю для передачи его в течение двух недель соответствующему государству-участнику.

Неполучение докладов

Правило 66

1. На каждой сессии Генеральный секретарь должен оповещать Комитет о всех случаях неполучения докладов или дополнительной информации, предусмотренных в статье 9 Конвенции. Комитет в таких случаях может направить соответствующему государству-участнику через Генерального секретаря напоминание относительно представления доклада или дополнительной информации.
2. Если даже после напоминания, о котором говорится в пункте 1 настоящего правила, государство-участник не представляет доклада или дополнительной информации, требуемых статьей 9 Конвенции, Комитет включает в свой ежегодный доклад Генеральной Ассамблее информацию об этом.

Предложения и общие рекомендации

Правило 67

1. При рассмотрении доклада, представленного государством-участником в соответствии со статьей 9, Комитет в первую очередь определяет, содержит ли этот доклад всю информацию, указанную в соответствующем сообщении Комитета.
2. Если доклад государства-участника Конвенции, по мнению Комитета, не содержит достаточной информации, Комитет может просить это государство представить дополнительную информацию.
3. Если на основании своего рассмотрения докладов и информации, представленных государством-участником, Комитет решит, что некоторые из обязательств этого государства по Конвенции не были выполнены, он может делать предложения и давать общие рекомендации в соответствии с пунктом 2 статьи 9 Конвенции.

Передача предложений и общих рекомендаций

Правило 68

1. Предложения и общие рекомендации, сделанные Комитетом на основе изучения докладов и информации, полученных от государств-участников в соответствии с пунктом 2 статьи 9 Конвенции, передаются Комитетом через Генерального секретаря государствам-участникам для представления ими замечаний.
2. Комитет может в случае необходимости указать срок, в течение которого замечания от государств-участников должны быть получены.

3. Предложения и общие рекомендации Комитета, о которых говорится в пункте 1, доводятся до сведения Генеральной Ассамблеи вместе с замечаниями государств-участников, если таковые имеются.

XVI. СООБЩЕНИЯ ГОСУДАРСТВ-УЧАСТНИКОВ СОГЛАСНО ПОЛОЖЕНИЯМ СТАТЬИ 11 КОНВЕНЦИИ

Порядок рассмотрения сообщений, полученных от государств-участников

Правило 69

1. Когда тот или иной вопрос доводится до сведения Комитета государством-участником в соответствии с пунктом 1 статьи 11 Конвенции, Комитет рассматривает этот вопрос на закрытом заседании и затем передает его через Генерального секретаря соответствующему государству-участнику. При рассмотрении сообщения Комитет не обсуждает его по существу. На этой стадии любые действия Комитета, имеющие отношение к этому сообщению, ни в коем случае не должны рассматриваться как выражение мнения Комитета по существу этого сообщения.
2. Если Комитет не заседает, то председатель доводит этот вопрос до сведения его членов путем направления копий этого сообщения и запроса их согласия на направление такого сообщения от имени Комитета соответствующему государству-участнику в соответствии с пунктом 1 статьи 11. Председатель устанавливает также трехнедельный срок для их ответов.
3. По получении согласия большинства членов Комитета или если в течение обусловленного срока ответы не поступили, председатель немедленно передает это сообщение через Генерального секретаря соответствующему государству-участнику.
4. В случае получения каких-либо ответов, которые отражают точки зрения большинства членов Комитета, председатель, хотя и руководствуется такими ответами, вместе с тем учитывает требование срочности в передаче от имени Комитета этого сообщения соответствующему государству-участнику.
5. Комитет или председатель от имени Комитета напоминает государству, получившему сообщение, что для представления письменных объяснений или заявления в соответствии с Конвенцией ему отводится трехмесячный срок.
6. Когда Комитет получит объяснения или заявления от государства, получившего сообщение, следует придерживаться установленной выше процедуры в отношении передачи этих объяснений или заявлений государству-участнику, представившему первоначальное сообщение.

Запрос о представлении информации

Правило 70

Комитет может предложить заинтересованным государствам-участникам представить информацию, относящуюся к применению статьи 11 Конвенции. Комитет может указать, каким образом и в какой срок представляется эта информация.

Уведомление соответствующих государств-участников

Правило 71

Если какой-либо вопрос представляется на рассмотрение Комитета в соответствии с пунктом 2 статьи 11 Конвенции, то председатель информирует через Генерального секретаря соответствующие государства-участники о предстоящем рассмотрении этого вопроса не позднее чем за тридцать дней до начала первого заседания Комитета в случае очередной сессии и по крайней мере за восемнадцать дней до начала первого заседания Комитета в случае специальной сессии.

XVII. СОЗДАНИЕ И ФУНКЦИИ СПЕЦИАЛЬНОЙ СОГЛАСИТЕЛЬНОЙ КОМИССИИ В СООТВЕТСТВИИ С ПОЛОЖЕНИЯМИ СТАТЕЙ 12 И 13 КОНВЕНЦИИ

Консультации относительно состава Комиссии

Правило 72

После того как Комитет получил и тщательно сопоставил всю информацию, которую он считает необходимой в отношении спора, возникшего на основании положений пункта 2 статьи 11 Конвенции, председатель уведомляет государства, являющиеся сторонами в споре, и проводит с ними консультации относительно состава Специальной согласительной комиссии (в дальнейшем именуемой "Комиссией") в соответствии со статьей 12 Конвенции.

Назначение членов Комиссии

Правило 73

После того как получено единодушное согласие государств, являющихся сторонами в споре, относительно состава Комиссии, председатель приступает к назначению членов Комиссии и информирует государства, являющиеся сторонами в споре, о составе Комиссии.

Назначение членов Комиссии

Правило 74

1. Если в течение трех месяцев после уведомления председателем, как это предусматривается выше в Правиле 71, государства, являющиеся сторонами в споре, не достигнут согласия относительно всего состава или части состава Комиссии, то председатель доводит сложившееся положение до сведения Комитета, который на своей следующей сессии действует в соответствии с пунктом 1 б) статьи 12 Конвенции.

2. По окончании выборов председатель информирует государства, являющиеся сторонами в споре, о составе Комиссии.

Торжественное заявление членов Комиссии

Правило 75

Приступая к исполнению своих обязанностей, каждый член Комиссии на первом заседании Комиссии делает следующее торжественное заявление:

"Я торжественно заявляю, что буду исполнять свои обязанности и осуществлять свои полномочия в качестве члена Специальной согласительной комиссии с достоинством, преданно, беспристрастно и добросовестно".

Заполнение вакансий в Комиссии

Правило 76

Если в Комиссии открывается вакансия, то председатель Комиссии в кратчайший срок заполняет эту вакансию в соответствии с процедурой, изложенной в правилах 72-74. Он приступает к заполнению такой вакансии по получении доклада Комиссии или уведомления Генерального секретаря.

Предоставление информации членам Комиссии

Правило 77

Полученная и тщательно составленная Комитетом информация предоставляется председателем Комитета через Генерального секретаря в распоряжение членов Комиссии одновременно с уведомлением членов Комиссии о дате первого заседания Комиссии.

Доклад Комиссии

Правило 78

1. Председатель Комитета незамедлительно после получения направляет доклад Комиссии, о котором говорится в статье 13 Конвенции, каждому из государств, являющихся сторонами в споре, и членам Комитета.
2. Государства, являющиеся сторонами в споре, в течение трех месяцев после получения доклада Комиссии сообщают председателю Комитета о том, согласны ли они с рекомендациями, содержащимися в докладе Комиссии. Председатель направляет членам Комитета информацию, полученную от государств, являющихся сторонами в споре.
3. По истечении срока, предусмотренного в предыдущем пункте, председатель Комитета направляет доклад Комиссии и любые заявления заинтересованных государств-участников другим государствам-участникам Конвенции.

Информирование членов Комитета

Правило 79

Председатель Комитета информирует членов Комитета о своих действиях согласно положениям правил 73-78.

XVIII. ПРОЦЕДУРА РАССМОТРЕНИЯ СООБЩЕНИЙ, ПОЛУЧЕННЫХ ОТ ОТДЕЛЬНЫХ ЛИЦ ИЛИ ГРУПП ЛИЦ В СООТВЕТСТВИИ СО СТАТЬЕЙ 14 КОНВЕНЦИИ

A. Общие положения

Компетенция Комитета

Правило 80

1. Комитет компетентен принимать и рассматривать сообщения и осуществлять функции, предусмотренные в статье 14 Конвенции, только в тех случаях, когда по меньшей мере десять государств-участников сделали заявления, в которых признается компетенция Комитета, в соответствии с пунктом 1 данной статьи.
2. Генеральный секретарь препровождает другим государствам-участникам копии заявлений, депонированных у него государствами-участниками, которые признают компетенцию Комитета.

3. Снятие заявления, сделанного в соответствии со статьей 14 Конвенции, не должно отражаться на рассмотрении сообщений, находящихся в Комитете.

4. Генеральный секретарь информирует другие государства-участники о наименовании, составе и функциях любого национального правового органа, учрежденного или указанного государством-участником, в соответствии с пунктом 3 статьи 14.

Национальные органы

Правило 81

Генеральный секретарь информирует Комитет о наименовании, составе и функциях любого национального правового органа, учрежденного или указанного в соответствии с пунктом 2 статьи 14, который компетентен принимать и рассматривать петиции отдельных лиц или групп лиц, заявляющих, что они являются жертвами нарушения какого-либо из прав, изложенных в Конвенции.

Заверенные копии списка петиций

Правило 82

1. Генеральный секретарь информирует Комитет о содержании всех заверенных копий списка петиций, которые были сданы ему в соответствии с пунктом 4 статьи 14.

2. Генеральный секретарь может обратиться с просьбой к государствам-участникам дать разъяснения в отношении заверенных копий списков петиций, составляемых национальными правовыми органами, несущими ответственность за ведение таких списков.

3. Содержание заверенных копий списков петиций, переданных Генеральному секретарю, не должно предаваться гласности.

Регистрация сообщений, полученных Генеральным секретарем

Правило 83

1. Генеральный секретарь регистрирует все сообщения, которые направляются или представляются направленными в Комитет отдельными лицами или группами лиц, которые заявляют, что они являются жертвами нарушения какого-либо из прав, изложенных в Конвенции, и на которых распространяется юрисдикция государства-участника, сделавшего заявление в соответствии со статьей 14.

2. Генеральный секретарь может, если он считает это необходимым, обратиться к автору сообщения с просьбой пояснить его намерение в отношении передачи его сообщения на рассмотрение Комитета в соответствии со статьей 14. В случае сомнений в отношении намерения автора данное сообщение рассматривается Комитетом.

3. Комитет не принимает сообщения и не включает его в список в соответствии с правилом 85 ниже, если это сообщение касается государства-участника, не сделавшего заявления, предусмотренного в пункте 1 статьи 14.

Информация, которая должна содержаться в сообщении

Правило 84

1. Генеральный секретарь может запросить у автора сообщения пояснение относительно применения статьи 14 к его сообщению, в частности в отношении:

- a) имени, адреса, возраста и рода занятий автора, а также удостоверения его личности;
- b) названия(ий) государства-участника или государств-участников, против которых направлено сообщение;
- c) цели сообщения;
- d) положения или положений Конвенции, которые, как утверждается, были нарушены;
- e) фактов претензии;
- f) мер, принятых автором, чтобы исчерпать внутренние средства правовой защиты, включая соответствующие документы;
- g) степени рассмотрения того же дела в соответствии с другой процедурой международного расследования или урегулирования.

2. При запросе пояснений или информации Генеральный секретарь устанавливает для автора сообщения соответствующий предельный срок, с тем чтобы избежать чрезмерных задержек в осуществлении процедуры.

3. Комитет может утвердить вопросник с целью запроса вышеупомянутой информации у автора сообщения.

4. Запрос пояснений, упомянутых в пункте 1 настоящего правила, не исключает возможности включения сообщения в список, предусмотренный в пункте 1 правила 85 ниже.

5. Генеральный секретарь информирует автора сообщения о процедуре, которая будет применяться, и о том, что текст его сообщения будет доведен до сведения соответствующего государства-участника в конфиденциальном порядке в соответствии с пунктом 6 а) статьи 14.

Передача сообщений Комитету

Правило 85

1. Генеральный секретарь составляет резюме каждого полученного таким образом сообщения и доводит эти резюме индивидуально или в виде списка сообщений до сведения Комитета на его следующей очередной сессии вместе с соответствующими заверенными копиями списков петиций, составляемых национальным правовым органом соответствующей страны и сдаваемых Генеральному секретарю в соответствии с пунктом 4 статьи 14.

2. Генеральный секретарь обращает внимание Комитета на случаи, в отношении которых заверенные копии списков петиций получены не были.

3. Содержание ответов на запросы пояснений и соответствующих последующих сообщений либо от автора сообщения, либо от затрагиваемого государства-участника доводится в надлежащей форме до сведения Комитета.

4. По каждому резюме сообщения ведется подборка подлинных документов. Полный текст любого сообщения, доведенного до сведения Комитета, предоставляется в распоряжение любого члена Комитета по его просьбе.

В. Процедура установления приемлемости сообщений

Порядок рассмотрения сообщений

Правило 86

1. В соответствии со следующими правилами Комитет принимает в кратчайший по возможности срок решение о том, является ли приемлемым данное сообщение в соответствии со статьей 14 Конвенции.

2. Комитет, если он не выносит иного решения, рассматривает сообщения в том порядке, в каком они поступают к нему от секретариата. Комитет может, если он сочтет это целесообразным, принять решение о рассмотрении совместно двух или более сообщений.

Учреждение рабочей группы

Правило 87

1. В соответствии с правилом 61 Комитет может создать рабочую группу, которая проводит заседания незадолго до начала сессий Комитета или в любое другое удобное время, определяемое Комитетом в консультации с Генеральным секретарем, в целях вынесения рекомендаций Комитету в отношении соблюдения условий приемлемости сообщений, изложенных в статье 14 Конвенции, а также в целях оказания Комитету такой помощи, которую Комитет сочтет необходимой.

2. Рабочая группа состоит не более чем из пяти членов Комитета. Рабочая группа избирает своих должностных лиц, разрабатывает свои собственные методы работы и в максимально возможной степени применяет правила процедуры Комитета в отношении своих заседаний.

Заседания

Правило 88

Заседания Комитета или его рабочей группы, на которых рассматриваются сообщения в соответствии со статьей 14 Конвенции, являются закрытыми. Заседания, в ходе которых Комитет может рассматривать вопросы общего характера, такие, как процедуры применения статьи 4, могут быть открытыми, если Комитет принимает такое решение.

Неспособность члена Комитета принять участие в рассмотрении сообщения

Правило 89

1. Член Комитета не принимает участия в рассмотрении сообщения Комитетом или его рабочей группой:

- a) если у него имеется какой-либо личный интерес к данному вопросу, или
- b) если он участвовал в любом качестве в принятии какого-либо решения по вопросу, охватываемому сообщением.

2. Любой вопрос, который может возникнуть в связи с пунктом 1 выше, решается Комитетом без участия члена, которого затрагивает данный вопрос.

Отказ члена Комитета от участия в рассмотрении сообщения

Правило 90

Если по какой-либо причине один из членов считает, что ему не следует принимать участие или продолжать принимать участие в рассмотрении какого-либо сообщения, он информирует председателя о своем отказе.

Условия приемлемости сообщения

Правило 91

С целью принятия решения о приемлемости сообщения Комитет или его рабочая группа удостоверяются в том, что:

- a) сообщение не является анонимным и что оно исходит от лица или группы лиц, на которых распространяется юрисдикция государства-участника, признающего компетенцию Комитета в соответствии со статьей 14 Конвенции;
- b) лицо утверждает, что оно является жертвой нарушения соответствующим государством-участником какого-либо из прав, изложенных в Конвенции. Как правило, сообщение должно представляться самим лицом или его родственниками или назначенными представителями; однако Комитет может в исключительных случаях согласиться рассмотреть сообщение, представленное другими лицами от имени предполагаемой жертвы, если считается, что она не способна сама представить сообщение, и автор такого сообщения обосновывает свои действия от имени жертвы;
- c) сообщение соответствует положениям настоящей Конвенции;
- d) сообщение не является злоупотреблением правом представлять сообщения согласно статье 14;
- e) лицо исчерпало все имеющиеся внутренние средства правовой защиты, включая там, где это применимо, средства, упомянутые в пункте 2 статьи 14. Однако это правило не действует в тех случаях, когда применение этих средств чрезмерно затягивается;
- f) данное сообщение представляется, кроме должным образом проверенных исключительных случаев, в течение шести месяцев после того, как исчерпаны все имеющиеся внутренние средства правовой защиты, включая там, где это приемлемо, средства, упомянутые в пункте 2 статьи 14.

Правило 92

1. Комитет или рабочая группа, созданная в соответствии с правилом 87, через посредство Генерального секретаря может предложить соответствующему государству-участнику или автору сообщения предоставить дополнительную письменную информацию или разъяснения, относящиеся к вопросу о приемлемости сообщения.
2. Такого рода запросы содержат заявление о том, что запрос не означает, что Комитетом принято какое-либо решение по вопросу о приемлемости сообщения.
3. Сообщение не может быть объявлено приемлемым, если соответствующее государство-участник не получило текста сообщения и ему не дана возможность предоставить информацию или замечания, предусмотренные в пункте 1 настоящего правила, включая информацию, касающуюся исчерпания внутренних средств правовой защиты.
4. Комитет или рабочая группа может утвердить вопросник для запроса такого рода дополнительной информации или разъяснений.
5. Комитет или Рабочая группа устанавливают предельный срок для представления такого рода дополнительной информации или разъяснений.
6. Если соответствующее государство-участник или автор сообщения не соблюдают установленный срок, то Комитет или Рабочая группа могут принять решение о рассмотрении вопроса о приемлемости такого сообщения в свете имеющейся информации.
7. Если соответствующее государство-участник оспаривает утверждение автора сообщения о том, что он исчерпал все имеющиеся внутренние средства правовой защиты, то государство-участник должно предоставить подробную информацию о том, какие эффективные внутренние средства имеются в распоряжении предполагаемой жертвы применительно к конкретным обстоятельствам данного дела.

Неприемлемые сообщения

Правило 93

1. Если Комитет принимает решение о том, что сообщение является неприемлемым или рассмотрение им этого сообщения откладывается или прекращается, Комитет в кратчайший по возможности срок направляет свои решения через посредство Генерального секретаря petitionerу и соответствующему государству-участнику.

2. Принятое Комитетом согласно пункту 7 а) статьи 14 решение о неприемлемости сообщения может быть пересмотрено Комитетом позднее, по получении письменной просьбы от соответствующего петиционера. Такая письменная просьба должна содержать документальное свидетельство того, что причины неприемлемости, о которых говорится в пункте 7 статьи 14, более неприменимы.

С. Рассмотрение сообщений по существу

Порядок рассмотрения приемлемых сообщений

Правило 94

1. После принятия Комитетом решения о приемлемости сообщения согласно статье 14 Комитет направляет через Генерального секретаря в конфиденциальном порядке текст данного сообщения и другую соответствующую информацию затрагиваемому государству-участнику, не раскрывая личности автора, если последний не дал своего явного согласия на это. Комитет информирует также петиционера о своем решении через Генерального секретаря.

2. Соответствующее государство-участник представляет Комитету в течение трех месяцев письменные объяснения или заявления, поясняющие рассматриваемый вопрос и меры правовой защиты, если таковые имеются, которые могли бы быть приняты этим государством-участником. Комитет, если он сочтет это необходимым, может указать, какую информацию он хотел бы получить от соответствующего государства-участника.

3. В ходе рассмотрения Комитет может информировать соответствующее государство-участник о своей точке зрения в отношении желательности, ввиду неотложности вопроса, применения предварительных мер во избежание нанесения непоправимого ущерба лицу или лицам, которые считают себя жертвой(ами) предполагаемого нарушения. При этом Комитет информирует соответствующее государство-участника, что такое выражение его точки зрения в отношении предварительных мер не влияет ни на окончательное мнение о существовании данного сообщения, ни на возможные предложения и рекомендации.

4. Любые объяснения или заявления, представленные государством-участником во исполнение настоящего правила, могут быть направлены через Генерального секретаря петиционеру, который может представить любую дополнительную письменную информацию или замечания в сроки, определяемые Комитетом.

5. Комитет может пригласить петиционера или его представителя, а также представителей соответствующего государства-члена присутствовать лично, с тем чтобы представить дополнительную информацию или ответить на вопросы, касающиеся существа сообщения.

6. Комитет может пересмотреть свое решение о приемлемости сообщения в свете любых объяснений или заявлений, представленных государством-участником. Однако, прежде чем Комитет пересмотрит такое решение, петиционеру должны быть представлены соответствующие объяснения или заявления, с тем чтобы он мог представить дополнительную информацию или замечания в сроки, определяемые Комитетом.

Мнение Комитета в отношении приемлемых сообщений и предложения
и рекомендации Комитета

Правило 95

1. Приемлемые сообщения рассматриваются Комитетом в свете всей информации, представленной ему петиционером и соответствующим государством-участником. Комитет может передать данное сообщение на рассмотрение Рабочей группы, с тем чтобы она оказала ему содействие в решении этой задачи.

2. Комитет или Рабочая группа, созданная им для рассмотрения сообщения, может в любой момент в ходе рассмотрения получить через посредство Генерального секретаря любую документацию, которая может способствовать решению вопроса по данному делу, от органов и специализированных учреждений Организации Объединенных Наций.

3. После рассмотрения приемлемого сообщения Комитет формулирует в отношении него свое мнение. Мнение Комитета сообщается через Генерального секретаря петиционеру и соответствующему государству-участнику вместе с любыми предложениями и рекомендациями, с которыми может пожелать выступить Комитет.

4. Любой член Комитета может просить приложить резюме своего собственного мнения к мнению Комитета, когда оно сообщается петиционеру и соответствующему государству-участнику.

5. Соответствующему государству-участнику направляется предложение о представлении Комитету в надлежащее время информации о мерах, которые оно принимает в соответствии с предложениями и рекомендациями Комитета.

Резюме в ежегодном докладе Комитета

Правило 96

Комитет включает в свой ежегодный доклад резюме рассмотренных сообщений и в случае необходимости резюме объяснений и заявлений соответствующих государств-участников, а также его собственных предложений и рекомендаций.

Сообщения для печати

Правило 97

Комитет может через посредство Генерального секретаря выпускать коммюнике о деятельности Комитета в соответствии со статьей 14 Конвенции для использования их средствами массовой информации и широкой общественностью.

ТРЕТЬЯ ЧАСТЬ. ТОЛКОВАНИЕ И ПОПРАВКИ

ХІХ. ТОЛКОВАНИЕ И ПОПРАВКИ

Подчеркнутые заголовки правил

Правило 98

Подчеркнутые заголовки настоящих правил, которые были включены исключительно для ссылок, не принимаются во внимание при толковании правил.

Поправки

Правило 99

Настоящие правила процедуры могут быть изменены по решению Комитета.

Приложение

Решение 2 (VI). Сотрудничество с Международной организацией труда (МОТ) и Организацией Объединенных Наций по вопросам образования, науки и культуры (ЮНЕСКО) а/

Без ущерба таким решениям, которые могут быть приняты Комитетом по ликвидации расовой дискриминации в будущем относительно возможности участия в его заседаниях представителей МОТ и ЮНЕСКО при определенных обстоятельствах, Комитет постановляет:

1. Комитет уполномочивает Генерального секретаря Организации Объединенных Наций пригласить представителей МОТ и ЮНЕСКО посещать заседания Комитета. Комитет будет решать на любом закрытом заседании, которое он будет проводить, вопрос о том, будут ли наблюдатели от МОТ и ЮНЕСКО посещать соответствующие закрытые заседания.
2. В соответствии с пунктом 1 правила 34 и правилом 35 правил процедуры Комитет уполномочивает Генерального секретаря направлять отчеты о его открытых заседаниях и тексты его докладов, официальные решения и другие официальные документы Комитету экспертов МОТ и Комитету по конвенциям и рекомендациям в области образования Исполнительного совета ЮНЕСКО.
3. Письменные заявления, представленные МОТ и ЮНЕСКО, содержащие информацию о применении Конвенции и Рекомендации о дискриминации в области труда и занятий, 1958 г., и Конвенции и Рекомендации о борьбе с дискриминацией в области образования, 1960 г., в территориях, упомянутых в пункте 2 а) статьи 15 Международной конвенции о ликвидации всех форм расовой дискриминации, будут направляться Генеральным секретарем Организации Объединенных Наций Комитету по ликвидации расовой дискриминации в соответствии с пунктом 4 статьи 15 Международной конвенции о ликвидации всех форм расовой дискриминации и пунктом 3 б) "Положения об ответственности Комитета в соответствии со статьей 15 Конвенции", которое было принято Комитетом по ликвидации расовой дискриминации 29 января 1970 года.
4. Письменные заявления, представленные МОТ и ЮНЕСКО, содержащие информацию о применении Конвенции и Рекомендации о дискриминации в области труда и занятий, 1958 г., и Конвенции и Рекомендации о борьбе с дискриминацией в области образования, 1960 г., в территориях, иных чем упомянутые в предыдущем пункте, будут направляться Генеральным секретарем Организации Объединенных Наций членам Комитета по ликвидации расовой дискриминации.

а/ Принято Комитетом на 115-м заседании (шестая сессия) 21 августа 1972 года.

REGLAMENTO
DEL
COMITE PARA LA ELIMINACION
DE LA DISCRIMINACION RACIAL

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INTRODUCCION

1. En su primer y segundo período de sesiones, el Comité para la Eliminación de la Discriminación Racial aprobó su reglamento provisional, compuesto por 78 artículos, sobre la base de los textos preparados por el Secretario General 1/.
2. En su cuarto período de sesiones, el Comité, en su decisión 1 (IV) modificó el artículo 36 (anteriormente artículo 35 del reglamento provisional) 2/.
3. En su quinto período de sesiones, el Comité, en su decisión 1 (V), aprobó el artículo 65 (anteriormente artículo 64 A del reglamento provisional) 3/.
4. En el mismo período de sesiones, el Comité, en su decisión 2 (V), aprobó el artículo 67 (anteriormente artículo 66 A del reglamento provisional) 4/.
5. En su séptimo período de sesiones, el Comité, en su decisión 2 (VII), modificó el artículo 13 5/.
6. En el mismo período de sesiones, el Comité, en su decisión 1 (VII), modificó el artículo 58 (anteriormente artículo 56 del reglamento provisional) 6/.
7. En su 17º período de sesiones, el Comité, en su decisión 1 (XVII), modificó el artículo 34 7/.

1/ Documentos Oficiales de la Asamblea General, vigésimo quinto período de sesiones, Suplemento Nº 27 (A/8027), anexo II.

2/ Ibid., vigésimo sexto período de sesiones, Suplemento Nº 18 (A/8418), cap. VII, sec. B.

3/ Ibid., vigésimo séptimo período de sesiones, Suplemento Nº 18 (A/8718), cap. IX, sec. A.

4/ Ibid.

5/ Ibid., vigésimo octavo período de sesiones, Suplemento Nº 18 (A/9018), cap. X, sec. A.

6/ Ibid.

7/ Ibid., vigésimo tercer período de sesiones, Suplemento Nº 18 (A/3318), cap. X, sec. A.

8. En el mismo período de sesiones, el Comité, en su decisión 2 (XVII), modificó el artículo 35 (anteriormente artículo 62 del reglamento provisional) 8/.
9. En su 27º período de sesiones, el Comité aprobó los artículos 80 a 93, con excepción del apartado a) y la segunda parte del apartado b) del artículo 91 que fueron aprobados en el 28º período de sesiones (anteriormente artículos 79 a 92 del reglamento provisional) 9/.
10. En el mismo período de sesiones, el Comité aprobó los párrafos 1 a 4 del artículo 94 (anteriormente artículo 93 del reglamento provisional) 10/.
11. En su 28º período de sesiones, el Comité aprobó el apartado a) y la segunda parte del apartado b) del artículo 91 y los párrafos 5 y 6 del artículo 94 que habían quedado pendientes en su 27º período de sesiones 11/.
12. En el mismo período de sesiones, el Comité aprobó los artículos 95 a 97 (anteriormente artículos 94 a 96 del reglamento provisional) 12/.
13. En su 29º período de sesiones, el Comité decidió suprimir la palabra "provisional" en su reglamento 13/.
14. En el mismo período de sesiones el Comité modificó los artículos 27 y 28 14/.
15. En el mismo período de sesiones el Comité aprobó el artículo 98 15/.

8/ Ibid.

9/ Ibid., trigésimo octavo período de sesiones, Suplemento Nº 18 (A/38/18), anexo III.

10/ Ibid.

11/ Ibid.

12/ Ibid.

13/ Ibid., trigésimo noveno período de sesiones, Suplemento Nº 18 (A/39/18), cap. III.

14/ Ibid.

15/ Ibid.

16. En el mismo período de sesiones, el Comité adoptó asimismo las siguientes decisiones:

a) Insertar al final del reglamento una nueva tercera parte titulada "Interpretación y enmiendas", incorporándose en esta nueva parte el artículo 63 del reglamento provisional que se convirtió en artículo 99, y

b) Insertar encabezamientos en los artículos del reglamento así como un índice 16/.

16/ Ibid.

NOTA EXPLICATIVA

Se señala a la atención el artículo 98, en el cual se establece que, para la interpretación de los artículos, no se tendrán en cuenta los encabezamientos subrayados, que fueron insertados a título de referencia únicamente.

REGLAMENTO

Primera parte

DISPOSICIONES GENERALES

I. PERIODOS DE SESIONES

Períodos ordinarios de sesiones

Artículo 1

El Comité para la Eliminación de la Discriminación Racial (denominado en adelante "el Comité"), creado de conformidad con la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial (denominada en adelante "la Convención"), celebrará dos períodos ordinarios de sesiones cada año.

Fechas de los períodos de sesiones

Artículo 2

Los períodos ordinarios de sesiones del Comité se celebrarán en las fechas que decida el Comité en consulta con el Secretario General de las Naciones Unidas (denominado en adelante "el Secretario General"), teniendo en cuenta el calendario de conferencias aprobado por la Asamblea General.

Períodos extraordinarios de sesiones

Artículo 3

1. Se convocará a períodos extraordinarios de sesiones del Comité por decisión de éste. Cuando el Comité no esté reunido, el Presidente podrá convocar a períodos extraordinarios de sesiones del Comité en consulta con los otros miembros de la Mesa del Comité. El Presidente del Comité también convocará a un período extraordinario de sesiones:

- a) A solicitud de la mayoría de los miembros del Comité;
- b) A solicitud de un Estado Parte en la Convención.

2. Los períodos extraordinarios de sesiones se celebrarán lo antes posible en la fecha que fije el Presidente en consulta con el Secretario General y con los otros miembros de la Mesa del Comité, teniendo en cuenta el calendario de conferencias aprobado por la Asamblea General.

Notificación de la fecha de apertura de los períodos de sesiones

Artículo 4

El Secretario General notificará a los miembros del Comité el lugar y la fecha de la primera sesión de cada período de sesiones. Esta notificación será remitida por lo menos treinta días antes de la primera sesión, si se trata de un período ordinario de sesiones, y por lo menos dieciocho días antes si se trata de un período extraordinario de sesiones.

Lugar de celebración de los períodos de sesiones

Artículo 5

Los períodos de sesiones del Comité se celebrarán normalmente en la Sede de las Naciones Unidas. El Comité podrá decidir celebrar un período de sesiones en otro lugar en consulta con el Secretario General y teniendo en cuenta las normas pertinentes de las Naciones Unidas sobre la cuestión.

II. PROGRAMA

Programa provisional de los períodos ordinarios de sesiones

Artículo 6

El Secretario General preparará el programa provisional de cada período ordinario de sesiones en consulta con el Presidente del Comité, de conformidad con las disposiciones pertinentes de los artículos 9, 11, 12, 13, 14 y 15 de la Convención, e incluirá en el mismo:

- a) Todo tema sobre el que el Comité haya tomado una decisión en su anterior período de sesiones;
- b) Todo tema propuesto por el Presidente del Comité;
- c) Todo tema propuesto por un Estado Parte en la Convención;
- d) Todo tema propuesto por un miembro del Comité;
- e) Todo tema propuesto por el Secretario General.

Programa provisional de los períodos extraordinarios de sesiones

Artículo 7

El programa provisional de un período extraordinario de sesiones del Comité comprenderá tan solo los temas propuestos para ser examinados en ese período extraordinario.

Aprobación del programa

Artículo 8

El primer tema del programa provisional de cada período de sesiones será la aprobación del programa, excepto cuando en virtud del artículo 15 deban elegirse los miembros de la Mesa.

Revisión del programa

Artículo 9

Durante un período de sesiones el Comité podrá revisar el programa y podrá, según corresponda, añadir, aplazar o suprimir temas.

Transmisión del programa provisional y de los documentos básicos

Artículo 10

El Secretario General transmitirá lo antes posible a los miembros del Comité el programa provisional y los documentos básicos referentes a cada tema incluido en el mismo. El Secretario General transmitirá a los miembros del Comité el programa provisional de cada período extraordinario de sesiones juntamente con la notificación sobre la sesión prevista en el artículo 4.

III. MIEMBROS DEL COMITE

Miembros

Artículo 11

Serán miembros del Comité los dieciocho expertos designados de conformidad con el artículo 8 de la Convención.

Comienzo del mandato

Artículo 12

Los miembros del Comité elegidos en la primera elección iniciarán su mandato en la fecha de la primera sesión del Comité. En el caso de los miembros del Comité elegidos en elecciones posteriores, su mandato empezará al día siguiente de la fecha de expiración del mandato de los miembros del Comité a quienes reemplacen.

Provisión de vacantes imprevistas

Artículo 13

1. Cuando se produzca una vacante imprevista en el Comité, el Secretario General pedirá inmediatamente al Estado Parte cuyo experto haya cesado en sus funciones como miembro del Comité que designe entre sus nacionales a otro experto dentro de un plazo de dos meses para que preste servicios durante el resto del mandato de su predecesor. El nombre del experto así designado será comunicado por el Secretario General al Comité para su aprobación en votación secreta.

2. Luego de la aprobación del experto por el Comité, el Secretario General notificará a los Estados partes en la Convención el nombre del miembro del Comité que cubrirá una vacante imprevista.

3. Salvo en el caso de una vacante producida por muerte o invalidez de uno de los miembros, el Secretario General y el Comité actuarán de conformidad con lo dispuesto en los párrafos 1 y 2 del presente artículo sólo después de recibir del miembro interesado una notificación por escrito de su decisión de cesar en sus funciones como miembro del Comité.

Declaración solemne

Artículo 14

Al asumir su mandato, cada miembro del Comité deberá hacer en sesión pública del Comité la siguiente declaración solemne:

"Declaro solemnemente que, en el desempeño de mis funciones y en el ejercicio de mis facultades como miembro del Comité para la Eliminación de la Discriminación Racial, actuaré en forma honorable, fiel, imparcial y concienzuda."

IV. MESA DEL COMITE

Elecciones

Artículo 15

El Comité elegirá, entre sus miembros, un Presidente, tres Vicepresidentes y un Relator.

Duración del mandato

Artículo 16

Los miembros de la Mesa del Comité serán elegidos para un mandato de dos años, y serán reelegibles. Sin embargo, ninguno de ellos podrá ejercer sus funciones si deja de ser miembro del Comité.

Relación entre el Presidente y el Comité

Artículo 17

Al ejercer sus funciones como tal, el Presidente seguirá estando sometido a la autoridad del Comité.

Presidente interino

Artículo 18

Si el Presidente no pudiera hallarse presente en una sesión o en parte de ella, designará a uno de los Vicepresidentes para que actúe en su lugar.

Atribuciones y obligaciones del Presidente interino

Artículo 19

Cuando uno de los Vicepresidentes actúe como Presidente, tendrá las mismas atribuciones y obligaciones que el Presidente.

Sustitución de miembros de la Mesa

Artículo 20

Cuando alguno de los miembros de la Mesa del Comité dejare de actuar como miembro de ésta o se declarase incapacitado para ello o cuando, por cualquier razón, no pudiere continuar actuando como miembro de la Mesa, se elegirá un nuevo miembro para el tiempo que quede hasta la expiración del mandato de su predecesor.

V. SECRETARIA

Funciones del Secretario General

Artículo 21

El Secretario General proporcionará los servicios de secretaría (en adelante denominados "la Secretaría") del Comité y de los órganos auxiliares que pueda crear el mismo Comité.

Exposiciones

Artículo 22

El Secretario General, o un representante suyo, estará presente en todas las sesiones del Comité. El mismo, o su representante, podrá, con sujeción a las disposiciones del artículo 37, presentar exposiciones orales o por escrito al Comité o a sus órganos auxiliares.

Servicios para las reuniones

Artículo 23

El Secretario General adoptará todas las disposiciones necesarias para las reuniones del Comité y de sus órganos auxiliares.

Información a los miembros

Artículo 24

El Secretario General será responsable de mantener informados a los miembros del Comité de todos los asuntos que puedan ser sometidos al Comité para su examen.

Consecuencias financieras de las propuestas

Artículo 25

Antes de que el Comité o cualquiera de sus órganos auxiliares apruebe una propuesta que implique gastos, el Secretario General preparará y comunicará a los miembros, lo antes posible, un cálculo de los gastos que entrañará la propuesta. El Presidente deberá señalar este cálculo a la atención de los miembros a fin de que lo examinen cuando el Comité o un órgano subsidiario consideren la propuesta de que se trate.

VI. IDIOMAS

Idiomas oficiales e idiomas de trabajo

Artículo 26

El chino, el español, el francés, el inglés y el ruso serán los idiomas oficiales, y el español, el francés, el inglés y el ruso los idiomas de trabajo del Comité.

Interpretación de un idioma oficial

Artículo 27

Los discursos pronunciados en uno de los idiomas oficiales serán interpretados en los demás.

Interpretación de un idioma distinto de los oficiales

Artículo 28

Cualquier persona que comparezca ante el Comité podrá hacer uso de la palabra en un idioma distinto de los oficiales. En este caso, se encargará de proporcionar la interpretación en uno de los idiomas oficiales. La interpretación hecha por un intérprete de la Secretaría en los demás idiomas oficiales podrá basarse en la interpretación hecha en el idioma oficial empleado en primer lugar.

Idiomas de las actas

Artículo 29

Se levantarán actas resumidas de las sesiones del Comité en los idiomas de trabajo.

Idiomas de las decisiones formales y de los documentos oficiales

Artículo 30

Todas las decisiones formales del Comité deberán ser proporcionadas en los idiomas oficiales. Todos los documentos oficiales del Comité se publicarán en los idiomas de trabajo, y, por decisión del Comité, cualesquiera de ellos podrán publicarse en el otro idioma oficial.

VII. SESIONES PUBLICAS Y SESIONES PRIVADAS

Sesiones públicas y sesiones privadas

Artículo 31

Las sesiones del Comité y de sus órganos auxiliares serán públicas, a menos que el Comité decida otra cosa o que, según las disposiciones pertinentes de la Convención, parezca que la sesión deba celebrarse en privado.

Publicación de comunicados de las sesiones privadas

Artículo 32

Al final de cada sesión privada el Comité o su órgano auxiliar podrá publicar un comunicado por conducto del Secretario General.

VIII. ACTAS

Corrección de las actas resumidas provisionales

Artículo 33

La Secretaría preparará actas resumidas de las sesiones públicas y privadas del Comité y de sus órganos auxiliares. Dichas actas serán distribuidas cuanto antes, en forma provisional, entre los miembros del Comité y entre los demás participantes en las sesiones. Todos los participantes podrán, dentro de los tres días laborables siguientes a la recepción de las actas resumidas de las sesiones, proponer rectificaciones a la Secretaría. Toda discrepancia motivada por tales rectificaciones será resuelta por el Presidente del Comité o por el Presidente del órgano auxiliar a cuyos debates se refiera el acta o, en caso de que la discrepancia persista, mediante una decisión del Comité o del órgano auxiliar.

Distribución de las actas resumidas

Artículo 34

1. Las actas resumidas de las sesiones públicas, en su versión definitiva, serán documentos de distribución general.
2. Las actas resumidas de las sesiones privadas se distribuirán a los miembros del Comité y a otros participantes en las sesiones. Podrán ponerse a disposición de otras personas, por decisión del Comité, en la oportunidad y en las condiciones que él mismo decida.

IX. DISTRIBUCION DE LOS INFORMES Y DE OTROS
DOCUMENTOS OFICIALES DEL COMITE

Distribución de los documentos oficiales

Artículo 35

1. Sin perjuicio de lo dispuesto en el artículo 34 del presente reglamento y con sujeción a los párrafos 2 y 3 de este artículo, los informes, las decisiones formales y todos los demás documentos oficiales del Comité y de sus órganos auxiliares serán documentos de distribución general, salvo que el Comité decida otra cosa.

2. La Secretaría distribuirá a todos los miembros del Comité, a los Estados partes interesados y, según decida el Comité, a los miembros de sus órganos auxiliares y a otras personas interesadas los informes, las decisiones formales y otros documentos oficiales del Comité y de sus órganos auxiliares relativos a los artículos 11, 12 y 13 y al artículo 14 de la Convención.

3. Los informes y la información complementaria presentada por los Estados partes en virtud del artículo 9 de la Convención serán documentos de distribución general, salvo que el Estado parte interesado solicite otra cosa.

X. DIRECCION DE LOS DEBATES

Quórum

Artículo 36

La mayoría de los miembros del Comité constituirá quórum. Pero se requerirá la presencia de dos tercios de los miembros del Comité para tomar una decisión.

Atribuciones del Presidente

Artículo 37

Además de ejercer los poderes que le confieren la Convención y otras disposiciones del presente reglamento, el Presidente abrirá y levantará cada una de las sesiones del Comité, dirigirá los debates, cuidará de la aplicación del presente reglamento, concederá la palabra, someterá a votación las cuestiones y proclamará las decisiones adoptadas. Con sujeción a las disposiciones del presente reglamento, el Presidente dirigirá las actuaciones del Comité y velará por

el mantenimiento del orden en sus sesiones. En el curso del debate de un tema, el Presidente podrá proponer al Comité la limitación del tiempo que se ha de asignar a los oradores, la limitación del número de veces en que cada orador podrá hacer uso de la palabra sobre determinada cuestión y el cierre de la lista de oradores. Resolverá las cuestiones de orden. También estará facultado para proponer el aplazamiento o el cierre del debate o la suspensión o el levantamiento de una sesión. Los debates se limitarán a la cuestión que esté examinando el Comité y el Presidente podrá llamar al orden a un orador cuyas observaciones no sean pertinentes al tema que se esté discutiendo.

Cuestiones de orden

Artículo 38

Durante la discusión de cualquier asunto, todo miembro podrá plantear en cualquier momento una cuestión de orden, y el Presidente la resolverá inmediatamente conforme al reglamento. Toda apelación de la decisión del Presidente será sometida inmediatamente a votación y la decisión del Presidente prevalecerá, a menos que sea revocada por la mayoría de los miembros presentes y votantes. El miembro que plantee una cuestión de orden no podrá tratar sobre el fondo de la cuestión que se esté discutiendo.

Limitación del tiempo de uso de la palabra

Artículo 39

El Comité podrá limitar la duración de las intervenciones de cada orador sobre una misma cuestión. Cuando la duración de las intervenciones esté limitada y un miembro o representante rebase el tiempo que se le haya concedido, el Presidente lo llamará al orden inmediatamente.

Lista de oradores

Artículo 40

En el curso de un debate, el Presidente podrá dar lectura a la lista de oradores y, con el asentimiento del Comité, declarar cerrada la lista. No obstante, el Presidente podrá otorgar a cualquier miembro o representante el derecho a contestar si un discurso pronunciado después de haberse declarado cerrada la lista lo hace aconsejable. Cuando el debate sobre un tema haya concluido por no haber más oradores, el Presidente declarará cerrado el debate. En tal caso, el cierre del debate surtirá el mismo efecto que si hubiera sido aprobado por el Comité.

Suspensión o levantamiento de la sesión

Artículo 41

Durante la discusión de cualquier asunto, un miembro podrá proponer la suspensión o el levantamiento de la sesión. No se permitirá ninguna discusión sobre tales mociones, que serán sometidas inmediatamente a votación.

Aplazamiento del debate

Artículo 42

Durante la discusión de cualquier asunto, todo miembro podrá proponer el aplazamiento del debate sobre el tema que se esté discutiendo. Además del autor de la moción, podrá hablar uno de los miembros a favor de la moción y otro en contra, después de lo cual la moción será sometida inmediatamente a votación.

Cierre del debate

Artículo 43

Todo miembro podrá proponer en cualquier momento el cierre del debate sobre el tema que se esté discutiendo, aun cuando otro miembro haya manifestado su deseo de hablar. Sólo se permitirá hablar sobre el cierre del debate a dos oradores que se opondan a él, después de lo cual la moción será sometida inmediatamente a votación.

Orden de las mociones

Artículo 44

Con sujeción a lo dispuesto en el artículo 38, las siguientes mociones tendrán precedencia, en el orden que a continuación se indica, sobre las demás propuestas o mociones presentadas:

- a) Suspensión de la sesión;
- b) Levantamiento de la sesión;
- c) Aplazamiento del debate sobre el tema que se esté discutiendo;
- d) Cierre del debate sobre el tema que se esté discutiendo.

Presentación de propuestas

Artículo 45

A menos que el Comité decida otra cosa, las propuestas y las enmiendas o mociones de fondo de los miembros se presentarán por escrito y se entregarán a la Secretaría y, a solicitud de cualquier miembro, podrá diferirse su examen hasta la próxima sesión que se celebre en día distinto del de su presentación.

Decisiones sobre cuestiones de competencia

Artículo 46

Con sujeción a lo dispuesto en el artículo 44, toda moción de un miembro encaminada a que el Comité resuelva sobre su competencia para pronunciarse sobre una propuesta que le haya sido presentada será sometida a votación inmediatamente antes de someterse a votación la propuesta de que se trate.

Retiro de mociones

Artículo 47

El autor de una moción podrá retirarla en cualquier momento antes de que haya sido sometida a votación, a condición de que no haya sido objeto de ninguna enmienda. Una moción así retirada podrá ser presentada de nuevo por cualquier miembro.

Nuevo examen de las propuestas

Artículo 48

Cuando una propuesta haya sido aprobada o rechazada, no podrá ser examinada de nuevo en el mismo período de sesiones, a menos que el Comité lo decida así por mayoría de dos tercios de los miembros presentes y votantes. Sobre una moción por la que se pida un nuevo examen sólo se concederá la palabra a dos oradores a favor de la moción y a dos oradores opuestos a la moción, después de lo cual será sometida inmediatamente a votación.

XI. VOTACIONES

Derecho de voto

Artículo 49

Cada miembro del Comité tendrá un voto.

Adopción de decisiones

Artículo 50

A menos que en la Convención y en otras disposiciones del presente reglamento se disponga otra cosa, las decisiones del Comité se tomarán por mayoría de los miembros presentes y votantes. A los efectos del presente reglamento, "miembros presentes y votantes" son los miembros que votan a favor o en contra. Se considera que los miembros que se abstienen de votar no toman parte en la votación.

Empates

Artículo 51

En caso de empate en una votación cuyo objeto no sea una elección, se considerará rechazada la propuesta.

Procedimiento de votación

Artículo 52

Con sujeción a lo dispuesto en el artículo 58, de ordinario las votaciones del Comité se harán alzando la mano, salvo cuando un miembro solicite votación nominal, la cual se efectuará siguiendo el orden alfabético inglés de los nombres de los miembros del Comité.

Votación nominal

Artículo 53

El voto de cada miembro que participe en una votación nominal será consignado en acta.

Reglas que deberán observarse durante una votación y explicación de votos

Artículo 54

Después de comenzada una votación, no se la interrumpirá, salvo cuando se trate de una cuestión de orden presentada por un miembro relativa a la forma en que se esté efectuando la votación. El Presidente podrá permitir que los miembros intervengan brevemente, pero sólo para explicar su voto, antes de comenzar la votación o una vez concluida.

División de las propuestas

Artículo 55

Si un miembro pide que se divida una propuesta, ésta será sometida a votación por partes. Las partes de la propuesta que hayan sido aprobadas serán entonces sometidas a votación en conjunto; si todas las partes dispositivas de una propuesta fueren rechazadas, se considerará que la propuesta ha sido rechazada en su totalidad.

Orden de votación sobre las enmiendas

Artículo 56

1. Cuando se presente una enmienda a una propuesta, se votará primero sobre la enmienda. Cuando se presenten dos o más enmiendas a una propuesta, el Comité votará primero sobre la que se aparte más, en cuanto al fondo, de la propuesta original; acto seguido votará sobre la enmienda que después de la votada anteriormente se aparte más de la propuesta, y así sucesivamente hasta que se haya votado sobre todas las enmiendas. Si se aprueba una o más de las enmiendas, se someterá a votación la propuesta modificada.

2. Se considerará que una moción es una enmienda a una propuesta cuando entrañe simplemente adición, supresión o modificación de alguna parte del texto de tal propuesta.

Orden de votación sobre las propuestas

Artículo 57

1. Cuando hay dos o más propuestas relativas a una misma cuestión, el Comité, a menos que resuelva otra cosa, votará sobre tales propuestas en el orden en que hayan sido presentadas.

2. Después de cada votación, el Comité podrá decidir si votará o no sobre la propuesta siguiente.

3. Sin embargo, las mociones encaminadas a que el Comité no se pronuncie sobre el fondo de tales propuestas serán consideradas como cuestiones previas y se someterán a votación antes que dichas propuestas.

XII. ELECCIONES

Procedimiento de las elecciones

Artículo 58

Las elecciones se harán por votación secreta, salvo decisión en contrario del Comité cuando para un cargo dado sólo hubiere un candidato.

Reglas que deberán observarse en las elecciones cuando se trate de elegir a una sola persona

Artículo 59

Cuando se trate de elegir una sola persona o miembro, si ningún candidato obtiene en la primera votación la mayoría requerida, se procederá a una segunda votación limitada a los dos candidatos que hayan obtenido mayor número de votos. Si en la segunda votación los votos se dividen por igual y se requiere mayoría para su validez, el Presidente resolverá el empate por sorteo. Cuando se requiera mayoría de dos tercios se continuará la votación hasta que uno de los candidatos obtenga dos tercios de los votos emitidos; sin embargo, después del tercer escrutinio sin resultado decisivo, se podrá votar por cualquier miembro elegible. Si tres votaciones no limitadas no dan resultado decisivo, las tres votaciones siguientes se limitarán a los dos candidatos que hayan obtenido más votos en la tercera votación no limitada; las tres votaciones ulteriores serán sin limitación de candidatos y así sucesivamente hasta que se haya elegido una persona o miembro.

Reglas que deberán observarse en las elecciones cuando se trate de elegir a dos o más personas

Artículo 60

Cuando hayan de cubrirse al mismo tiempo y en las mismas condiciones dos o más cargos electivos, se declarará elegidos a aquellos candidatos que obtengan en la primera votación la mayoría requerida. Si el número de candidatos que obtengan tal mayoría es menor que el de personas o miembros que han de ser elegidos, se efectuarán votaciones adicionales para cubrir los puestos restantes, limitándose la votación a los candidatos que hayan obtenido más votos en la votación anterior, de modo que el número de candidatos no sea mayor que el doble del de cargos que queden por cubrir; sin embargo, después del tercer escrutinio sin resultado decisivo se podrá votar por cualquier persona o miembro elegible. Si tres votaciones no limitadas no dan resultado decisivo, las tres votaciones siguientes se limitarán a los candidatos que hayan obtenido mayor número de votos en la tercera votación no limitada, de modo que el número de candidatos no sea mayor que el doble del de los cargos que queden por cubrir; las tres votaciones ulteriores serán sin limitación de candidatos, y así sucesivamente hasta que se hayan cubierto todos los puestos.

XIII. ORGANOS AUXILIARES

Establecimiento de órganos auxiliares

Artículo 61

1. De conformidad con las disposiciones de la Convención y con sujeción a lo dispuesto en el artículo 25, el Comité podrá establecer los subcomités y otros órganos auxiliares especiales que considere necesarios y determinar su composición y mandato.

2. Cada órgano auxiliar elegirá su propia Mesa y aprobará su propio reglamento.

XIV. INFORME ANUAL DEL COMITE

Informe anual del Comité

Artículo 62

El Comité informará cada año a la Asamblea General, por conducto del Secretario General, conforme a lo dispuesto en la Convención.

Segunda parte

ARTICULOS RELATIVOS A LAS FUNCIONES DEL COMITE

XV. INFORMES Y DATOS TRANSMITIDOS POR LOS ESTADOS PARTES DE CONFORMIDAD CON EL ARTICULO 9 DE LA CONVENCION

Forma y contenido de los informes

Artículo 63

El Comité podrá informar a los Estados Partes, por intermedio del Secretario General, de sus deseos en cuanto a la forma y el contenido de los informes periódicos que deben presentarse en virtud del artículo 9 de la Convención.

Asistencia de los Estados Partes al examen de los informes

Artículo 64

El Comité deberá notificar a los Estados Partes (tan pronto como sea posible), por conducto del Secretario General, la fecha de apertura, la duración y el lugar de celebración del período de sesiones en el que serán examinados sus respectivos informes. Representantes de los Estados Partes podrán asistir a las reuniones del Comité cuando se examinen sus informes. El Comité podrá también hacer saber a un Estado Parte del que decida obtener más información que puede autorizar a su representante a asistir a una determinada sesión. Dicho representante deberá poder responder a las preguntas que pueda hacerle el Comité y formular declaraciones sobre los informes ya presentados por su Estado, y podrá también proporcionar información adicional proveniente de su Estado.

Solicitud de información adicional

Artículo 65

Si el Comité decide solicitar de un Estado Parte un informe adicional o más información en virtud de las disposiciones del párrafo 1 del artículo 9 de la Convención, podrá indicar la manera así como el plazo en que se proporcionará tal informe o información y transmitirá su decisión al Secretario General para que la comunique, dentro de dos semanas, al Estado parte interesado.

Casos en que no se hubieran recibido los informes

Artículo 66

1. En cada período de sesiones, el Secretario General notificará al Comité acerca de todos los casos en que no se hubieran recibido los informes o la información adicional, según corresponda, previsto en el artículo 9 de la Convención. El Comité, en tales casos, podrá transmitir al Estado Parte interesado, por intermedio del Secretario General, un recordatorio respecto de la presentación del informe o de la información adicional.

2. Si aun después de transmitido el recordatorio a que se hace referencia en el párrafo 1 de este artículo, el Estado Parte no presentara el informe o la información adicional requeridos en virtud del artículo 9 de la Convención, el Comité incluirá una referencia a este efecto en su informe anual a la Asamblea General.

Sugerencias y recomendaciones de carácter general

Artículo 67

1. Al considerar un informe presentado por un Estado Parte de conformidad con el artículo 9, el Comité determinará en primer lugar si el informe proporciona la información a que se hace referencia en las comunicaciones pertinentes del Comité.

2. Si, a juicio del Comité, un informe del Estado Parte en la Convención no contiene suficiente información, el Comité podrá pedir a dicho Estado que proporcione información adicional.

3. Si, sobre la base de su examen de los informes y de la información presentados por el Estado Parte el Comité determina que dicho Estado no ha cumplido algunas de sus obligaciones de conformidad con la Convención, podrá formular sugerencias y recomendaciones generales con arreglo al párrafo 2 del artículo 9 de la Convención.

Transmisión de las sugerencias y recomendaciones de carácter general

Artículo 68

1. El Comité pondrá en conocimiento de los Estados Partes por intermedio del Secretario General, para que formulen observaciones, las sugerencias y las recomendaciones de carácter general que el Comité hubiera hecho sobre la base del examen de los informes y de la información transmitidos por los Estados Partes en virtud del párrafo 2 del artículo 9 de la Convención.

2. El Comité podrá, en los casos necesarios, indicar el plazo dentro del cual habrán de recibirse las observaciones de los Estados Partes.

3. Las sugerencias y recomendaciones de carácter general del Comité mencionadas en el párrafo 1 se comunicarán a la Asamblea General, junto con las observaciones de los Estados Partes si las hubiere.

XVI. COMUNICACIONES DE LOS ESTADOS PARTES DE CONFORMIDAD CON EL ARTICULO 11 DE LA CONVENCION

Procedimiento para examinar las comunicaciones de los Estados Partes

Artículo 69

1. Cuando un Estado Parte de conformidad con el párrafo 1 del artículo 11 de la Convención, señale un asunto a la atención del Comité, éste lo examinará en sesión privada y lo transmitirá luego al Estado Parte interesado por conducto del Secretario General. Al examinar la comunicación, el Comité no considerará el fondo de la misma. Ninguna medida que tome el Comité en esta etapa respecto de la comunicación será interpretada en modo alguno como una expresión de su opinión sobre el fondo de la comunicación.

2. Si el Comité no está celebrando reuniones, el Presidente señalará el asunto a la atención de sus miembros mediante la transmisión de copias de la comunicación, solicitándoles su consentimiento para transmitir dicha comunicación, en nombre del Comité, al Estado Parte interesado, de conformidad con el párrafo 1 del artículo 11. El Presidente especificará asimismo un plazo de tres semanas para sus respuestas.

3. Al recibir el consentimiento de la mayoría de los miembros, o si dentro del plazo especificado no se hubieran recibido respuestas, el Presidente transmitirá sin demora la comunicación al Estado Parte interesado por conducto del Secretario General.

4. En caso de que se hayan recibido respuestas que representen los pareceres de la mayoría de los miembros del Comité, el Presidente, a la vez que actúe de conformidad con dichas respuestas, tendrá presente la urgencia del caso al transmitir la comunicación, en nombre del Comité, al Estado Parte interesado.

5. El Comité, o el Presidente en su nombre, recordarán al Estado que haya recibido la comunicación que el plazo para la presentación de sus explicaciones o declaraciones escritas de conformidad con la Convención es de tres meses.

6. Cuando el Comité reciba las explicaciones o declaraciones del Estado receptor, se seguirá el procedimiento establecido supra para la transmisión de dichas explicaciones o declaraciones al Estado Parte que presentó la comunicación inicial.

Solicitud de información

Artículo 70

El Comité podrá pedir a los Estados Partes interesados que faciliten la información pertinente para la aplicación del artículo 11 de la Convención. El Comité podrá indicar la manera y el plazo en que deberá facilitarse dicha información.

Notificación a los Estados Partes interesados

Artículo 71

Cuando el Comité haya de entender en un asunto de conformidad con el párrafo 2 del artículo 11 de la Convención, el Presidente, por conducto del Secretario General, informará a los Estados Partes interesados del próximo examen de dicho asunto por lo menos treinta días antes de la primera sesión del Comité, si se trata de un período ordinario de sesiones, y por lo menos dieciocho días antes de la primera sesión del Comité si se trata de un período extraordinario de sesiones.

XVII. ESTABLECIMIENTO Y FUNCIONES DE LA COMISION ESPECIAL DE CONCILIACION PREVISTA EN LOS ARTICULOS 12 Y 13 DE LA CONVENCION

Consultas acerca de la composición de la Comisión

Artículo 72

Una vez que el Comité haya obtenido y estudiado toda la información que estime necesaria con respecto a alguna controversia que haya surgido según lo previsto en el párrafo 2 del artículo 11 de la Convención, el Presidente notificará a los Estados Partes en la controversia y realizará consultas con ellos acerca de la composición de la Comisión Especial de conciliación (denominada en lo sucesivo "la Comisión"), de conformidad con el artículo 12 de la Convención.

Nombramiento de los miembros de la Comisión

Artículo 73

Una vez que el Presidente haya recibido el consentimiento unánime de los Estados Partes en la controversia respecto de la composición de la Comisión, procederá a designar a los miembros de la Comisión e informará a los Estados Partes en la controversia acerca de la composición de la Comisión.

Artículo 74

1. Si transcurridos tres meses desde la notificación del Presidente prevista en el artículo 72 *supra*, los Estados Partes en la controversia no llegaren a un acuerdo sobre la totalidad o parte de los miembros de la Comisión, el Presidente señalará la situación a la atención del Comité, el cual en su período de sesiones siguiente procederá de acuerdo con el inciso b) del párrafo 1 del artículo 12 de la Convención.

2. Al terminarse la elección, el Presidente informará a los Estados Partes en la controversia acerca de la composición de la Comisión.

Declaración solemne de los miembros de la Comisión

Artículo 75

Al asumir su mandato, cada miembro de la Comisión deberá hacer la siguiente declaración solemne en la primera sesión de la Comisión:

"Declaro solemnemente que en el desempeño de mis funciones y en el ejercicio de mis facultades como miembro de la Comisión Especial de Conciliación, actuaré en forma honorable, fiel, imparcial y concienzuda."

Provisión de una vacante en la Comisión

Artículo 76

Cuando se produzca una vacante en la Comisión, el Presidente del Comité la cubrirá lo antes posible de acuerdo con los procedimientos previstos en los artículos 72 a 74. El Presidente procederá a llenar esa vacante al recibir un informe de la Comisión o por notificación del Secretario General.

Transmisión de información a los miembros de la Comisión

Artículo 77

El Presidente del Comité, por conducto del Secretario General facilitará a los miembros de la Comisión la información obtenida y estudiada por el Comité en el momento en que les notifique la fecha de la primera reunión de la Comisión.

Informe de la Comisión

Artículo 78

1. El Presidente del Comité transmitirá el informe de la Comisión mencionado en el artículo 13 de la Convención lo antes posible, una vez recibido, a cada uno de los Estados partes en la controversia y a los miembros del Comité.

2. Dentro de los tres meses siguientes al recibo del informe de la Comisión, los Estados partes en la controversia notificarán al Presidente del Comité si aceptan o no las recomendaciones contenidas en dicho informe. El Presidente transmitirá la información recibida de los Estados partes en la controversia a los miembros del Comité.

3. Transcurrido el plazo previsto en el párrafo precedente, el Presidente del Comité comunicará el informe de la Comisión y cualesquiera declaraciones de los Estados partes interesados a los demás Estados Partes en la Convención.

Información a los miembros del Comité

Artículo 79

El Presidente del Comité mantendrá informados a los miembros de éste de las medidas que adopte de conformidad con los artículos 73 a 78.

XVIII. PROCEDIMIENTO PARA EL EXAMEN DE COMUNICACIONES DE PERSONAS O GRUPOS DE PERSONAS EN VIRTUD DEL ARTICULO 14 DE LA CONVENCION

A. Disposiciones generales

Competencia del Comité

Artículo 80

1. El Comité será competente para recibir y examinar comunicaciones y ejercer las funciones dispuestas en el artículo 14 de la

Convención solamente cuando por lo menos 10 Estados Partes se hayan obligado mediante declaraciones a reconocer la competencia del Comité de conformidad con el párrafo 1 de dicho artículo.

2. El Secretario General transmitirá a los demás Estados Partes copias de las declaraciones depositadas en su poder por los Estados Partes que reconozcan la competencia del Comité.

3. El examen de las comunicaciones pendientes ante el Comité no será afectado por el retiro de una declaración efectuada con arreglo al artículo 14 de la Convención.

4. El Secretario General comunicará a los demás Estados Partes el nombre, la composición y las funciones de cualquier órgano jurídico nacional que un Estado Parte haya establecido o designado de conformidad con el párrafo 3 del artículo 14.

Organos nacionales

Artículo 81

El Secretario General mantendrá informado al Comité del nombre, la composición y las funciones de cualquier órgano jurídico nacional establecido o designado con arreglo al párrafo 2 del artículo 14, que sea competente para recibir y examinar peticiones de personas o grupos de personas que aleguen ser víctimas de violaciones de cualquiera de los derechos estipulados en la Convención.

Copias certificadas de los registros de peticiones

Artículo 82

1. El Secretario General mantendrá informado al Comité del contenido de todas las copias certificadas de los registros de peticiones que le hayan sido presentadas de conformidad con el párrafo 4 del artículo 14.

2. El Secretario General podrá solicitar aclaraciones a los Estados Partes en relación con las copias certificadas de los registros de peticiones emanadas de los órganos jurídicos nacionales encargados de mantener esos registros.

3. No se dará publicidad al contenido de las copias certificadas de los registros de peticiones transmitidos al Secretario General.

Artículo 83

1. El Secretario General mantendrá un registro de todas las comunicaciones que se hayan presentado al Comité o que parezcan dirigidas a éste por personas o grupos de personas que aleguen ser víctimas de violaciones de cualquiera de los derechos establecidos en la Convención y que estén sometidos a la jurisdicción de un Estado Parte obligado por una declaración formulada con arreglo al artículo 14.

2. El Secretario General podrá, si lo estima necesario, pedir aclaraciones al autor de una comunicación en cuanto a su deseo de que su comunicación se presente al Comité para su examen con arreglo al artículo 14. En caso de duda en cuanto al deseo del autor, la comunicación se presentará al Comité.

3. El Comité no recibirá comunicación alguna ni la incluirá en una lista conforme al artículo 84 infra si se refiere a un Estado Parte que no haya formulado una declaración conforme al párrafo 1 del artículo 14.

Información pertinente que deberá figurar en una comunicación

Artículo 84

1. El Secretario General podrá pedir aclaraciones al autor de una comunicación relativa a la aplicabilidad del artículo 14 a su comunicación, en especial:

- a) Nombre, dirección, edad y ocupación del autor y prueba de su identidad;
- b) Nombre del Estado Parte o los Estados Partes contra los que se dirige la comunicación;
- c) Objeto de la comunicación;
- d) Disposición o disposiciones de la Convención cuya violación se alega;
- e) Hechos en que se basa la reclamación;
- f) Medidas adoptadas por el autor para agotar todos los recursos internos, incluyendo los documentos pertinentes;
- g) Medida en que se esté examinando la misma cuestión en virtud de otro procedimiento de investigación o arreglo internacionales.

2. Cuando solicite aclaraciones o información, el Secretario General indicará al autor de la comunicación un plazo adecuado a fin de evitar demoras indebidas en el procedimiento.

3. El Comité podrá aprobar un cuestionario para pedir al autor de la comunicación la información mencionada.

4. La petición de aclaraciones a que se refiere el párrafo 1 del presente artículo no impedirá la inclusión de la comunicación en la lista mencionada en el párrafo 1 del artículo 85 infra.

5. El Secretario General informará al autor de una comunicación acerca del procedimiento que se seguirá y de que el texto de su comunicación se transmitirá confidencialmente al Estado Parte interesado de conformidad con el inciso a) del párrafo 6 del artículo 14.

Transmisión de comunicaciones al Comité

Artículo 85

1. El Secretario General resumirá cada comunicación así recibida y, por separado o en listas conjuntas de comunicaciones, presentará esos resúmenes al Comité en su período ordinario de sesiones siguiente, junto con las copias certificadas pertinentes de los registros de peticiones del órgano jurídico nacional del país interesado que hayan sido depositadas en poder del Secretario General, de conformidad con el párrafo 4 del artículo 14.

2. El Secretario General señalará a la atención del Comité los asuntos para los cuales no se hayan recibido copias certificadas de los registros de peticiones.

3. El contenido de las respuestas a las solicitudes de aclaración y los documentos pertinentes que envíen posteriormente al autor de la comunicación o el Estado Parte interesado se presentarán al Comité en forma adecuada.

4. Se archivarán los documentos originales relativos a cada asunto para cada comunicación que se resuma. El texto completo de toda comunicación señalada a la atención del Comité será facilitado a todo miembro del Comité que lo solicite.

B. Procedimiento para determinar la admisibilidad de las comunicaciones

Método que ha de seguirse para el examen de las comunicaciones

Artículo 86

1. Con arreglo a los artículos siguientes, el Comité decidirá lo antes posible si una comunicación es admisible de conformidad con el artículo 14 de la Convención.

2. A menos que decida otra cosa, el Comité examinará las comunicaciones en el orden en que le hayan sido presentadas por la Secretaría. El Comité podrá decidir, cuando lo considere apropiado, el examen conjunto de dos o más comunicaciones.

Establecimiento de un grupo de trabajo

Artículo 87

1. De conformidad con el artículo 61, el Comité podrá establecer un grupo de trabajo que se reunirá poco antes de los períodos de sesiones, o en cualquier otro momento que el Comité, en consulta con el Secretario General, considere oportuno, para que le haga recomendaciones sobre el cumplimiento de las condiciones de admisibilidad de las comunicaciones establecidas en el artículo 14 de la Convención y para que le asista de cualquier otro modo que el Comité decida.

2. El grupo de trabajo estará formado por cinco miembros del Comité, como máximo. El grupo de trabajo elegirá su propia mesa, establecerá sus propios métodos de trabajo y aplicará en lo posible el reglamento del Comité en sus reuniones.

Sesiones

Artículo 88

El Comité o su grupo de trabajo celebrarán sus sesiones a puerta cerrada cuando examinen las comunicaciones presentadas en virtud del artículo 14 de la Convención. Cuando el Comité examine cuestiones de carácter general, como los procedimientos para la aplicación del artículo 14, las sesiones podrán ser públicas si el Comité así lo decide.

Incapacidad de los miembros para participar en el examen de las comunicaciones

Artículo 89

1. En el examen de una comunicación por el Comité o su grupo de trabajo no participará ningún miembro:

- a) que tenga algún interés personal en el asunto; o
- b) que haya participado de algún modo en la adopción de cualquier decisión sobre el asunto a que se refiera la comunicación.

2. El Comité decidirá cualquier cuestión que pueda plantearse en virtud del párrafo 1 del presente artículo sin la participación del miembro de que se trate.

Retiro de un miembro

Artículo 90

Si, por cualquier razón, un miembro considera que no debe participar o seguir participando en el examen de una comunicación, informará al Presidente de que se retira.

Condiciones para la admisibilidad de las comunicaciones

Artículo 91

Para decidir acerca de la admisibilidad de una comunicación, el Comité o su grupo de trabajo comprobarán:

- a) Que la comunicación no sea anónima y que procede de una persona o un grupo de personas que se hallan bajo la jurisdicción de un Estado Parte que reconoce la competencia del Comité en virtud del artículo 14 de la Convención;
- b) Que la persona alegue ser víctima de una violación por el Estado parte interesado de cualquiera de los derechos enunciados en la Convención. En general, la comunicación deberá ser presentada por la propia persona, sus parientes o representantes designados, no obstante, en casos excepcionales, el Comité podrá examinar una comunicación presentada por terceros en nombre de una presunta víctima cuando sea evidente que ésta no está en condiciones de presentar personalmente la comunicación y si el autor de la comunicación justifica su actuación en nombre de la víctima;
- c) Que la comunicación sea compatible con las disposiciones de la Convención;
- d) Que la comunicación no constituya un abuso del derecho a presentar una comunicación en virtud del artículo 14;
- e) Que la persona haya agotado todos los recursos de la jurisdicción interna, incluso, cuando proceda, los recursos mencionados en el párrafo 2 del artículo 14, sin embargo, no regirá esta disposición si la sustanciación de los recursos se prolonga injustificadamente;
- f) Que la comunicación se presente, excepto en circunstancias excepcionales debidamente comprobadas, dentro de los seis meses posteriores al agotamiento de todos los recursos de la jurisdicción interna, incluso, cuando proceda, de los que se indican en el párrafo 2 del artículo 14.

Artículo 92

1. El Comité o el grupo de trabajo establecido con arreglo al artículo 87 podrán, por conducto del Secretario General, pedir al Estado Parte interesado o al autor de la comunicación que presenten por escrito informaciones o aclaraciones suplementarias relacionadas con la cuestión de la admisibilidad de la comunicación.
2. Cuando se presenten tales peticiones, se indicará que éstas no implican que se haya llegado a una decisión sobre la cuestión de la admisibilidad de la comunicación por el Comité.
3. No podrá declararse admisible ninguna comunicación si el Estado Parte interesado no ha recibido su texto y si no se le ha dado oportunidad de proporcionar informaciones u observaciones conforme a lo dispuesto en el párrafo 1 del presente artículo, incluida información sobre el agotamiento de los recursos internos.
4. El Comité o el grupo de trabajo podrán adoptar un cuestionario para solicitar esas informaciones o aclaraciones adicionales.
5. El Comité o el grupo de trabajo fijarán un plazo para la presentación de tales informaciones o aclaraciones suplementarias.
6. Si el Estado Parte interesado o el autor de una comunicación no cumplen con el plazo fijado, el Comité o el grupo de trabajo podrán decidir examinar la admisibilidad de la comunicación a la luz de la información disponible.
7. Si un Estado Parte interesado impugna la alegación del autor de una comunicación de que se han agotado todos los recursos internos disponibles, se pedirá al Estado Parte que explique detalladamente los recursos efectivos de que dispone la presunta víctima en las circunstancias particulares de ese asunto.

Comunicaciones inadmisibles

Artículo 93

1. Si el Comité decide que una comunicación es inadmisibile, o si decide suspender su examen o darle fin, comunicará su decisión lo antes posible por intermedio del Secretario General, al peticionario y al Estado Parte interesado.
2. Si el Comité decide que una comunicación es inadmisibile en virtud del inciso a) del párrafo 7 del artículo 14, su decisión podrá ser ulteriormente revisada por el Comité a solicitud escrita del peticionario interesado. En dicha solicitud se incluirán pruebas documentales de que las causales de inadmisibilidat a que se refiere el inciso a) del párrafo 7 del artículo 14 ya no son aplicables.

C. Examen de las comunicaciones en cuanto al fondo

Método que ha de seguirse para el examen de las comunicaciones admisibles

Artículo 94

1. Cuando el Comité haya decidido que una comunicación es admisible en virtud del artículo 14, transmitirá confidencialmente, por intermedio del Secretario General, el texto de la comunicación y de toda otra información pertinente al Estado Parte interesado, pero no revelará la identidad de la persona interesada sin su consentimiento expreso. Además, el Comité deberá informar de su decisión, por intermedio del Secretario General, al peticionario.

2. En un plazo de tres meses, el Estado Parte interesado presentará al Comité explicaciones o declaraciones por escrito para aclarar la cuestión en examen y exponer qué medidas correctivas, si las hubiera, ha adoptado. Si lo estima necesario, el Comité indicará qué tipo de información desea recibir del Estado parte interesadc.

3. Durante su examen, el Comité podrá comunicar al Estado Parte su opinión sobre la conveniencia, dada la urgencia, de adoptar medidas provisionales para evitar posibles daños irreparables a la persona o personas que afirmen ser víctimas de la presunta violación. Al mismo tiempo, el Comité informará al Estado Parte interesado de que la expresión de su opinión sobre las medidas provisionales no prejuzga su opinión definitiva sobre el fondo de la comunicación ni de sus eventuales sugerencias y recomendaciones.

4. Toda explicación o declaración presentada por un Estado Parte en virtud de este artículo podrá ser transmitida, por intermedio del Secretario General, al peticionario, quien podrá presentar por escrito información u observaciones suplementarias dentro del plazo que señale el Comité.

5. El Comité podrá invitar a comparecer al peticionario o su representante, así como a representantes del Estado Parte interesado, con objeto de que proporcionen información suplementaria o respondan a preguntas relativas al fondo de la comunicación.

6. El Comité podrá revocar su decisión de que la comunicación es admisible sobre la base de las explicaciones o declaraciones presentadas por el Estado Parte. Sin embargo, antes de que el Comité considere la revocación de su decisión, las explicaciones o declaraciones del caso serán transmitidas al peticionario para que éste pueda presentar informaciones u observaciones suplementarias dentro del plazo que señale el Comité.

Opinión del Comité sobre las comunicaciones admisibles y sugerencias y recomendaciones del Comité

Artículo 95

1. Las comunicaciones admisibles serán examinadas por el Comité sobre la base de toda la información que le hayan facilitado el peticionario y el Estado Parte interesado. El Comité podrá remitir la comunicación al grupo de trabajo con objeto de que le preste asistencia en su labor.
2. En cualquier momento durante el examen, el Comité o el grupo de trabajo que éste haya establecido para examinar una comunicación podrán obtener de los órganos de las Naciones Unidas o los organismos especializados, por intermedio del Secretario General, cualquier documentación que pueda ayudarles a solucionar el caso.
3. Una vez que haya examinado una comunicación admisible, el Comité formulará su opinión al respecto. La opinión del Comité será transmitida, por intermedio del Secretario General, al peticionario y al Estado Parte interesado, conjuntamente con las sugerencias y recomendaciones que el Comité juzgue oportunas.
4. Cualquier miembro del Comité podrá pedir que, cuando se comunique la opinión del Comité al peticionario y al Estado parte interesado, se acompañe un resumen de su opinión personal.
5. Se invitará al Estado Parte interesado a que informe oportunamente al Comité de las medidas que adopte de conformidad con las sugerencias y recomendaciones de éste.

Resúmenes en el informe anual del Comité

Artículo 96

El Comité incluirá en su informe anual un resumen de las comunicaciones examinadas y, cuando corresponda, un resumen de las explicaciones y declaraciones de los Estados Partes interesados, así como de sus propias sugerencias y recomendaciones.

Comunicados de prensa

Artículo 97

Además, el Comité podrá, por intermedio del Secretario General, emitir comunicados dirigidos a los medios de información y al público en general, relativos a las actividades realizadas por el Comité con arreglo al artículo 14 de la Convención.

Tercera Parte

INTERPRETACION Y ENMIENDAS

XIX. INTERPRETACION Y ENMIENDAS

Encabezamientos subrayados

Artículo 98

Para la interpretación de los presentes artículos, no se tendrán en cuenta los encabezamientos subrayados, que fueron insertados a título de referencia únicamente.

Enmiendas

Artículo 99

El presente reglamento podrá modificarse por decisión del Comité.

ANEXO

Decisión 2 (VI). Cooperación con la Organización Internacional del Trabajo (OIT) y con la Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura (UNESCO) a/

Sin perjuicio de las decisiones que el Comité para la Eliminación de la Discriminación Racial pueda adoptar en el futuro con respecto a la posibilidad de que en sus reuniones participen representantes de la Organización Internacional del Trabajo y la Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura, en ciertas circunstancias, el Comité decide lo siguiente:

1. El Comité autoriza al Secretario General de las Naciones Unidas a invitar a que representantes de la OIT y de la UNESCO asistan a las sesiones del Comité. El Comité decidirá en cualquier sesión privada que celebre si los observadores de la OIT y de la UNESCO pueden asistir a ella.
2. De conformidad con lo dispuesto en el párrafo 1) del artículo 34 y en el artículo 35 de su reglamento provisional, el Comité autoriza al Secretario General a poner a disposición de la Comisión de Expertos de la OIT y del Comité de Convenciones y Recomendaciones relativas a la Enseñanza del Consejo Ejecutivo de la UNESCO las actas de sus sesiones públicas y los textos de sus informes, decisiones formales y otros documentos oficiales.
3. El Secretario General de las Naciones Unidas transmitirá al Comité para la Eliminación de la Discriminación Racial los informes escritos presentados por la OIT y la UNESCO que contengan datos sobre la aplicación del Convenio y Recomendación sobre la discriminación (empleo y ocupación), de 1958, y de la Convención y Recomendación relativas a la lucha contra las discriminaciones en la esfera de la enseñanza, de 1960, en los territorios mencionados en el párrafo 2 a) del artículo 15 de la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial, en cumplimiento de lo dispuesto en el párrafo 4 del artículo 15 de dicha Convención y en el párrafo 3 b) de la "Declaración sobre las responsabilidades del Comité de conformidad con el artículo 15 de la Convención", aprobada por el Comité para la Eliminación de la Discriminación Racial el 29 de enero de 1970.

a/ Aprobada por el Comité en su 115ª sesión (sexto período de sesiones), celebrada el 21 de agosto de 1972.

4. El Secretario General de las Naciones Unidas distribuirá a los miembros del Comité para la Eliminación de la Discriminación Racial las exposiciones escritas presentadas por la OIT y la UNESCO que contengan datos sobre la aplicación del Convenio y Recomendación sobre la discriminación (empleo y ocupación) de 1958, y de la Convención y Recomendación relativas a la lucha contra las discriminaciones en la esfera de la enseñanza, de 1960, en territorios que no sean los mencionados en el párrafo anterior.

**INTERNATIONAL
CONVENTION
ON THE ELIMINATION
OF ALL FORMS OF
RACIAL DISCRIMINATION**



CERD

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Meeting of the States Parties

RULES OF PROCEDURE

Of the Meetings of the States Parties to the
International Convention on the Elimination
of All Forms of Racial Discrimination

Adopted at the First Meeting of the States Parties
on 10 July 1969 and amended at the Eleventh Meeting
of States Parties on 29 April 1987

I. Representation and credentials

- Rule 1. Each State Party to the International Convention on the Elimination of All Forms of Racial Discrimination, hereinafter referred to as the Convention, shall be represented at the Meeting of States Parties, hereinafter referred to as the Meeting, by an accredited representative; if more than one representative is named, one shall be designated as the head of the delegation. Each delegation may also include such alternate representatives and advisers as may be required.
- Rule 2. The credentials of representatives and the names of members of a delegation shall be submitted to the Secretary-General if possible not less than one week before the date fixed for the opening of the Meeting. The credentials shall be issued by the Head of State or Government or by the Minister for Foreign Affairs. The Secretary-General shall report to the Meeting on the credentials.
- Rule 3. Pending the decision of the Meeting upon the report on credentials, the representatives of the participating States Parties shall be entitled provisionally to participate in the Meeting.

II. Officers

- Rule 4. The Meeting shall elect a Chairman and one to four Vice-Chairmen from among the representatives of the States Parties.
- Rule 5. If the Chairman is absent from a meeting or any part thereof, a Vice-Chairman nominated by him shall preside. The Vice-Chairman, when acting as Chairman, shall have the same powers and duties as the Chairman.

- Rule 6. The Chairman or Vice-Chairman acting as Chairman may in his capacity as representative appoint one of his alternates or advisers to participate in the proceedings and to vote in the meetings in his place. In such a case, the Chairman or Acting Chairman shall not vote.

III. Secretariat

- Rule 7. The Secretary-General of the United Nations shall be responsible for making the arrangements connected with the Meeting. He or his representatives may make either oral or written statements to the Meeting concerning any question under consideration.

IV. Conduct of business

- Rule 8. A quorum shall be constituted by the representatives of two thirds of the States Parties to the Convention.
- Rule 9. The Chairman shall declare the opening and closing of each meeting, and at such meetings shall direct the discussions, accord the right to speak, put questions to the vote, announce decisions, rule on points of order and, subject to these rules of procedure, have complete control of the Meeting. In exercising these functions the Chairman shall remain under the authority of the Meeting.

V. Voting

- Rule 10. Each State Party represented at the Meeting shall have one vote.
- Rule 11. For the purposes of these rules, the phrase "representatives of States Parties to the Convention present and voting" means representatives casting an affirmative or negative vote. Representatives who abstain from voting are considered as not voting.
- Rule 12. Decisions of the Meeting shall be made by a majority of the representatives present and voting except as regards the election of the Committee on Elimination of Racial Discrimination which shall be conducted in accordance with rules 13, 14 and 15 of these rules of procedure.
- Rule 13. The 18 members of the Committee on the Elimination of Racial Discrimination who shall be experts of high moral standing and acknowledged impartiality, shall be elected from a list of persons nominated by the States Parties and submitted by the Secretary-General, in conformity with the Convention, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems. Each State Party may nominate one person from among its nationals.
- Rule 14. Elections of members of the Committee on the Elimination of Racial Discrimination shall be held by secret ballot.

- Rule 15. The persons elected to the Committee shall be those nominees who obtain in the first ballot the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

VI. Languages

- Rule 16. Arabic, Chinese, English, French, Russian and Spanish shall be the official and the working languages of the Meeting.

VII. Records

- Rule 17. Official records of the Meeting shall be drawn up by the Secretariat of the United Nations in the working languages.
- Rule 18. The text of all formal decisions adopted by the Meeting shall be distributed by the Secretary-General of the United Nations in the official languages as soon as possible after the Meeting to all States Parties and all States eligible to become Parties to the Convention.

VIII. Publicity

- Rule 19. The meetings shall be held in public unless decided otherwise.

IX. Reference to rules of procedure of the General Assembly

- Rule 20. Any procedural matter arising at meetings which is not covered by these rules shall be dealt with by the Chairman in the light of the rules of procedure of the General Assembly which may be applicable to the matter at issue.

X. Amendments

- Rule 21. These rules of procedure may be amended by a decision of the Meeting of the States Parties to the Convention, provided that the amendment is not inconsistent with the provisions of the Convention.
-

The International Convention on the Elimination of
All Forms of Racial Discrimination (ICERD)

The Committee on the Elimination of Racial Discrimination (CERD)

ICERD and CERD:

A Guide for Civil Society Actors

IMADR Geneva Office



The International Movement Against All Forms of
Discrimination and Racism (IMADR)

ICERD and CERD:

A Guide for Civil Society Actors

Prepared by Daisuke SHIRANE (IMADR Geneva Office)



**The International Movement Against All Forms
of Discrimination and Racism (IMADR)**

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THE AUTHOR

ICERD and CERD: A Guide for Civil Society Actors is prepared by Mr. Daisuke SHIRANE (IMADR Geneva Office staff). Prior to this guidebook, the Minority Rights Group International (MRG) and IMADR jointly published “The International convention on the Elimination of All Forms of Racial Discrimination: A Guide for NGOs” in 2001, written by Ms Atsuko TANAKA with assistance of Mr. Yoshinobu NAGAMINE. Since then, there have been many changes in our society and developments in the work of the Committee on the Elimination of Racial Discrimination (CERD). The current guide reflects these developments and changes, while taking over the basic idea and some elements from the 2001 publication.

IMADR

The International Movement Against All Forms of Discrimination and Racism (IMADR) is an international non-profit and non governmental organisation founded in 1988 by one of Japan’s largest minorities, the Buraku people. IMADR has its international secretariat in Tokyo, Japan, a UN liaison office in Geneva, Switzerland, and regional committees, members and partners around the world. IMADR works for the elimination of all forms of discrimination and racism by networking relevant actors, in particular discriminated minorities and grassroots organisations, and exploiting UN human rights system. Against this backdrop IMADR puts special emphasis on the implementation of the International Convention on the Elimination of Racial Discrimination (ICERD) and its promotion among as well as utilisation by civil society actors.

For more information, please visit our website: www.imadr.org
Any updates on the guidebook will be uploaded there.

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Abbreviations

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; <i>OR</i> Committee against Torture
CED	Committee on Enforced Disappearances
CEDAW	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CMW	Committee on Migrant Workers
CRC	Convention on the Rights of the Child; <i>OR</i> Committee on the Rights of the Child
CRPD	Committee on the Right of Persons with Disabilities
ECOSOC	Economic and Social Council
GA	General Assembly
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICPMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICRPD	International Convention on the Rights of Persons with Disabilities
NGOs	Non-governmental organisations
NHRIs	National human rights institutions
OHCHR	Office of the High Commissioner for Human Rights
UN	United Nations

Glossary

Concluding Observations	Collective and official observations and recommendations issued by a Treaty Body to a State party after the State report concerned has been considered (For CERD's concluding observation please see PART II 2.1 e) of this Guide).
Country Rapporteur	A CERD member designated for consideration of each State party report. The Country Rapporteur plays a leading role in: i) drafting "List of Themes", ii) the examination of the report, and iii) the preparation of the relevant concluding observations. (ref. PART II 2.1 c) of this Guide)
General Recommendations	CERD's interpretation of the articles of ICERD issued for assisting States parties in interpreting articles of ICERD and implementing their obligations. Other Treaty Bodies also refer to these as General Comments. (ref. PART II 2.4 of this Guide)
Human Rights Council (HRC)	A UN inter-governmental human rights body responsible for the promotion and protection of human rights, a subsidiary organ of UN GA.
List of themes	A list of themes / topics issued by CERD to each State before the consideration of its report, practiced since CERD's 77 th session. (ref. PART II 2.1 c) of this Guide)
Reservation	A unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State
Review procedure	A procedure by which the Committee considers a country situation without an up-to-date state report (ref. PART II 2.1 g) of this Guide)
Treaty Bodies:	The human rights treaty bodies (also called UN Treaty Bodies) are committees of independent experts that monitor implementation of international human rights treaties.
States parties	States that have ratified or otherwise expressed their consent to be legally bound by the international treaty concerned

PREFACE

It is an honour and a pleasure to write this brief preface to *ICERD and CERD: A Guide for Civil Society Actors*. IMADR and Daisuke Shirane should be congratulated for taking on the challenge of updating and re-writing the excellent Guide prepared by the late and sadly missed Atsuko Tanaka and by Yoshinobu Nagamine in 2001 – coincidentally the year in which the present writer joined CERD. The older Guide has proved its worth. I do not have a precise knowledge of its readership but sense that it played its part in increasing civil society understanding of the norms and the procedures of ICERD over the years since its publication. As a member of CERD, I never fail to take a copy of the Tanaka/Nagamine Guide with me to CERD sessions, and fully expect to use the new Guide in a similar fashion. We may be confident that the present volume will enjoy comparable success in sustaining and deepening the interest of civil society in the international community's most important single instrument in the field of combating racial discrimination.

A great deal has happened in the life of ICERD since 2001. The number of States parties has increased from 156 to 174. There have been major developments in ICERD's reporting procedure, notably in terms of the Committee's increased 'friendliness' to national and international NGOs and NHRIs. CERD is required to 'examine' the reports of States parties. Such examination necessitates an active civil society input in order to make a reality of the notion of a 'constructive' dialogue: otherwise the 'dialogue' could be reduced to a mere page-turning exercise. This does not imply lack of trust in information supplied, but what it does mean is that all sources of information, including civil society information, must be critically and professionally appraised by the Committee before the adoption of concluding observations. Other important areas of progress in the working methods of CERD include the further establishment and regularisation of the early warning and urgent action procedure, and key developments with respect to follow-up in the context of the reporting and communications procedures. The number of General Recommendations adopted by CERD has moved up from 27 to 33.

Less impressively, the number of States parties accepting the optional article 14 individual communications procedure has risen to only 54. This leaves the great majority of States parties outside the range of the article. Further, the number of States that have been implicated in the procedure remains stubbornly low, suggesting, *inter alia*, that article 14 is not as well known to civil society as it ought to be. It is sincerely to be hoped that the present Guide will encourage civil society to activate this important safety valve for victims of racial discrimination.

Supported by the above procedural moves, the decade since 2001 has witnessed a consolidation of CERD's concern for an increasing range of groups threatened by racial discrimination. This has occurred notably in the context of general recommendations setting out the legal bases for the recognition of categories of victim but is implicated in all aspects of procedural development. The general recommendations on indigenous peoples, on gender dimensions of racial discrimination, and on the Roma are all referred to in the 2001 Guide. Concern for such groups and categories has been sustained and enlarged by the Committee which has added fresh instruments on descent and caste, and on non-citizens, with a general recommendation on discrimination against people of African descent due shortly for consideration and adoption. The enlargement of CERD's concerns has moved *pari passu* with geopolitical and normative changes since the 1970s, notably in the recognition of new categories of right-holder, and has in turn served to provide a legal cutting edge to defend their rights.

Since its first sessions in the 1970s, CERD has also worked to enlarge our understanding of the global incidence of racial discrimination, even if it looms larger in the reality of some societies more than others. It has also highlighted the involvement of private actors in discrimination, has been resolute on the issue of racist hate speech, and has stressed the importance of education as the surest method of addressing discrimination in the long term. Improving the legal architecture within States, including the institutionalisation of remedies for discrimination, has also been a major concern.

PREFACE

ICERD is a specific instrument that defines a particular form of social practice (racial discrimination) and specifies a programme of legal obligations necessary to combat it. It is not a 'bucket shop' for random violations of human rights. It is therefore important for civil society to understand the nature of the instrument in terms of the concepts it contains as well as its procedures. Otherwise the interventions of civil society will not be effective. The Guide importantly combines an illuminating account of the norms and standards of ICERD together with an analysis of the procedures, employing explanatory case studies where appropriate. The Convention is not an easy instrument to understand. The Guide takes the reader to first base and beyond; putting knowledge into practical effect necessitates further applied analysis and reflection, and hard work.

I am therefore pleased to commend this Guide to its readership, which will be a wide readership, doubtless including members of CERD itself. There is perhaps less written about ICERD than about other 'core' UN human rights conventions. The Guide goes some way to remedying this *lacuna* in the literature. Racial discrimination remains one of the most pressing and sensitive human rights issues of our day, and is the cause of much conflict and suffering. Working with the Convention through the Guide will not solve every problem but will signpost avenues of redress that offer hope for many victims, actual and potential, of racial discrimination. There is good advice and practical wisdom in the present Guide on how to make the best of opportunities for engaging with CERD. Its publication is a significant occasion for all stakeholders in the fight against racism. Civil society in particular should take advantage of the occasion: *Carpe Diem!*

Patrick Thornberry
Member of CERD

July 2011

PART I – What is ICERD?

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was adopted by the United Nations (UN) General Assembly (GA) in 1965 and entered into force in 1969. As of 5 July 2011, there are 174 States parties to ICERD.¹ As its name shows this Convention (or sometimes called “treaty”) is explicitly devoted to the elimination of racial discrimination. ICERD is legally binding for member State parties; each State has the obligation to uphold and implement all provisions of the Convention. However, in some cases, a State may make a declaration or reservation on particular articles of ICERD.²

The Convention consists of a preamble and 25 articles divided into three parts:³ the first part sets out the definition and scope of racial discrimination prohibited by ICERD (Article 1) and States parties’ obligations (Article 2 – 7); the second part deals with the establishment of a monitoring body, the Committee on the Elimination of Racial Discrimination (CERD) and its work (Article 8 – 16);⁴ and the third part handles other technical matters (Article 17 – 25). CERD has also issued a number of General Recommendations on various topics in order to shape the scope of the Convention more clearly and to assist States in interpreting and implementing its provisions.⁵

Illustration 1: Historical background of ICERD

For many years, the struggle against racial discrimination was closely linked with anti-colonialism. In the 1950s, 1960s and 1970s, with countries in the South becoming members of the UN, the UN developed significant political and legal norms through several instruments such as the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) and the Declaration on the Elimination of All Forms of Racial Discrimination (1963). However, it should be observed that the rationale of the majority behind the adoption of these declarations was to put an end to discriminatory practices in other States, whereas the idea that discrimination could also exist in the domestic realm was largely ignored. The almost unanimous condemnation by States of apartheid as an institutionalized policy and practice in South Africa led to an important leap forward in the fight against discrimination. This was the belief that the racist practices of one State can be a legitimate concern of others, thus curtailing the principle of national sovereignty. It is in this historical context that ICERD was adopted in 1965 by the GA with its clear reference to apartheid in Article 3.

1. “Racial Discrimination” addressed by ICERD

1.1 Definition and grounds of racial discrimination

Article 1, Para. 1 of ICERD defines the concept of racial discrimination as follows:

“any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

¹ http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en, please also refer to ANNEX I, 1 and 2 of this guide.

² Please also refer to ANNEX I, 3 of this guide, exact text of declarations and reservations can be found at:

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en

³ The full text of the Convention can be found at: <http://www2.ohchr.org/english/law/cerd.htm>, a PDF version is also available: <http://www2.ohchr.org/english/law/pdf/cerd.pdf>

⁴ For more details of CERD and its work, please refer to PART II of this guide.

⁵ Please also refer to PART II 2.5 and Annex IV of this guide.

The definition of ICERD sets out five grounds of discrimination; it includes not only race, but also colour, descent, and national or ethnic origin. There is no hierarchy among these five categories and any discrimination based on them should be addressed comprehensively. CERD also stresses that, according to this definition, the Convention relates to all persons who belong to different races, national or ethnic groups or to indigenous peoples.⁶ Regarding the question of who belongs to which group, it is the opinion of CERD that the identification of individuals as being members of a particular racial or ethnic group “shall, if no justification exists to the contrary, be based upon self-identification by the individuals concerned.”⁷

Illustration 2: Racial discrimination exists in every country⁸

Sometimes State parties argue that racial discrimination does not exist in its territory. However, CERD has a contrary view that no country can claim that racial discrimination is non-existent in its territory. In the consideration of its 15th to 20th periodic report of the Philippines, the State party stated that racial discrimination has never officially or factually existed there, neither in a systematic, formal nor intermittent or isolated manner. Responding to this statement, CERD expressed its view and made recommendations as follows: “While the denial of the existence of formal racial discrimination might be acceptable, the Committee wishes to note that even well-intentioned or neutral policies may directly or indirectly have negative or undesired effects on race relations and lead to de facto discrimination. The Committee reiterates its observations that no country can claim that racial discrimination is non-existent in its territory, and that an acknowledgment of the existence of the phenomenon is a necessary precondition for the fight against discrimination”.

Illustration 3: Common victims of racial discrimination – vulnerable groups

There are some groups or individuals, empirically identified by CERD, who are generally more vulnerable to racial discrimination prohibited by ICERD. These are among others: minority groups (e.g. ethnic, national or linguistic); indigenous peoples; migrants, refugees and asylum seekers. These groups of individuals have indeed often been identified by CERD as victims of racial discrimination in many societies throughout the world.

Regarding indigenous peoples, the Committee issued its General Recommendation No. 23 (1997) and affirmed that discrimination against indigenous peoples falls under the scope of ICERD. As a minority or ethnic group, the situation of Roma i.e. discrimination against them in different countries, has been of a particular concern of the Committee and so it issued General Recommendation No. 27 (2000) on this group.

1.2 Discrimination based on “descent”

In 2002, CERD issued General Recommendation No. 29 confirming its consistent view that the term “descent” does not solely refer to “race” and has a meaning and application which complement the other prohibited grounds of discrimination. It further stresses that:

“discrimination based on “descent” includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights”⁹

The Committee also sets out the following factors in identifying descent-based communities suffering from discrimination:¹⁰

⁶ CERD General Recommendation No. 24, para. 1.

⁷ CERD General Recommendation No. 8

⁸ CERD annual report 2009, A/64/18, para. 42, the Philippines (13)

⁹ Ibid.

¹⁰ Ibid., para. 1

- 1) inability or restricted ability to alter inherited status;
- 2) socially enforced restrictions on marriage outside the community;
- 3) private and public segregation, i.e. in housing and education, access to public spaces, places of worship and public sources of food and water;
- 4) limitation of freedom to renounce inherited occupations or degrading or hazardous work;
- 5) subjection to debt bondage;
- 6) subjection to dehumanizing discourses referring to pollution or untouchability; and
- 7) generalized lack of respect for their human dignity and equality.

It can be seen that this General Recommendation has contributed to bringing the issue of descent-based discrimination to light. Indeed, since its issuance the number of cases in which the Committee expresses its concern regarding descent-based discrimination has increased. Examples can be found in the consideration of the State reports of: Mali and Senegal (2002);¹¹ Ghana, Republic of Korea and the UK (2003);¹² Nepal, Madagascar and Mauritania (2004);¹³ Nigeria (2005);¹⁴ Yemen (2006, 2011);¹⁵ India (2007);¹⁶ Ethiopia (2009);¹⁷ and Japan (2010).¹⁸

Illustration 4: Caste discrimination

India maintains the position that discrimination based on caste falls outside the scope of the ICERD Article 1 and the Convention is not applicable in this case. However, taking note of such argument and after having an extensive exchange of views with the State party, the Committee still “maintains its position expressed in general recommendation No. 29” and “reaffirms that discrimination based on the ground of caste is fully covered by article 1 of the Convention.”¹⁹ A similar view was also expressed in the consideration of the State reports of Nepal (2000) and Bangladesh (2001).²⁰

1.3 Indirect discrimination and de facto discrimination

It should be noted that the Convention covers acts where the results might unintentionally lead to discrimination, as reflected in Article 1 (1) which refers to “the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise” of human rights. In its General Recommendation No. 14 (1993), CERD reaffirmed its view on this matter as follows:

“A distinction is contrary to the Convention if it has either the purpose or the effect of impairing particular rights and freedoms This is confirmed by the obligation placed upon States parties by article 2, paragraph 1 (c), to nullify any law or practice which has the effect of creating or perpetuating racial discrimination” (para. 1) and

“the Committee will acknowledge that particular actions may have varied purposes. In seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin” (para. 2).

¹¹ CERD Annual Report (2002), UN doc. A/57/18, paras. 406, 445

¹² CERD Annual Report (2003), UN doc. A/58/18, paras. 124, 492, 544

¹³ CERD Annual Report (2004), UN doc. A/59/18, paras. 127, 131, 320, 342

¹⁴ CERD Annual Report (2005), UN doc. A/60/18, para. 290

¹⁵ CERD Annual Report (2006), UN doc. A/61/18, paras. 442, 445, 449; and CERD Concluding Observations on Yemen (2011), UN doc. CERD/C/YEM/CO/17-18, para. 15

¹⁶ CERD Annual Report (2007), UN doc. A/62/18, paras. 166, 167

¹⁷ CERD Concluding Observations on Ethiopia (2009), UN doc. CERD/C/ETH/CO/7-16, para. 15

¹⁸ CERD Concluding Observations on Japan (2010), UN doc. CERD/C/JPN/CO/3-6

¹⁹ UN doc. A/51/18, para. 352; CERD Annual Report (2007), UN doc. A/62/18, para. 166

²⁰ CERD Annual Report (2000) UN doc. A/55/18, para. 294, 297, 299 (Nepal); and CERD Annual Report (2001) UN doc. A/56/18, para. 73 (Bangladesh)

In the concluding observations on the Philippines, the Committee further noted that “even well-intentioned or neutral policies may directly or indirectly have negative or undesired effects on race relations and lead to de facto discrimination.”²¹

Illustration 5: A system with a discriminatory effect – de facto discrimination²²

In the concluding observations on China in 2009, the Committee expressed its concern that the national household registration system (hukou) could indirectly have a discriminatory effect i.e. create de facto discrimination against internal migrants in the fields of employment, social security, health services and education. It further stated that this system also affects members of ethnic minorities, and in particular women. Against this backdrop, the Committee recommended that “the State party implement its decision to reform the hukou system and ensure that internal migrants, in particular members of ethnic minorities, will be able to enjoy the same work, social security, health and education benefits as long-time urban residents.”

1.4 Citizens and Non-citizens

ICERD Articles 1 (2) and 1 (3) respectively allow States parties to make distinctions, exclusions, restrictions or preferences between citizens and non-citizens and to interpret the Convention as not affecting laws on citizenship, nationality or naturalization, provided that they do not discriminate against any particular nationality. However, CERD takes the position that the Convention is generally applicable to discrimination against immigrants or foreigners. This interpretation was developed as a consequence of the practice in many countries, where distinctions between citizens and non-citizens appear to follow ethnic patterns and are inherently discriminatory in their effect.

States occasionally interpret Article 1 (2) as absolving them from any obligation to report on matters relating to legislation on foreigners. This prompted CERD to issue General Recommendation No. 11 in 1993,²³ requesting that States parties fully report on legislation on foreigners and its implementation.

Concerning the issue of xenophobic, discriminatory and racist practices against non-citizens including migrants, refugees, asylum seekers, undocumented non-citizens and persons who cannot establish the nationality of the State on whose territory they live, CERD issued its General Recommendation No. 30 in 2004. This Recommendation was issued to clarify the States parties’ various responsibilities with regard to non-citizens and make clear that that Article 1 (2) should not be interpreted as reducing the rights and freedoms for everyone recognized in other international human rights instruments, particularly the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). It further observes that:

“differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.”²⁴

In the General Recommendation No. 30, the Committee also recommends that States parties adopt various measures to protect the rights of non-citizens against discrimination in the law and practice. In this Recommendation, more concrete measures are listed in terms of:

- Protection against hate speech and racial violence;
- Access to citizenship;

²¹ CERD annual report 2009, A/64/18, para. 42, the Philippines (13)

²² Ibid., para. 32, China (14)

²³ The General Recommendation No. 11 was replaced by the General Recommendation No. 30 in 2004.

²⁴ CERD General Recommendation No. 30, para. 4

- Administration of justice;
- Expulsion and deportation of non-citizens;
- Economic, social and cultural rights.

Illustration 6: De facto discrimination against students of foreign origin²⁵

In the individual communication No. 40/2007 (Murat Er v. Denmark), the petitioner, a student at the Copenhagen Technical School, claimed a violation of Articles 2 (1) (d), 5 (e) (v) and 6 of the Convention, on the basis of the school's alleged discriminatory practice towards non-ethnic Danes. The practice consisted of accepting requests from employers not to send students of Pakistani or Turkish origin to train in their companies, and the State party's failure to investigate the situation. The Committee considered that the mere existence of cases where such requests had been accepted was in itself enough to ascertain the existence of de facto discrimination towards non-ethnic Danish students, regardless of whether they were qualified for an internship. CERD further asserted that the State party had an obligation to investigate whether such a racially discriminatory school practice existed and not rely solely on the fact that the petitioner did not qualify for an internship on other grounds, such as his academic record. The Committee concluded that the State party had violated the petitioner's right to the equal enjoyment of his right to education and training under Article 5 (e) (v) and that it had failed to carry out an effective investigation to determine whether or not an act of racial discrimination had taken place, in violation of Articles 2 (1) (d) and 6 of the Convention.

Illustration 7: A case of non-discrimination²⁶

In the individual communication case No. 32/2003 (Sefic v. Denmark), the petitioner, a Bosnian citizen residing in Denmark, sought to buy third-party liability insurance from a local insurance company. He was advised that he was not eligible for an insurance contract, as he did not speak Danish, so he complained to the authorities, arguing that the language requirement was not objectively motivated but discriminatory within the meaning of section 1 (1) of the Danish Anti-Discrimination Act. In its opinion, the Committee noted that the author's claim and the evidence produced by him concerning the reasons behind the insurance company's policy had been fully considered by the competent authorities, including the public prosecutor, who had concluded that the language requirement was not based on the complainant's race or ethnic origin, but designed to facilitate communication with customers. The Committee concluded that the reasons for the language requirement adduced by the insurance company, in particular the fact that it was a relatively small company and primarily operating through telephone contacts with customers, was a reasonable and objective ground for the requirement. Consequently, the facts did not disclose a violation of the Convention.

1.5 Special Measures – Affirmative Action

In order to achieve not only formal equality before the law but also substantive equality in practice (e.g. in the enjoyment and exercise of human rights), Article 1 (4) of the Convention allows for special measures (also named as affirmative action, affirmative measures or positive action) for the benefit of racially or ethnically disadvantaged groups or individuals. These measures are considered legitimate on the condition that:

“such measures do not lead to the maintenance of separate rights for different groups and that they shall cease after the objectives for which they were taken have been achieved” (ICERD Article 1 (4)).

²⁵ CERD annual report 2007, A/62/18, paras. 518-524 and Annex V

²⁶ CERD annual report 2005, A/60/18, para. 440

On the other hand, an action is judged contrary to the Convention, when it has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin²⁷ (see also Article 2 (2) of ICERD). Inevitably, certain difficulties arise in the understanding of the concept of special measures. Against this backdrop, the Committee held a thematic discussion on 4 and 5 August 2008 and issued its General Recommendation No. 32 in 2009 to provide practical guidance, especially to States parties, on the meaning and scope of special measures under ICERD.

It is important that States parties distinguish special measures from “unjustifiable preferences”²⁸ and should be noted that “to treat in an equal manner persons or groups whose situations are objectively different will constitute discrimination in effect, as will the unequal treatment of persons whose situations are objectively the same.”²⁹ Based on such understanding, special measures should be *temporary* and designed as well as implemented to secure to disadvantaged groups the full and equal enjoyment of human rights and fundamental freedoms. At the same time, targets of temporary special measures should not be confused with *permanent rights* of specific groups such as: the rights of persons belonging to minorities to profess and practice their own religion and use their own language; the rights of indigenous peoples; or rights of women to non-identical treatment with men on account of biological differences from men, e.g. maternity leave, while these groups are also entitled to benefit from special measures.³⁰

A wide range of measures are possible, including “the full span of legislative, executive, administrative, budgetary and regulatory instruments, at every level in the State apparatus, as well as plans, policies, programmes and preferential regimes in areas such as employment, housing, education, culture, and participation in public life for disfavoured groups, devised and implemented on the basis of such instruments.”³¹

Illustration 8: Special Measures: CERD’s concluding observation on Colombia (2009)³²

Despite national policies on special measures, CERD was concerned that: Afro-Colombians and indigenous peoples continue to face serious challenges to the enjoyment of their rights, de-facto discrimination and marginalisation; structural causes of discrimination and exclusion from the access to socio-economic rights and development; policies on special measures are not accompanied by adequate resource allocations, including at the departmental and municipal level; and implementation of special measures is not effectively monitored in the country. The Committee respectively gave recommendations to the State party to address these concerns. In addition, CERD underlined the importance of consultation with relevant communities in the elaboration of relevant development plans and affirmative action policies.

1.6 Multiple Discrimination

Paragraph 7 of CERD’s General Recommendation No. 32 (2009) reads,

“The ‘grounds’ of discrimination are extended in practice by the notion of ‘intersectionality’ whereby the Committee addresses situations of double or multiple discrimination - such as discrimination on grounds of gender or religion – when discrimination on such a ground appears to exist in combination with a ground or grounds listed in Article 1 of the Convention.”

CERD pays special attention to cases where such multiple forms of discrimination are involved. Regarding the intersectionality of gender, in its General Recommendation No. 25 (2000), the Committee noted that racial discrimination does not always affect women and men equally or in the same way, and certain forms of racial

²⁷ Ref. CERD General Recommendation No. 14

²⁸ CERD General Recommendation No. 32, para. 7

²⁹ Ibid., para. 8

³⁰ Ibid., para. 15

³¹ Ibid., para. 13

³² CERD Concluding Observations on Colombia (2009), CERD/C/COL/CO/14, para. 18

discrimination directly affect women such as sexual violation against women of particular racial or ethnic groups, or coerced sterilisation of indigenous women. At the same time, racial discrimination may have consequences where women are primarily or exclusively affected e.g. racial bias-motivated rape. Against this backdrop the Committee has been enhancing its efforts to integrate gender perspective into its work and also recommending that States parties provide disaggregated data with regard to the gender dimensions of racial discrimination as well as to take necessary actions in this regard.³³

Age is also addressed by the Committee as being a factor that can contribute to the circumstances of multiple or double discrimination against children of a specific group.³⁴

Illustration 9: Religion and racial discrimination

“Religion” is not included in the five grounds of discrimination set out in the Article 1 of ICERD. Accordingly, CERD observes that discrimination based solely on religious grounds does not fall in the scope of ICERD.³² However, drawing a clear line between ethnic/national origin and religion is not always a simple task. In this regard, CERD has expressed its view that the Committee “would be competent to consider a claim of “double” discrimination on the basis of religion and another ground specifically provided for in Article 1 of the Convention, including national or ethnic origin”.³³ At the same time, under ICERD 5(d), States parties have the obligation to ensure that all persons enjoy their right to freedom of thought, conscience and religion, without any discrimination based on race, colour, descent, national or ethnic origin.

2. State obligations under ICERD (Article 2 – 7)

2.1 Measures to be taken to eliminate racial discrimination (Article 2)

Article 2 requires the State party to prohibit and stop racial discrimination by *any* persons, groups or organisations, without any distinction between public and private actors.³⁷

State obligations as set out under Article 2 (1) include:

- Not to engage in any act or practice of racial discrimination;
- To ensure that all public authorities and institutions do not engage in any act or practice of racial discrimination;
- Not to sponsor, defend or support racial discrimination by any person or organisation;
- To review policies and to amend or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination.

Article 2 (2) addresses special measures which should be taken by the State party in social, economic, cultural and other fields to ensure adequate development and protection of disadvantaged groups and to guarantee them full and equal enjoyment of human rights and fundamental freedoms.³⁸

³³ Ref. e.g. CERD General Recommendations No. 25, paras. 3, 4, 5, 6; No. 29, paras. 11, 12, 13; No. 30, para. 8; No. 32, para. 7

³⁴ CERD General Recommendation No. 31, preamble; and in the consideration of State report of Mali in 2002, ref. CERD Annual Report (2002) A/57/18, paras. 404 and 405

³⁵ CERD Annual Report 2007, individual communication No. 36/2006 and 37/2006, para. 516

³⁶ *ibid*

³⁷ See also CERD concluding observations on the USA (2001) para. 5 and (2008) para. 11.

³⁸ For special measure, please refer to PART I, 1.5 of this guidebook.

2.2 Racial segregation and apartheid (Article 3)

Article 3 condemns racial segregation and apartheid. Initially this Article was often interpreted as directed exclusively at South Africa. However, the Committee makes it clear in General Recommendation No. 19 (1995) that Article 3 prohibits all forms of racial segregation in all countries, including unintended segregation in housing and/or education. States also have the obligation to eradicate the consequences of such practices undertaken or tolerated by previous Governments.

The Committee regularly expresses concerns and makes explicit recommendations on the issue of racial segregation, especially in sectors such as housing and education.³⁹ In most cases, CERD addresses this issue in relation to the situation of ethnic or national minorities, and in particular Roma and descent-based groups such as Dalits.

2.3 Prohibition of racial incitement (Article 4)

The Committee has repeatedly emphasized the paramount importance of Article 4, which puts a limit on the excessive exercise of freedom of expression “*with due regard to the principle embodied in the Universal Declaration of Human Rights.*” Furthermore CERD has issued three General Recommendations on this topic; No. 1 (1972), No. 7 (1985) and No. 15 (1993). Under Article 4, States parties must declare an offence punishable by law following acts:

- The dissemination of ideas based upon racial superiority or hatred;
- Incitement to racial discrimination;
- Acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin;
- Provisions of any assistance to racist activities, including their financing.

Additionally, organizations as well as their activities and propaganda, which promote and incite racial discrimination, must be declared illegal and be prohibited (Article 4 (b)). Belonging to such organizations as well as participating in such activities are also to be treated as a criminal offence. Article 4 (c) underlines the obligation of the States parties to prohibit any public authority or institution at all administrative levels from promoting or inciting racial discrimination.

Full compliance with Article 4 is a particularly complicated issue in many countries because the line of upholding the States obligations under this Article and respecting the freedom of expression and association is often blurred. States frequently use the argument of protecting the freedom of expression and association to justify noncompliance with Article 4. There are also countries with reservations to Article 4 (20 States parties as of 5 July 2011, cf. Annex I). In response the Committee has taken a robust position on the implementation of Article 4. In its General Recommendation No. 15 (1993), the Committee clarifies that “*the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression*” which is embodied in the Universal Declaration of Human Rights (Article 19) and recalled in the Article 5 (d) (viii) of ICERD.⁴⁰ Referencing Article 29 (2) of the Universal Declaration, CERD further stresses that the citizen’s exercise of the right to freedom of opinion and expression carries special duties and responsibilities including the obligation not to disseminate racist ideas.

³⁹ For example, in the consideration of States reports in 2009: Azerbaijan (Concluding Observations para. 15), Croatia (Concluding Observations para. 14), Ethiopia (Concluding Observations para. 15), Finland (Concluding Observations para. 17), Pakistan (Concluding Observations para. 12) and Turkey (Concluding Observations para. 13). In 2008: Belgium, Fiji, Italy, Namibia, Russia, USA (CERD Annual Report 2008, A/63/18, paras. 81, 174, 236, 294, 377, 487 and 488). In 2007: Antigua and Barbuda, Czech Republic, India, Israel and DR Congo (CERD Annual Report 2007, A/62/18, paras. 45, 110, 111, 171, 183, 215 and 330).

⁴⁰ CERD General Recommendation No. 15, para. 4

Illustration 10: Racial incitement or freedom of expression⁴¹

The Jewish communities of Oslo and Trondheim along with various individuals submitted individual communication No. 30/2003 regarding racist comments made by a member of the right-wing “Bootboys” in a speech commemorating a Nazi leader. The speech led to the speaker’s prosecution and eventual acquittal by the Supreme Court of Norway, on the grounds of freedom of speech. CERD decided that the communication was admissible. However, the State objected to the admissibility of the complaint, on the basis that none of the groups or individuals concerned were “victims” of the remarks in question; they were not present when the speech was made, and none of them had been singled out. It also argued that the authors had not exhausted domestic remedies, although the speaker could not be retried, none of the authors had ever complained about the speech to the authorities. However, CERD found that “victim” status could pertain to all members of a particular group of potential victims and that, although none of them had complained to the authorities, the authors had had no possibility of altering the course of the criminal proceedings against the speaker. In August 2005, CERD considered the merits of the complaint that the statements contained ideas based on racial superiority or hatred; the deference shown to the principles of former Nazi leaders had to be taken as incitement to racial discrimination, if not violence. On the issue of whether the incriminating statements were protected by the “due regard” clause in Article 4, the Committee considered that giving the right to freedom of speech a more limited role in the context of Article 4 did not deprive the “due regard” clause of significant meaning, especially taking into account that all international instruments protecting freedom of speech provide for the possibility of limiting, under certain conditions, the exercise of this right. As the incriminating statements were of an exceptionally offensive character, they were not protected by the “due regard” clause, and there had been a violation of Article 4 and consequently Article 6 of the Convention.

2.4 Equality in the enjoyment of rights (Article 5)

Article 5 provides a non-exhaustive list of rights and States parties have the obligation to guarantee that everyone – regardless of race, colour or national or ethnic origin – can enjoy these rights. The list includes:

- a) the right to equal treatment before the tribunals and all other organs administering justice;
- b) the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- c) a whole series of political and civil rights;
- d) a whole series of economic, social and cultural rights;
- e) the right of access to any place or service intended for use by the general public, including those privately owned, such as transport, hotels, restaurants, cafes, theatres and parks.

According to CERD’s General Recommendation No. 20 (1996), Article 5 assumes the existence and recognition of human rights and requires States to prohibit and eliminate racial discrimination in the enjoyment of these rights. However, the Article itself does not create nor define civil, political, economic, social or cultural rights, thus there is space allowing the manner in which the acknowledgement and protection of these rights are translated into actual legal order and practice differ from State to State. At the same time, it is important to note that this Article and its interpretation are also open for further developments and elaboration of human rights.

In interpreting Article 5, CERD makes a distinction between rights to be enjoyed by all persons living in a given State and rights of its citizens. While many of the rights and freedoms mentioned in Article 5 fall under the former, the right to participate in elections, to vote and to stand for elections are covered by the latter.⁴² In any case “human rights are in principle to be enjoyed by all persons” and States parties have the “obligation to

⁴¹ CERD annual report 2005, A/60/18, paras. 442-446 and Annex III, section A

⁴² CERD General Recommendation No. 20, para. 3

*guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognised in international law.”*⁴³

CERD also notes that the rights and freedoms referred to in Article 5 and any similar rights are to be protected by a State party, while such protection can be achieved in different ways including activities of private institutions.⁴⁴

2.5 Remedies for racial discrimination (Article 6)

Under Article 6, States are obliged to assure everyone within their jurisdiction has:

- effective protection and remedies against any acts of racial discrimination; and
- the right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

However, quite often the degree of damage that acts of racial discrimination cause to a person is underestimated and claims for remedies are not taken seriously. In this regard, CERD stresses in General Recommendation No. 26 (2000) that the rights embodied in Article 6 are not necessarily secured solely by the punishment of the perpetrator and that the courts and other competent authorities should consider awarding financial compensation for material or moral damage suffered by a victim.⁴⁵

2.6 Education (Article 7)

Article 7 requires States to adopt immediate and effective measures, particularly in the fields of teaching, education and culture:

- to combat prejudice which lead to racial discrimination; and
- to promote understanding, tolerance and friendship among nations and racial or ethnic groups;

Concerning States parties not paying sufficient attention to the implementation of Article 7, the Committee requests every State to submit adequate information on concrete measures taken and their effect.⁴⁶

Full implementation of ICERD, and any other international instruments heavily depend on national law enforcement officials and whether they are properly informed about the obligations their State has entered into. Education as referred to in the Article 7 is not limited to school education but also includes training of law enforcement officials and other professionals such as teachers. CERD's General Recommendation No. 13 (1993) stresses the following:

*“In the implementation of Article 7 of the Convention, the Committee calls upon States parties to review and improve the training of law enforcement officials so that the standards of the Convention as well as the Code of Conduct for Law Enforcement Officials (1979) are fully implemented.”*⁴⁷

In its General Recommendation No. 17 (1993), the Committee also recommends that States parties set up national institutions to serve the following purposes, including but not limited to:

⁴³ CERD General Recommendation No. 30, para. 3

⁴⁴ CERD General Recommendation No. 20, para. 5

⁴⁵ CERD General Recommendation No. 26, para. 2

⁴⁶ CERD General Recommendation No. 5

⁴⁷ CERD General Recommendation No. 13 para. 3

PART I – WHAT IS ICERD?

- promoting respect for human rights and the exercise thereof, free from any discrimination, as expressly stated in Article 5 of ICERD;
- examining official policies towards the protection against racial discrimination;
- monitoring laws so that they comply with the provisions of ICERD;
- educating the public as to the obligations which the States parties assume under ICERD.

Furthermore, CERD pays close attention to the question of whether States inform the public about human rights in general, in particular ICERD and CERD, and whether ICERD has been translated into and published in the local languages.⁴⁸

⁴⁸ Recommendations adopted at the 6th meeting of the Persons Chairing the Human Rights Treaty Bodies, in September 1995, UN doc. A/50/505, para. 20

PART II – CERD and its Work

1. The Committee on the Elimination of Racial Discrimination (CERD)

CERD, the Committee on the Elimination of Racial Discrimination, was established as an independent body to monitor the implementation of the ICERD by its States parties and began its work in 1970 as the first UN treaty body. There are currently nine treaty bodies in total and subsequent bodies were established for the other UN Human Rights treaties in the following years (as of 5 July 2011):

- Human Rights Committee monitors implementation of the International Covenant on Civil and Political Rights (ICCPR) and its optional protocols;
- Committee on Economic, Social and Cultural Rights (CESCR) monitors implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- Committee on the Elimination of Discrimination Against Women (CEDAW) monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its optional protocol;
- Committee Against Torture (CAT) monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT);
- Subcommittee on Prevention of Torture (SPT) is established by the Optional Protocol to CAT (OPCAT);
- Committee on the Rights of the Child (CRC) monitors implementation of the Convention on the Rights of the Child (CRC) and its optional protocols;
- Committee on Migrant Workers (CMW) monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPMW);
- Committee on the Right of Persons with Disabilities (CRPD) monitors implementation of the International Convention on the Rights of Persons with Disabilities (ICRPD);
- Committee on Enforced Disappearance (CED) monitors implementation of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED).

1.1 Membership

CERD is composed of 18 independent experts, who serve in a personal capacity (Article 8 (1) of ICERD). Each member is nominated by a State party and elected for a four-year term during a meeting of States parties (Articles 8 (4) and (5) (a)). Elections take place for half of the members at two-year intervals (Article 8 (5) (a)). In the election of the Committee members, consideration has to be given to equitable geographical distribution and to the representation of different forms of civilization as well as principal legal systems (Article 8 (1)). Under the Convention the Committee shall establish its own rules of procedure and receive no directives from outside (Article 10).

1.2 Sessions

CERD meets two times⁴⁹ a year in Geneva, usually at the Palais Wilson, headquarters of the Office of High Commissioner for Human Rights (OHCHR). While sessions usually last for three weeks, since its 75th session the Committee has been holding four week sessions to deal with the backlog of State reports. State party reports are considered by the Committee in an open meeting which other stakeholders e.g. NGOs are allowed to observe. Part of each CERD session consists of closed meetings in which concluding observations, individual communications or situations under the early warning and urgent action procedure and any other issues arising can be considered.

⁴⁹ From 2015, the Committee meets 3 times a year in Geneva.

2. Work and functions of CERD

The primary tasks of CERD are the consideration of State reports, individual communications, and consideration of situations under its early warning and urgent action procedure. In order to assist States parties in the implementation of their obligations under the Convention, CERD also issues a series of so called “General Recommendation”⁵⁰ on various subjects, explaining its interpretation of the provisions of ICERD and making suggestions, recommendations or requests to the States parties (ref. also Annex IV). Detailed information on activities carried out by CERD and developments in its working methods during a given year are included in the CERD’s annual report.

2.1 Consideration of State Reports

Under Article 9 (1) of the Convention, States parties are obliged to submit reports “*on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention*” to the Secretary-General of the United Nations for the consideration by CERD. Each State party undertakes to submit its *initial report* within one year after the entry into force of the ICERD for the State concerned, thereafter a report is required every two years (often called a *periodic report*) or whenever the Committee so requests. In some cases States parties assert that, since their governments believe that racial discrimination does not exist within their territories, they are not obliged to submit periodic reports. However, racial discrimination is a phenomenon that is actually or potentially prevalent in all countries, and thus all the States parties have an obligation to be vigilant, and to report on the measures taken to prevent or to combat racial discrimination.

The Committee reports annually to the UN General Assembly on its activities and makes suggestions and general recommendations based on the examination of state reports and information received (ICERD Article 9 (2)).

In relation to guidelines on a common core document and treaty specific documents contained in the harmonised guidelines on reporting under the international human rights treaties,⁵¹ CERD adopted new reporting guidelines⁵² at its 71st Session in 2007.⁵³ The guidelines provide States parties with information on how to prepare their reports especially in terms of form and content.

Under the current Treaty Body reporting system, states should submit a common core document according to the said harmonised guidelines. The common core document should include: general information on the state concerned; general framework for the promotion and protection of human rights; and general information on non-discrimination and equality and effective remedies. If a Treaty Body considers that information of the common core document is out of date, it may request the state concerned to update it.⁵⁴

a) Information to be included

According to the new reporting guidelines of CERD, the Treaty- i.e. CERD-specific documents should not repeat the content of the common core document, but should include more specific information on e.g.:

- Implementation of Articles 1 to 7 of ICERD;

⁵⁰ In the practice of other Treaty Bodies it can be referred as General Comments.

⁵¹ HRI/MC/2006/3 and Corr.1

⁵² CERD/C/2007/1

⁵³ The new guidelines replaced the previous one (CERD/C/70/Rev.5).

⁵⁴ HRI/MC/2006/3, para. 27

- Implementation of CERD’s recommendations included in its concluding observations (except for the initial CERD-specific document);
- Responses to the concerns of the Committee included in its concluding observations (except for the initial CERD-specific document); and
- Involvement of civil society in the reporting process

In order to monitor the progress in eliminating discrimination based on race, colour, descent, or national or ethnic origin, CERD also requests information on persons who might be treated less favourably on the basis of these characteristics. States that do not have such information are then requested to provide information based on such as mother tongue or commonly spoken languages, together with any information about race, colour, descent, national and ethnic origin. CERD is also interested in information indicating whether groups, and if so which groups, are officially identified as national or ethnic minorities. It also recommends that information on the situation of descent based communities, non-citizens and internally displaced persons be included.⁵⁵

Some State reports give the impression that, if the Convention has become part of legal order of the given country, no further legislative action is necessary. However, the Convention, first of all, requires legislation that clearly and specifically prohibits racial discrimination and related acts. Second of all, it calls for further concrete action in the judiciary and administration, as well as in the fields of culture, education and information. Similarly, a State party does not fulfil its obligations under the Convention simply by condemning racial discrimination e.g. in the Constitution of the country.

b) Reporting Cycle

The process of consideration of States Parties’ reports can be seen as a cycle:

- 1) Preparation and submission of the report by the State party;
- ↓
- 2) Designation of Country Rapporteurs and issuance of the list of themes by CERD;
- ↓
- 3) Consideration of the report by CERD;
- ↓
- 4) Issuance of Concluding Observations by CERD;
- ↓
- 5) Implementation of CERD’s Concluding Observations / Recommendations by the State party (Follow-up);
- ↓
- 6) Preparation of next periodic report by the State party (start of the next cycle)

c) Country Rapporteur and list of themes

Once a state report is submitted to the Committee, it will be put in the list of “*Reports received and pending consideration by the Committee*”.⁵⁶ CERD then decides which reports should be considered at the next session and designates one of its members to be the so-called “Country Rapporteur” for each State party i.e. its consideration. The Country Rapporteur plays a leading role in: i) drafting the “List of Themes”, ii) the examination of the report, and iii) in the preparation of the relevant concluding observations.

Instead of “list of issues” which requires written answers from the State party concerned, CERD established a new practice of “list of themes” at its 77th Session.⁵⁷ Unlike the list of issues, the list of themes does not require written replies but is meant to guide the dialogue between the States party’s delegation and the Committee

⁵⁵ Please also refer to the CERD’s General Recommendation No. 24 (1999)

⁵⁶ These lists are included in the document “Status of submission of reports by States parties under article 9, paragraph 1, of the Convention” which will be prepared for every CERD session and can be found in the top of respective session website (e.g. for CERD 77th session, visit: <http://www2.ohchr.org/english/bodies/cerd/cerds77.htm>).

⁵⁷ <http://www2.ohchr.org/english/bodies/cerd/cerds77.htm>

during its examination in Geneva. While the list of issues is a compilation of concrete questions to be answered, the list of themes is a compilation of themes or topics which should be raised in the course of the dialogue. Both lists are not exhaustive. CERD does not have the system of “Pre-Sessional Working Group” which is practiced by some of the other treaty bodies. The list of themes is sent to the State party and published at the CERD website usually four to six week prior to the session at which the report concerned will be examined.

d) Consideration of State reports - Interactive dialogue with States parties

For the consideration of state reports CERD invites States parties to send their delegation to the CERD meetings in Geneva in order to facilitate an “interactive dialogue”. Currently CERD uses two days i.e. one afternoon meeting (from 3 to 6 pm of the 1st Day) and one morning meeting (from 10 am to 1 pm of the 2nd Day) for consideration of one state report.

The consideration generally begins with an opening statement by the Chairperson of the Committee followed by an oral presentation by the state delegation. The Country Rapporteur then presents his/her analysis of the situation and raises issues or questions to be addressed. Following the Country Rapporteur other Committee members, who so wish, give their comments and questions. If present, National Human Rights Institutions (NHRIs) of the given country may also take the floor and formally present statements.

In most cases, the first day ends with this 1st round of comments and questions from Committee members. If the Committee members’ 1st round of comments and questions finishes on the 1st day, the delegation will be asked whether they are able to immediately answer some of the questions, otherwise time is given for responses from the delegation on the 2nd day. In other cases, dialogue on the 2nd day starts with questions and comments from Committee members who could not take the floor on the 1st day. After the delegation has given their 1st responses, the 2nd round of CERD members’ questions and comments begin and are followed by a round of responses from the delegation. Since its 77th session the CERD has been taking a more active and flexible approach to the “dialogue” by inviting the delegation to answer the question / comment of one member immediately after the member gives it. At the end of the meeting the Country Rapporteur presents his/her concluding remarks and is followed by the delegation which is also asked to give its final remarks.

1st Day from 3 p.m. to 6 p.m.:

1. Opening of the meeting by the CERD chairperson
2. Introduction / presentation of the state report by the state delegation (comments and supplementary information to the report may be added)
3. Analytical comments and questions by the Country Rapporteur
4. Comments and questions by other Committee members
5. (Comments / remarks of the NNHRIs, if present)
6. Responses from the delegation (if information is available)

2nd Day from 10 a.m. to 1 p.m.:

1. (Comments / remarks of the NHRIs, if present and did not do so on the 1st day)
2. Responses from the delegation to the 1st round of comments and questions
3. 2nd round of comments / questions from CERD and responses from the state delegation
4. Concluding remarks by the Country Rapporteur;
5. Final remarks by the delegation
6. Closing of the meeting by CERD chairperson

e) Concluding Observations

Following the interactive dialogue with the state delegation, CERD adopts its concluding observations to the State party concerned. Respective Country Rapporteurs will draft the concluding observations and CERD, as a

whole, then discusses and adopts them in a closed meeting, usually in the last week of each session.⁵⁸ After the preliminary adoption of the concluding observations, respective States parties are given the opportunity to provide their comments thereon. After comments by States parties are appropriately reflected, concluding observations are published on the CERD website, normally after the closure of each session. Comments from the relevant States parties on the concluding observations are listed in the CERD's annual report.

In most cases concluding observations consist of three parts: A. Introduction; B. Positive aspects; and C. Concerns and recommendations. In specific cases, a chapter on "*Factors and difficulties impeding the implementation of the Convention*" is inserted between introduction and positive aspects. The final paragraph of the concluding observations gives the date by which the next report should be submitted by the State party concerned.

f) Follow-up procedure to concluding observations

Pursuant to Article 9 of ICERD and rule 65 of the rules of procedure of the Committee, CERD may request the State party concerned to submit an additional report or information on specific topics following consideration of the state report. If the Committee decides so, it usually indicates in its concluding observations the topics as well as the manner and time (mostly one year) within which such report or information should be provided.

At its 64th session (2004) CERD adopted a second paragraph to rule 65, which provides for the appointment of a coordinator, in order to more effectively conduct this follow-up procedure. The coordinator (or its alternative) cooperates with the respective Country Rapporteur and is mandated to monitor the follow-up by States parties on the observations and recommendations of the Committee. According to its terms of reference,⁵⁹ the coordinator will among others:

- monitor the deadline for the submission of additional report i.e. information by the State party;
- analyse and assess the information received, if necessary, recommend the Committee to take appropriate action; and
- report on the progress to the Committee.

The Committee holds closed meetings to discuss the findings of the coordinator and adopt formal recommendations or decisions on further action. The coordinator's findings are included in CERD's annual report. In addition, the Committee issued guidelines⁶⁰ for States parties to facilitate their follow up activities. According to the guidelines States parties should effectively follow-up the concluding observations of CERD through e.g.:

- Dissemination of the concluding observations;
- Coordination of implementation efforts and designation of a focal point/liaison person;
- Regular reporting on progress;
- Cooperation with NHRIs and NGOs.

g) Review Procedure (review in the absence of an up-to-date state report)

Though it is their obligation, not all the States parties submit their initial or periodic reports in a timely manner or at all. In order to deal with the cases where a state report is significantly overdue, the Committee decided at its 39th session (1991) to review the implementation of the Convention in the country concerned, even in the absence of an up-to-date state report. In such case the previous state reports are used as a basis and other relevant information is taken into account (this is known as a *review procedure*). A letter is sent to the State party, whose report is overdue by five years, informing it that the review will take place, and later the exact date is communicated; state representatives are then invited to attend the meeting.

⁵⁸ In the past, individual members expressed their views and assessments at the concluding stage of consideration of a state report.

⁵⁹ CERD/C/66/Misc. 11/Rev.2

⁶⁰ CERD/C/68/Misc.5/Rev.1

At its 49th session, the Committee further decided that States parties whose initial reports were overdue by five years or more would also be scheduled for a review procedure. In such cases the Committee would consider all information submitted by the State concerned to other UN organs, in the absence of such material, reports and information prepared by UN organs would be used. In practice CERD also considers relevant information from other sources, including NGOs. This is intended to encourage dialogue between the State party and the Committee despite the absence of a report, to ensure all States parties participate in some level of review. In a good number of instances this procedure prompted States parties to expedite the submission of overdue reports and enabled the Committee to resume the dialogue with these States.

Examples of cases: Gambia was reviewed under this procedure at the 74th session of CERD and the Committee adopted concluding observations in the absence of a state report or delegation. Panama, which was scheduled for the review procedure at the 74th session, submitted its report prior to the session. At its 75th session CERD decided to postpone scheduled review of Maldives and Kuwait, since the former submitted its report before the session and the latter gave a commitment to finalise its reports in the near future.

h) Status of National Human Rights Institutions (NHRIs)

At its 71st session CERD amended rule 40 of its rules of procedure regarding input from NHRIs that are accredited to take part in the deliberations of the UN Human Rights Council i.e. comply with the Paris Principles. According to this new rule NHRIs, with consent of the State party concerned, are allowed to formally take the floor during official meeting in which the respective States' report is considered.

2.2 Consideration of Individual Communications (Article 14)

Under Article 14 of the ICERD, individuals or groups of individuals who claim that any of their rights enumerated in the Convention have been violated by a State party and who have exhausted all available domestic remedies may submit written communications to CERD for consideration, provided that the state concerned has made a declaration to recognize CERD's competence under Article 14 (ref. Annex I, 4). It came into operation in 1982 when a State party made the 10th of such declarations recognising CERD's competence; as of 20 April 2011, 54 States parties made such declarations.

The Convention further provides, in its Article 14 (2), that states having made this declaration may establish or indicate a national body competent to receive petitions from individuals or groups of individuals who claim to be victims of violations of any of the rights set forth in ICERD and who have exhausted other locally available remedies. Consideration of communications takes place in closed meetings. All documents pertaining to the work of the Committee under Article 14 (submissions from the parties and other working documents of the Committee) are confidential. Details on this procedure can be also found in rules 80 – 97 of the rules of procedure of CERD.

As of 2 May 2011, 48 cases had been submitted to the Committee, of which 4 cases are still in consideration and 16 cases were decided as inadmissible. Of 27 admissible cases CERD found violations in 13 cases (no violation in 14 cases, cf. Annex II). One case was discontinued. CERD includes in its annual report a summary of communications examined and, where appropriate, a summary of the State party's explanation and statements regarding the action it has taken in conformity with the Committee's suggestions and recommendations. The full texts of the Committee's decisions are also reproduced in an annex to its annual reports.

a) Consideration of the admissibility of communications

Once a communication has reached the Committee, it first considers whether the communication, i.e. petition, is admissible. All the cases before CERD are examined by the Plenary (full Committee), while CERD's rules of procedure leave the possibility open for the Committee to form a Working Group consisting of 5 Committee

members, when the Committee's workload increase dramatically. Conditions for admissibility of communications can be summarized as follows:

- The communication is not anonymous;
- It emanates from an individual or group of individuals subject to the jurisdiction of a State party recognising the competence of the committee under Art. 14 of the ICERD;
- It is from a victim of a violation by the State party concerned of any of the rights set forth in the ICERD;
- It should be submitted by the individual him-/herself or by his relatives or designated representatives (when it appears that the victim is unable to submit the communication, a communication submitted by others on behalf of an alleged victim is also accepted);
- It is compatible with the provisions of the ICERD;
- It is not an abuse of the right to submit a communication in conformity with Art. 14;
- The individual has exhausted all available domestic remedies (this shall not be the rule where the application of the remedies is unreasonably prolonged);
- It is submitted within six months after all available domestic remedies have been exhausted, except in the case of duly verified exceptional circumstances.

CERD, or its Working Group, may request the State party concerned or the author of the communication to submit additional information or clarifications relevant to the question of admissibility of the communication within an appropriate time limit. A communication may not be declared admissible unless the State party concerned has received the text of the communication and has been given an opportunity to furnish information or observations including information relating to the exhaustion of domestic remedies. A deadline shall be indicated for the submission of such additional information or clarifications. If the deadline is not kept by the State party concerned or the author of a communication, CERD or the Working Group may consider the admissibility in the light of available information. If the State party concerned disputes the contention of the author of a communication that all available domestic remedies have been exhausted, the State party is required to give details of the effective remedies available to the alleged victim in the particular circumstances of the case. A decision taken by CERD that a communication is inadmissible may be reviewed at a later date by the Committee upon a written request by the petitioner concerned.

b) Consideration of communications on their merits

After a communication has been decided as admissible, the Committee transmits the communication and other relevant information confidentially to the State party in question, but does not - without its consent - reveal the identity of the individual or group claiming a violation. The State party concerned shall submit within three months to the Committee written explanations or statements and the remedy, if any, which have been taken.

In the course of its consideration, CERD may express its views on the desirability of taking interim measures to avoid possible irreparable damage to the person or persons who claim to be victim(s) of the alleged violation. Any explanations or statements submitted by the State party concerned may be transmitted to the petitioner of the communication who may submit any additional written information or observations within a given time-limit that the Committee decides. The Committee may invite the petitioner or his/her representative and the representatives of the State party concerned in order to provide additional information or to answer questions on the merits of the communication. The Committee may also revoke its decision on admissibility of a communication in light of any explanations or statements submitted by the State party. However, before CERD considers revoking a decision, the explanations or statements concerned must be transmitted to the petitioner so that he/she may submit additional information.

c) Committee's suggestions and recommendations

After consideration of a communication, CERD formulates its opinion thereon including any suggestions and recommendations, which are transmitted both to the individual or group concerned and to the State party. According to the CERD 2009 annual report (A/64/18), the Committee has so far adopted final opinions on 27

complaints. The opinion i.e. suggestions and recommendations of the Committee should not be confused with the jurisdiction of a court. They do not provide any legal aid.

d) Follow-up procedure to the opinion of CERD

In 2005 CERD adopted a new rule to more effectively follow-up on any suggestions and recommendations adopted under the Individual Communication procedure. According to this rule, CERD may designate one or several special Rapporteurs⁶¹ who should monitor the States parties' efforts in implementing Committee's suggestions and recommendations. To fulfil its mandate the Rapporteur(s) will establish contacts, take appropriate actions and report to the Committee, if necessary with recommendations for further actions to be taken by CERD. Such recommendations reflect all cases in which CERD found violations of ICERD or otherwise provided suggestions or recommendations. Information on follow-up activities is included in CERD's annual report.

e) Recommendations in case of non-violation of the Convention or inadmissible communication

As a special feature of CERD's individual communication procedure, as compared to similar procedures of other Treaty Bodies, the Committee sometimes provides suggestions or recommendations even in case of no violation, when it considers it appropriate or necessary. By its 75th session the Committee had provided suggestions or recommendations in 9 cases, which did not establish a violation of the Convention. Moreover, when cases have been considered as inadmissible, CERD has taken action by providing suggestions or recommendations to the State concerned in order to draw its attention to the issue.

Illustration 11: CERD's action in a case without any violation of ICERD⁶²

During its 75th session (2009) CERD considered communication No. 41/2008 (Ahmed Fara Jama v. Denmark), which concerned alleged discriminatory statements by a Danish Member of Parliament against individuals of Somali origin. Due to the ambiguity of the statements in question and based on the information at its disposal, CERD found no violation of any of the provisions of ICERD. Nevertheless, the Committee called on the State to ensure that its police and judicial authorities conduct thorough investigations into the alleged acts of racial discrimination. It also drew the attention of politicians and members of political parties to the particular duties and responsibilities incumbent upon them under ICERD Article 4.

Illustration 12: CERD's decision on an inadmissible case⁶³

During its 72nd session (2008) CERD considered communication No. 38/2006 (Zentralrat Deutscher Sinti und Roma et al. v. Germany), which concerned alleged hate speech against the Roma and Sinti community through a letter by a police officer published in the journal of the Association of German Detective Police Officers (BDK). Although it decided that the claim was inadmissible regarding Article 4 (c) of ICERD and found no violation of Article 4 (a) or 6, the Committee called the State party's attention to the discriminatory, insulting and defamatory nature of the comments and of the particular weight of such comments if made by a police officer, whose duty is to serve and protect individuals.

⁶¹ This term should not be confused with the Special Rapporteur established within the framework of Human Rights Council Special Procedures.

⁶² CERD annual report 2009, A/64/18, paras. 62 and 63 and Annex III

⁶³ CERD annual report 2008, A/63/18, paras. 532 and 533 and Annex III

2.3 Early Warning and Urgent Action Procedure

In 1993, CERD adopted a working paper on the prevention of racial discrimination, including early warning and urgent procedures.⁶⁴ CERD works under this procedure to prevent and respond to serious violations of ICERD. Since then, CERD has examined a number of situations and adopted decisions, e.g. regarding conflicts in the former Yugoslavia and in the Great Lakes Region in Africa, and Australia's amendment of its Native Title Act that was considered to be racially discriminatory against indigenous peoples in Australia.

At the Committee's 71st session in 2007, the 1993 working paper was replaced by the new guidelines⁶⁵ in light of contemporary practices of CERD as well as current needs and recent developments. Since its 65th session a five-member working group has been facilitating the Committee's work under this procedure. CERD and the Working Group meetings for the examination of situations under the early warning and urgent action procedure are mostly closed, although CERD may decide to have a public meeting to consider general issues under this procedure.

The working group meets during regular sessions of CERD, or at any other time as the Committee decides, to preliminarily analyse and assess information received. It makes recommendations to the Committee and may draft decisions of the Committee as well as letters to be sent to the State party concerned. Members of the working group are elected for a renewable term of two years with equitable geographical representation.

a) Purpose and indicators for the procedure

According to the revised guidelines of 2007, CERD shall act under early warning and urgent action procedure to address serious violations of ICERD in an urgent manner. The new guidelines have set out the following indicators replacing the criteria of 1993 working paper:

- (a) Presence of a significant and persistent pattern of racial discrimination, as evidenced in social and economic indicators;
- (b) Presence of a pattern of escalating racial hatred and violence, or racist propaganda or appeals to racial intolerance by persons, groups or organizations, notably by elected or other State officials;
- (c) Adoption of new discriminatory legislation;
- (d) Segregation policies or de facto exclusion of members of a group from political, economic, social and cultural life;
- (e) Lack of an adequate legislative framework defining and criminalizing all forms of racial discrimination or lack of effective mechanisms, including lack of recourse procedures;
- (f) Policies or practice of impunity regarding: (a) Violence targeting members of a group identified on the basis of race, colour, descent or national or ethnic origin by State officials or private actors; (b) Grave statements by political leaders/prominent people that condone or justify violence against a group identified on the ground of race, colour, descent, national or ethnic origin; (c) Development and organization of militia groups and/or extreme political groups based on a racist platform;
- (g) Significant flows of refugees or displaced persons, especially when those concerned belong to specific ethnic groups;
- (h) Encroachment on the traditional lands of indigenous peoples or forced removal of these peoples from their lands, in particular for the purpose of exploitation of natural resources;
- (i) Polluting or hazardous activities that reflect a pattern of racial discrimination with substantial harm to specific groups.

⁶⁴ Official Records of the General Assembly, Forty-eighth Session, Supplement No. 18 (A/48/18), para. 18 and annex III.

⁶⁵ Official Records of the General Assembly, Sixty-second Session, Supplement No. 18 (A/62/18), annex III

In accordance with these indicators and on the basis of information provided by inter alia UN agencies and human rights bodies, HRC special procedures, regional human rights mechanisms, NHRIs and NGOs, CERD may decide to consider a specific situation under this procedure.

b) Possible measures to be taken

In considering specific situations under the early warning and urgent action procedure CERD can take the following measures:

- (a) Request the State party concerned for the urgent submission of information on the situation;
- (b) Request the Secretariat to collect information from field presences of the OHCHR and UN specialized agencies, NHRI, and NGOs on the situation under consideration;
- (c) Adopt a decision including the expression of specific concerns, along with recommendations for action, addressed to:
 - (i) The State party concerned;
 - (ii) The Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, or the Independent Expert on minority issues;
 - (iii) Other relevant human rights bodies or special procedures of the Human Rights Council;
 - (iv) Regional intergovernmental organizations and human rights mechanisms;
 - (v) The Human Rights Council;
 - (vi) The Special Adviser of the Secretary-General on the prevention of genocide;
 - (vii) The Secretary-General through the High Commissioner for Human Rights, together with a recommendation that the matter be brought to the attention of the Security Council.
- (d) Offer to send to the State party concerned one or more of the members of the Committee in order to facilitate the implementation of international standards or the technical assistance to establish a human rights institutional infrastructure;
- (e) Recommend the State party concerned to avail itself of the advisory services and technical assistance of the Office of the High Commissioner for Human Rights.

c) Recent actions⁶⁶

At its 76th session in February and March 2010 CERD adopted a decision on Nigeria concerning attacks and killings of a large number of persons resulting from tensions between ethno-religious groups in January and March 2010. The Committee strongly urged Nigeria to take all appropriate measures to immediately stop ethnic violence, to protect victims, and to avoid the reoccurrence of such killings in the future. In addition it also urged Nigeria to investigate the massacre, bring those responsible to justice, and to provide redress to the victims and their families.

At its 77th session in August 2010, CERD adopted a decision on Kyrgyzstan concerning the reported attacks and killings between Uzbek and Kyrgyz ethnic groups that occurred in June 2010, whereby the ethnic Uzbek community appeared the main target of violence, threats, unlawful arrests and detentions, disappearances, torture and denial of access to justice. Through consideration of the situation, CERD urged the government of Kyrgyzstan, among others, to ensure protection of all its citizens from ethnic hatred and to pay due attention to possible discrimination on ethnic grounds in various areas e.g. employment and education. Furthermore the Committee strongly urged the government to facilitate access to justice for the victims, to investigate the violation of human rights and to bring those responsible to justice, and to provide redress to the victims and their families.

Other situations considered by the Committee during 2010 (in most cases a letter was sent to respective governments) include situations of: people of Raposa Serra do Sol in Brazil, indigenous peoples in Orissa in India,

⁶⁶ Letters sent to state parties and regional institutions as well as decisions taken by the Committee can be found at the CERD website: <http://www2.ohchr.org/english/bodies/cerd/early-warning.htm#about>

Achuar indigenous people in Peru, Hmong people in the Lao People's Democratic Republic, Touareg people in Niger (concerning alleged negative impact of uranium extraction by a French state company), Yakye Axa and Sawhoyamaya people and their traditional lands in Paraguay, Aboriginal legal aid in Australia, and Romani and Irish Traveller communities in the United Kingdom.

Moreover, CERD took a noteworthy action at its 77th session. Concerning the situation of Roma communities in several, primarily European, countries⁶⁷ and recognising the importance of a regional approach in addition to efforts of individual governments, CERD sent letters to the Council of Europe and European Union. This was the first time, in which regional bodies were addressed by CERD through its early warning and urgent action procedure.

Illustration 13: CERD's decision on the New Zealand Foreshore and Seabed Act 2004⁶⁸

A political and legal debate concerning the ownership of foreshore and seabed of New Zealand has emerged in 2003 when New Zealand's Court of Appeal decided on the Ngati Apa case. The decision provided the backdrop to drafting and enactment of the New Zealand Foreshore and Seabed Act 2004. At its 66th session in February and March 2005, CERD reviewed, under the early warning and urgent action procedure, the compatibility of this Act with ICERD in the light of information submitted from the Government of New Zealand as well as a number of Maori NGOs. The Committee had a dialogue with the State party on 25 February 2005 and adopted its decision 1 (66) (CERD/C/DEC/NZL/1) on 11 March 2005. In this decision, CERD expressed its concern over the process of the legislation and stated that "the legislation appears to the Committee, on balance, to contain discriminatory aspects against the Maori, in particular in its extinguishment of the possibility of establishing Maori customary titles over the foreshore and seabed and its failure to provide a guaranteed right of redress, notwithstanding the State party's obligations under article 5 and 6 of the Convention." (paragraph 6). Furthermore, the Committee urged the State party to resume dialogue with the Maori community regarding the legislation and requested that the State party: closely monitors the implementation of the legislation and its impact on Maori; takes steps to minimise any negative effects; and includes full information on the state of its implementation in the next periodic report.

CERD considered the combined 15th through 17th periodic report of New Zealand (CERD/C/NZL/17) at its 71st session in July/August 2007 in which the State party provided information on the follow-up to the Committee's decision 1(66). In the concluding observations on New Zealand (CERD/C/NZL/CO/17) CERD expressed its concern over the discrepancy between the assessment of the government and the one of NGOs on the issue, reiterated recommendations made in the decision 1 (66) and requested the State party to submit information on the implementation of these recommendations within a year. New Zealand submitted the information in its follow-up report (CERD/C/NZL/CO/17/Add.1) which was considered by CERD during its 74th session in February/March 2009. Under its follow-up procedure, then, CERD issued a letter to New Zealand⁶⁹ and requested it to include in its next periodic report (combined 18th to 20th) information on: recent progress made in ongoing negotiations with the Maori; new negotiations with groups which have decided to collaborate with the Government; the status of the dialogue held with tribes who oppose the act; and the realisation of the right to access justice through a fair and equitable process, e.g. in the case of Te Whanau a Apanui. The 18th to 20th periodic report of New Zealand is due on 22 December 2011.

⁶⁷ The issue of Roma people were also addressed in the consideration of state reports of: Bosnia and Herzegovina, Denmark, Estonia, France, Romania, Slovenia and Uzbekistan at 77th session.

⁶⁸ CERD/C/DEC/NZL/1 (2005)

⁶⁹ Can be found at: <http://www2.ohchr.org/english/bodies/cerd/followup-procedure.htm>

2.4 General Recommendations and Thematic Discussions

In order to assist States parties in interpreting articles of ICERD and implementing their obligations, CERD produces “General Recommendations”⁷⁰ which provides the Committee’s interpretation of the articles of ICERD. So far 33 General Recommendations have been issued on various thematic topics.⁷¹ These General Recommendations enable States parties and the Committee to have a better understanding of the types of issues and problems encountered by States when trying to translate the legal formulations contained in ICERD into practice. General Recommendations may also help NGOs to comprehend the meaning and implication of various provisions of the Convention. However, they are not legally binding on States parties.

In addition, CERD regularly holds thematic discussions where other stakeholders e.g. States parties, and intergovernmental and non-governmental organisations are allowed to express their views. The first thematic discussion was organised in 2000 on the issue of discrimination against Roma. Since then there have been six thematic discussions⁷² and most of them have also connected with the drafting process of respective General Recommendations.

Inter-state complaints (Article 11-13)

All the states parties to the Convention recognize the competence of CERD to receive and act on a complaint by one of them that another is not giving effect to the provisions of the Convention (Article 11 (1)). However, no state party has yet resorted to this procedure, which provides, unless the matter is settled in another way, for the appointment of an *ad hoc* conciliation commission (Article 12). To date, no state has ever used the inter-state procedures under any of the UN human rights treaties.

⁷⁰ In the practice of other Treaty Bodies it can be referred as General Comments.

⁷¹ Please refer to Annex IV of this guide and for the text of each recommendation to the CERD website:

<http://www2.ohchr.org/english/bodies/cerd/comments.htm>

⁷² Please refer to <http://www2.ohchr.org/english/bodies/cerd/discussions.htm>

PART III – Civil Society Participation

When the state concerned is a party to ICERD,⁷³ there are several ways in which civil society actors can engage with the Committee and its work, in particular 1) in the course of States reporting cycle, 2) under individual communication procedure, 3) under the Early Warning mechanism and Urgent procedure, and 4) through thematic discussions. Usually NGOs and other stakeholders do not need any ECOSOC consultative status to use these opportunities.

For example, civil society actors can:

1. In the course of State reporting cycle:
 - A) Before the consideration of State report concerned:
 - Participate in the preparation of the State report.
 - Provide information for the list of themes.
 - Prepare and submit an alternative report.
 - Submit their own answers to the list of themes.
 - B) During the CERD session:
 - Organise an informal briefing to CERD members.
 - Lobby in Geneva.
 - Observe the CERD sessions.
 - C) Follow-up - After the consideration of the State report concerned:
 - Monitor implementation.
 - Lobby national governments.
 - Disseminate information and raise awareness.
2. Submit Individual Communication under Article 14
3. Submit information under Early Warning measures and Urgent Procedure
4. Submit information to and/or participate in thematic discussions

In any case when civil society actors wish to submit information to the Committee and take full advantage of available opportunities, their engagement and information should be laid out in a constructive and non-adversarial manner. To increase the effectiveness of civil society participation, information submitted should be as precise, concise and accurate as possible, with clear reference to the concrete articles of ICERD. Besides providing the Committee with information, NGOs and other civil society actors, especially those active at national and grassroots levels, can also disseminate information on ICERD and CERD in general or on a specific state report for consideration in their society. In order to make the best use of existing opportunities, civil society actors can take up issues from their society to the Committee, bring back the outcome, and create or facilitate actual changes in the lives of those who are facing issues of racial discrimination.

CERD Secretariat Contact:⁷⁴

Secretariat of the Committee on the Elimination of Racial Discrimination (CERD)
Human Rights Treaty Division (HRTD), Office of the High Commissioner for Human Rights (OHCHR)
Palais Wilson – 52, rue des Pâquis
Geneva, Switzerland
Tel.: +41 22 917 9440
Fax.: +41 22 917 9008
E-mail: cerd@ohchr.org

Mailing address:

CERD Secretariat, UNOG-OHCHR
8-14 Avenue de la Paix, CH- 1211 Geneva 10, Switzerland

⁷³ To check whether the state concerned is a party to the ICERD, please refer to the Annex I or the website of the UN Treaty Collection: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en

⁷⁴ For up to date information, please see: <http://www2.ohchr.org/english/bodies/cerd/contact.htm>, or the document “Information for NGOs” uploaded at each CERD session page

1. In the course of the State Reporting Cycle

Generally civil society actors can submit information to CERD through its secretariat at any time. However, there are several different key phases in the State reporting cycle (ref. PART II 2.1). In order to be more effective, inputs should be provided in a more targeted and timely manner at each phase of the cycle.

1.1 Before the consideration of the State report concerned

Before taking any steps civil society actors may need to clarify following question.

- **When is the State report due?**
- **Has the State report already been sent?**
- **When is the consideration of the State report concerned?**

As explained in PART II of this guide, an initial report is due one year after the Convention has entered into force for the State concerned. Thereafter, periodic reports are due every two years. However, the reality of most cases is that reports are not submitted according to this time schedule and consideration of each State report does not take place every two years.

Once a State report has reached the Committee, it will be put on the list of “Reports received and pending consideration by the Committee.” This list is updated and published at every CERD session together with the list of State reports of which submission is due or overdue.⁷⁵ Once consideration of a State report is scheduled for a coming session (or thereafter), detailed information is put on the CERD website under “Sessions”⁷⁶ and relevant State reports can be found at the respective session page.

Depending on whether and when the relevant State report will be or was submitted, different options are available for civil society actors on how to interact with the Committee. Alternatively, civil society actors can also directly contact the government concerned or the CERD Secretariat in order to obtain information on aforementioned questions.

a) Participating in the preparation of the State report:

If the due State report has not yet been submitted to the Committee, civil society actors can contact the government authority in charge (very often the Ministry of Foreign Affairs) to find out when the government plans to submit it. If the report is still being prepared, NGOs could negotiate with the appropriate authority to become involved in the drafting process. In some cases governments may be willing and even keen to consult national NGOs in order to avoid being criticized for an incomplete State report.

b) Providing information for the list of themes

For the consideration of each State report at the coming session, CERD prepares and publishes a list of themes.⁷⁷ In addition to (or as a part of) the alternative report, civil society actors can provide information to be specifically reflected in the list of themes and/or concrete proposals of themes. In any case input targeted at the list of themes should be made early enough, so that the Country Rapporteur can take account of it when drafting the list. Usually the list of themes is sent to the respective State government and published 4 to 6 weeks prior to the relevant session. It is generally recommended that, if wishing to provide information specifically for the list of

⁷⁵ These lists are included in the document “Status of submission of reports by States parties under article 9, paragraph 1, of the Convention” which will be prepared for every CERD session and can be found in the top of respective session website (e.g. for CERD 77th session, visit: <http://www2.ohchr.org/english/bodies/cerd/cerds77.htm>).

⁷⁶ <http://www2.ohchr.org/english/bodies/cerd/sessions.htm>

⁷⁷ This has been practiced since its 77th session, please also refer to the PART II 2.1 c) of this guide.

themes, civil society actors start preparing and submit it to the Secretariat as soon as possible. When submitted, it must also be clearly indicated that the input is for the list of themes so that it is processed in a timely manner.

c) Preparing and submitting an alternative report

Regarding the relevant State report, civil society can submit their own “*alternative*” report. Such reports should serve to primarily help CERD members gain a more comprehensive picture of the human rights situation in a given country, particularly concerning the implementation of ICERD. While State reports often tend to present legislative framework, but may not always thoroughly reflect the reality on the ground, civil society actors have the opportunity to conduct their own research, present alternative evidence, views, findings etc. and/or raise issues that are not covered by the State reports. Various alternative reports submitted to CERD can be found at the CERD website,⁷⁸ which can also be used as examples.

● **When and how to submit:**

Civil society actors can basically submit reports at any time, however it may not be effective to submit a report when no consideration of a relevant State report is scheduled. Generally it is suggested to submit alternative reports after the submission of relevant state report and before its consideration by CERD. While there is no official deadline for submission, information provided in the very last minutes might not be reflected thoroughly during the consideration. Therefore the CERD secretariat advises that alternative reports be sent to the secretariat at the latest two weeks before the relevant session. CERD usually considers more than 10 state reports at one session and the earlier such a report is submitted, the more time CERD members have to examine it. At the same time, more updated, precise and rather brief information may be submitted to the secretariat shortly before the relevant consideration so that any new developments and current changes in the field can also be addressed by the Committee.

When submitting an alternative report an electronic version (by email) and 24 hard copies (by post or given personally) should be submitted to the secretariat. Alternative reports that have been submitted in a timely manner are published on the CERD website in relation to the State report concerned, unless it has been requested to keep it confidential.

● **Working languages of CERD:**

Information should be submitted in one of the working languages of CERD members, in most cases English, French or Spanish, while English is the preferred working language of many members.

● **Length and layout of the report:**

There is no page or words limit for alternative reports. However, submission of voluminous documents should be avoided considering the amount of information that CERD members receive and process for each session. Generally it is suggested that civil society actors make their alternative reports as concise as possible and preferably submit it with a summary page. A title page with the name of the organisation(s) and a table of contents should also be included. A short description of the mandate or nature of the organisation, network or coalition of organisation is also helpful.

● **Content and structure of the report:**

When providing information to CERD, in the interest of both the Committee and the civil society actor, it is important that the information is submitted in the most constructive and non-adversarial manner. Practice has shown that a simple submission of random cases or media report articles to the Committee does not normally

⁷⁸ For example, alternative reports submitted to the 77th session for respective state reports can be found in the column “Information from other sources” at: <http://www2.ohchr.org/english/bodies/cerd/cerds77.htm>

have a great impact, nor does submitting an abundance of information without a clear nexus to ICERD result in a concrete outcome.

Committee members generally seek specific, reliable and objective information that enables them to genuinely and independently assess the status of the implementation of ICERD in the territory of each State. In order to provide CERD with such information, civil society actors can present:

- Statistics (description on the methodology of data collection should be included, e.g. how, when, where and by whom data was collected);
- Results of academic research;
- Court cases;
- Official documents issued by authorities;
- Reliable media reports on specific cases.

In order to increase the reliability and objectivity, especially when findings of personal research are presented, cross-reference of information sources is quite useful. For example, “reliable sources said ...” may be enough in journalism but not in this case. Any source referred to in the alternative report should be precise, truthful and authentic and allegations should never be made without firm evidence to support them.

Comments, decisions, General Recommendations and previous concluding observations adopted by CERD can be also referred to. In a similar vein, alternative reports can include references to reports and comments of:

- Other Treaty Bodies;
- UN Human Rights mechanisms e.g. Special Procedures, UPR etc.;
- NHRIs;
- Regional institutions;
- UN specialised agencies such as the ILO

As an option, civil society actors can include concrete suggestions for questions and recommendations that CERD members can use in the consideration of the State report concerned.

Considering the structure of the alternative report, there will be several possibilities on how to construct it. Major options for effective input are:

- i. **State report oriented**
- ii. **In accordance with articles of ICERD**
- iii. **Issues oriented**

The first option is to consider each point of the State report and offer either supplementary or contradictory information. This requires thorough examination of the State report concerned and possibly a lot of time and resources. However, in this way those points or issues which are not properly or at all reflected in the State report can be highlighted. The second option is to collect and present information in accordance with the articles of ICERD. In this way various information and issues can be presented in a more comprehensive way and with clear connection to ICERD. This allows both CERD members and civil society actors to process information more efficiently and effectively, especially when civil society actors have jointly prepared one report or when the state report is not well structured or prepared. Cross-cutting issues and general human rights concerns can of course be included and presented as such e.g. at the beginning of the report. Specific reference to State reports should be made as often as possible so that the comparisons between the State and the alternative reports are more straightforward. The third option is useful for actors who are not able to bring together the necessary resources and/or whose activities are limited in certain fields or areas. A report can be prepared targeting specific issues of concern — like those affecting particular groups, or specific fields such as education, employment or working conditions. However when choosing this option, civil society actors should make it clear how the issues raised relate to specific articles of ICERD, or at least ensure that those issues fall within the scope of ICERD.

Regardless of how civil society actors construct their alternative reports, it should always be kept in mind that the Committee is a monitoring body, and is thus concerned with the State party's implementation of the

provisions set forth in ICERD. Moreover, the decision of whether and how to take up alternative reports i.e. information from civil society actors, is entirely up to the Committee members, thus an imperative or adversarial tone should be avoided.

- **Alternative contacts:**

NGOs: Alternatively civil society actors may find it useful to contact other civil society actors such as NGOs. Alternative reports jointly prepared by several organizations are often more convincing and make a greater impact. By preparing joint reports, civil society actors can avoid duplicating their work and use their knowledge, materials and resources more effectively and efficiently. Moreover, a comprehensive single report covering various issues can provide CERD members, who have to process a large amount of information in a limited time, with a clearer picture of the country situation; while separate reports dealing with the same issues may confuse experts. Civil society actors can, for example, form coalitions or (temporary) networks and coordinate their work. Coordinating work and sharing information can play a significant role in best utilising available resources and opportunities, while maximising the outcomes of their work. This is not only effective when reporting to the Committee, but in each stage of the reporting cycle e.g. lobbying and briefing CERD in Geneva and for follow-up (ref. below). International NGOs (that have an office in Geneva) who have experience in working with Treaty Bodies can also be of great help to national or local actors in this regard.

NHRIs: Although NHRIs do not exist in every country, nor share the same level of independence; they can be a unique partner for civil society actors. NHRIs can formally present their statements, with consent of respective State party, during the consideration of the State report by CERD and may have a separate closed briefing meeting with CERD members. When civil society actors choose to work with NHRIs, they can be a good contact for follow-up activities in a given country.

The Government: It often happens that the State delegation does not have data or competent staff available to answer the questions raised by Committee members. In order to facilitate the dialogue between the delegation and the Committee, and in particular to obtain tangible answers from the delegation, it may be useful for civil society actors to inform the delegation of the questions they have recommend the Committee to ask during the consideration of the State report.

Parliamentarians: This may be especially useful in States where the government is very sensitive to concerns raised by the legislature. Civil society may contact parliamentarians and indirectly lobby the government.

Media: The media can be a valuable partner in raising public awareness about ICERD and CERD in general, and more specifically about the consideration of the state report concerned. If the national media of the country concerned has a correspondent or an office in Geneva or nearby, contacts may be established with both the headquarters in the country and the correspondent. In cases where no such branch exists, it is still worth trying to encourage the national media to send a reporter to Geneva. Organisation of press briefings, conferences or any similar events can be a useful possibility for attracting media attention.

- **What can we do, if a comprehensive report cannot be prepared?**

Not all civil society actors have the time and resources to prepare a comprehensive alternative report and this can be a common obstacle especially for civil society actors at the grass-roots level. In such cases, however, it is still encouraged that, civil society actors at least consider submitting information that focuses on key issues and highlights State's non-compliance or violation of specific articles of ICERD. As stated below, submission of civil society answers to the list of themes is also an option.

Illustration 14: **Case of Australian NGO Coalition: Before the consideration of the State report**⁷⁹**Start of the work:**

The Australian NGO coalition started its substantive work, when Australia provided its periodic report to CERD. The idea was to prepare a single report in consultation with community organisations that would cover comprehensively CERD-related issues in Australia, and that could be endorsed broadly by Australian NGOs, in order to provide CERD with a single document which covers a wide range of issues and to minimise the likelihood of the Committee being provided with multiple reports and duplicated information.

Preparation of an alternative report:

First, the likely issues to be canvassed in an alternative report were identified. Then the peak bodies working with the key issues or with relevant affected communities were identified to form a Strategy Group to guide and inform the consultation. A meeting of the Strategy Group of key NGOs and experts was convened and a list of issues for the alternative report was prepared. A team was established to be primarily responsible for drafting the report. NGOs agreed that the alternative report should be developed on the basis of community consultation and evidence, and each of the Strategy Group members undertook to consult with their contacts and communities and to provide information and guidance to the drafting team in their area of interest and expertise. After a draft report was prepared, further consultation took place.

Submission of the report:

The final version of the alternative report was provided to CERD six weeks prior to the scheduled review. Six weeks was determined to be a sufficient amount of time to give CERD, particularly the country rapporteur and the secretariat, the chance to read and digest our information.

Before the CERD session:

In the months just prior to the review NGOs were in touch by email with the CERD secretariat to let them know that they were planning to provide an alternative report. They also began to build a relationship with the Australian government delegation in Australia, providing them with their materials.

d) Submitting additional information on the list of themes:⁸⁰

As a complement (or an alternative) to other input, civil society actors can consider submitting information that specifically focuses on the list of themes which compiles themes and topics to be raised during the dialogue between the Committee and state delegation. However, concerning the fact that the list will be usually published 4 to 6 weeks before the respective session, this should be regarded as an optional submission. If civil society actors send their representatives to Geneva or have partners in Geneva, they can consider providing precise information with regard to the List of Themes directly to Committee members, especially to the Country Rapporteur, e.g. during the informal briefing (see below).

1.2 During the CERD session

If NGOs can send someone to the CERD session in Geneva, they will have the opportunity to:

- Interact with CERD members in an informal meeting at the beginning of the week;
- Organise an informal briefing to CERD members;
- Lobby CERD members;
- Observe the consideration of the State reports by CERD.

⁷⁹ Communication with Ms. Emily Howie, Director – Advocacy and Strategic Litigation, Human Rights Law Resource Centre. More information on their NGO alternative report can be found at their website: <http://www.hrlrc.org.au/content/topics/equality/cerd-ngo-report-for-review-of-australia/>

⁸⁰ For the list of themes, please also refer to PART II, 2.1 c) and PART III 1.1 b) of this guide.

Although civil society actors do not have the possibility to formally participate in the interactive dialogue between States and the Committee, they are highly encouraged to send their representatives to Geneva to utilise existing opportunities as much as possible. In order to obtain access to Palais Wilson, where the CERD session is held, civil society actors are required to contact the CERD secretariat and apply for an accreditation in advance.

a) Informal meeting with CERD at the beginning of the week

Since its 78th session (February/March 2011)⁸¹ CERD holds an informal meeting with NGOs at the beginning of each week; a total of 3 hours are allocated for one meeting and NGOs can provide information on all countries that are considered by CERD in that respective week. NGOs who wish to participate should contact the CERD secretariat before the session concerned. At the 78th session NGOs from Bolivia and Uruguay participated in the meeting at the beginning of the first week and those from Norway, Ireland, Spain and Serbia at the beginning of the second week.⁸²

These meetings are convened in the conference room where CERD has its formal sessions and interpretation is provided by the conference service in English, French, Spanish, Russian and Chinese.⁸³ Here NGOs have the opportunity to directly provide country-specific information to CERD members and receive their questions, even if NGOs and CERD members use different working languages. Depending on the number of NGOs wishing to speak, exact time given to one speaker will vary.

b) Organising an informal briefing for CERD members

Civil society actors can organise an informal briefing for CERD members. Usually 1 hour during the lunch break is allocated for all those who wish to provide information on one country immediately before the consideration of the relevant State report. In order to do so, civil society actors must first contact the CERD secretariat and request this possibility. All Committee members are informed by the secretariat when there is a briefing, however it is an informal meeting and, thus, up to Committee members to decide whether to actually attend or not. Civil society actors can also choose to personally invite the Committee members to the briefing in hopes of increasing the chances of their attendance. The length of a briefing is usually 1 hour, whereas longer briefings might be organised for 1.5 hours if lunch for CERD members is provided.

Such briefings are usually held in the room next to the main conference room where CERD convenes its formal sessions. There is a screen and sockets for e.g. using lap tops to show power point presentation, pictures or short movies. Wireless internet is normally available in the room and there have been briefings where civil society actors who could not come to Geneva have participated through skype. It is important that there is no facility for simultaneous interpretation, so briefings should ideally be convened in one of the working languages of the Committee members, mostly English, French or Spanish. Organising and providing interpretation of oral presentations can be complicated for the briefing, but civil society actors can, for example, prepare short information sheets, in which key issues are summarised, in English, French and/or Spanish for those Committee members whose native language is one of these.

Committee members have stated that they have found these informal briefings to be very useful. These informal briefings provide civil society actors with the opportunity to interact directly with Committee members and present updated information, explain complicated issues, and/or to answer any questions which CERD members may raise. When more than one organisation wishes to have such a briefing, it is highly recommended that all participants cooperate with each other in order to maximise the benefit of it for all; civil society actors and CERD members alike.

⁸¹ Decision to have this meeting was made by CERD at its 77th session in August 2010. Ref. CERD annual report 2010, A/65/18, para.

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⁸² Refer to the programme of work of CERD for its 78th session, can be found at:

<http://www2.ohchr.org/english/bodies/cerd/cerds78.htm>

⁸³ Current working languages of CERD members

c) Lobbying in Geneva

Once in Geneva and after receiving accreditation, civil society actors can try to make informal contacts with the Committee members outside of the formal meeting hours. However, it must be noted that Committee members have quite a tight schedule when dealing with more than 10 State reports and other work and tasks during these three (or four) weeks.

Illustration 15: **Experience of Australian NGO Coalition: activities in Geneva**⁸⁴

Once we arrived in Geneva, we sought to meet with the secretariat to provide them with information on the NGO delegation likely to be in Geneva for the review, to see if we could assist with any further information and to arrange an informal lunchtime briefing of the Committee. We also arranged a meeting between the NGO delegation and the Australian Mission to the UN to discuss issues in the review. This is an important element of the relationship building to support implementation and follow up after the review.

As it happened, four other NGO reports were provided to the Committee as well as a report from Australia's NHRI, the Australian Human Rights Commission. Representatives of the organisations that submitted the other reports arrived in Geneva a couple of days before the review. At that stage all the Australian NGOs in Geneva met and began a process of working cooperatively and collaboratively to brief CERD.

For the lunch time briefing, we decided to provide the Committee with lunch to enable us to increase our time with them by an extra half hour or so – so about 1.5 hours in total. It was very important to ensure that we used our limited time with the Committee in a strategic way, to ensure all relevant issues were covered and that we avoided duplication. We carefully allocated time to all speakers. It cannot be understated how difficult it is to reduce important issues to short, sharp statements for the purposes of the briefing, but also how ineffective it is to be underprepared and undisciplined with time.

To support our short oral briefing, we also created short two page fact sheets on key issues of concern that we provided to the Committee as we spoke to them. We had the fact sheets interpreted into Spanish and French, given that key members of the committee did not have English as a mother tongue. This seemed to be an effective way of increasing our influence beyond the strong English speakers.

d) Observing the CERD sessions

Civil society can attend the session of CERD as observers. The session usually takes place in the ground floor conference room at Palais Wilson in 52 rue des Pâquis in Geneva. There are a number of seats available for the observers and State reports and other printed materials are also available in the room. If possible, it is useful for civil society actors coming to Geneva to attend other consideration of State reports by CERD in order to get familiar with the process of CERD meetings. Although as observers civil society actors do not have the right to formally take part in the dialogue between states and CERD, they can directly see and even audio record what questions and issues the Committee members raise, how states respond thereto, and again how the Committee reacts to those replies.

The entire discussion will be interpreted simultaneously into English, French and Spanish, and additionally into Arabic, Chinese or Russian when Committee members or the states delegation speak those languages.

● **Following the session from outside Geneva:**

A press release on the consideration of a State party by CERD is usually issued on the following day⁸⁵ detailing the progress of the dialogue, however, this is not an official UN document. A “summary record” is issued as the

⁸⁴ Communication from Ms. Emily Howie, Director – Advocacy and Strategic Litigation, Human Rights Law Resource Centre

official record of each meeting held by CERD (a three-hour meeting either in the morning or afternoon is counted as one meeting). They are usually redacted and circulated one week after the respective meeting and first released in English or French. The document number of each summary record begins with CERD/C/SR. followed by the number of the meeting (e.g. summary record for CERD's 1979th meeting is CERD/C/SR.1979).⁸⁶ They can be obtained through the UN Official Document System Search,⁸⁷ or found at the CERD website on the respective session page.⁸⁸ As an option, if a representative or partner attends CERD session, civil society actors can ask that person/organisation to audio record the dialogue between the State concerned and the Committee and share it.

An official record of one whole session, consisting of concluding observations and other work or decisions made by the Committee are compiled in the Committee's annual report that covers the two respective sessions convened in the year concerned. The annual report is usually published in October or November and submitted to the UN General Assembly.

1.3 Follow-up - after the consideration of the State report concerned:

The ultimate purpose of the participation of civil society actors in the reporting cycle is not the submission of information or getting quality concluding observations from the Committee, but bringing about actual changes in society. In order to fulfil this purpose, concluding observations and recommendations of the Committee must be effectively followed up. In a similar vein the Committee itself also has its own Follow-up procedure.⁸⁹ Although the concrete steps to be taken by the State concerned and civil society actors vary from country to country, the major follow-up activities of civil society actors can be summarised as follows.

a) Monitoring implementation

Civil society actors can monitor how national governments are implementing the concluding observations or recommendations of CERD. Additionally CERD sometimes requests that States submit information before the submission of the next State report under its follow-up procedure (rule 65 of the rules of procedure of CERD).⁹⁰ Pursuant to Article 9 of ICERD and rule 65 of CERD's rules of procedures, the Committee may request the State concerned to submit an additional report or information on specific topics following the consideration of the State report. When the Committee makes this request, it usually indicates in its concluding observations the topics as well as manner and time frame (usually one year) within which the report or information should be provided. Civil society actors can also submit additional information to the Committee when monitoring the efforts of their national government in taking the necessary steps to bring about changes in the country's law, policy, and practice.

At its 64th session (2004) CERD adopted a second paragraph to rule 65, which provides for the appointment of a coordinator, in order to follow up on the concluding observations more effectively. The coordinator (or their alternative) cooperates with the respective country Rapporteur and is mandated to monitor the follow-up by States parties on the observations and recommendations of the Committee. In such cases the Committee holds closed meetings to discuss the findings of the coordinator and adopt formal recommendations or decisions on further action. The coordinator's findings are then included in CERD's annual report.

⁸⁵ Please refer to:

<http://www.unog.ch/80256EDD006B9C2E/%28httpPages%29/CBD301FF98AF69B980256EE700376D86?OpenDocument>

⁸⁶ For example, summary records for the consideration of Romania at CERD 77th session (2022nd meeting on 10 August pm and 2023rd meeting on 11 August am) consist of CERD/C/SR.2022 and CERD/C/SR.2023 respectively.

⁸⁷ <http://www.un.org/en/documents/ods/>

⁸⁸ Summary records for States considered during CERD 77th session can be found in the row of respective states and the column "Timetable" under the date of the meeting at: <http://www2.ohchr.org/english/bodies/cerd/cerds77.htm>. Please note that it might take longer than one week till summary records are uploaded onto the website.

⁸⁹ Please refer to PART II 2.1 f) of this guide.

⁹⁰ Please also refer to PART II 2.1 f) of this guide.

b) Lobbying the national government

Civil society actors can lobby the government in various ways e.g. contacting relevant ministries, departments, local authorities, parliamentarians and other stakeholders; and/or organising meetings, conferences, or workshops to discuss and facilitate implementation of recommendations. When ICERD and State obligations under the Convention are not familiar to stakeholders, some kind of awareness raising event and/or activities should also be organised.

Civil society actors can refer to CERD's concluding observations at other international forums such as the Human Rights Council or UPR, other Treaty Bodies' sessions, or regional forum to indirectly urge the national government to take actions.

c) Disseminating information and raising awareness

Civil society actors can inform the public and raise awareness about the Committee's concluding observations / recommendations to the State concerned not only by distributing them, but also by translating them into the national language(s) and, more importantly, into the language of ethnic or minority groups in the country. The national media can also be contacted to assist with raising awareness. For those who are not familiar with ICERD and CERD's work, briefings or any other information event can be organised. Moreover, seminars and workshops are useful to discuss actions with relevant stakeholders. It is also important to raise the awareness of national courts and other law enforcement organs / officers, so that ICERD and Committee observations can be fully implemented.

Illustration 16: Experience of Japanese NGOs: Follow-up⁹¹

After the CERD consideration of Japan in February 2010, we translated the concluding observations into Japanese and shared the translated text with all concerned groups and individuals. The text was also uploaded on the IMADR's website. Press release with the brief translation was sent to the Japanese media for their news coverage. Three newspapers and one news agency took it up and covered in their papers. Other organizations and movements that joined the coalition (named "ERD Net") also shared and reported the outcomes of the CERD consideration using their own media.

Following the dissemination of information, the ERD Net held a public meeting in May 2010 inviting those members who went to Geneva as speakers. They shared first-hand information with participants.

As a part of the follow-up, IMADR published a book in Japanese entitled "Elimination of Racial Discrimination in Japan Faces the Last-Minute Challenge" containing all the relevant documents and articles concerning the CERD consideration. It also includes the transcript of the dialogue between CERD and the Japanese government during the session. So far, about 1,000 copies were sold.

The most important in our follow-up activities rests with dialogues with the government and parliament members. ERD Net, through the coordination of IMADR, has been in contact with the Japanese government. While NGOs and the civil society welcome strong statements and recommendations made in Concluding Observations by CERD, we cannot be contented with these outcomes. We are stepping into the next challenge to discuss with the government about its observation and implementation of the recommendations. Based on the list of questions that we submitted to relevant government agencies including Ministries of Justice, Foreign Affairs, Education, Health-Welfare-Labor, and Cabinet Office, dialogues with them have started. In the meantime, we approach to members of the Diet which is also responsible to the implementation of the Convention. For us, it is specifically important to get them involved since they are usually not well informed of what are recommended by UN human rights mechanisms in regard to the implementation of human rights instruments ratified by Japan.

⁹¹ Communication from Ms. Megumi Komori, Under-Secretary-General, IMADR / IMADR Japan Committee

2. Submitting an Individual Communication under ICERD Article 14⁹²

If any right of individuals set forth in ICERD is violated, a communication can be submitted to CERD under the Individual Communications procedure. However, before considering the submission of individual communications, civil society actors have to check whether the State concerned has made a declaration recognising the competence of CERD to receive such communications (Article 14 of ICERD). Out of 173 States parties, 54 have recognised that competence (as of 5 July 2011, the list of 54 states is available in Annex II, 4). According to rule 91 (a) of CERD's rules of procedure, an individual or a group of individuals subject to the jurisdiction of these 54 States can invoke this procedure. If the State concerned has not made the declaration, civil society actors should organise activities to persuade their respective governments to recognize CERD's competence under Article 14.

2.1 Before the submission: Admissibility of the communication

Provided that the State concerned has made the necessary declaration, there are still some conditions that must be met in order for the communication to be admissible.⁹³ The main condition, although not the sole condition, is that the individual or group wishing to submit a communication must have exhausted all local remedies. However, there is an exception to this rule when the application of local remedies is unreasonably prolonged. In addition, the Committee has established that this rule applies only to the extent that those remedies: i) are considered an adequate avenue of redress, and ii) have any prospect of success.⁹⁴ In other words, where domestic remedies are ineffective and *a priori* of no avail, the rule of exhaustion of these remedies does not apply.

Normally, only the individual concerned, their relatives or designated representatives can submit a communication claiming violation of a right (or rights) set forth in the ICERD can be submitted to the Committee. However, in exceptional cases, the Committee may accept a communication submitted by others on behalf of an alleged victim, when it appears that the victim is unable to submit the communication by themselves and the author of the communication justifies their acting on the victim's behalf. Furthermore, the communication should be submitted within six months after all available domestic remedies have been exhausted, except in the case of duly verified exceptional circumstances. Under no circumstances can the Committee consider a violation of human rights beyond the scope of ICERD.

Generally, individuals or groups of individuals who want to file a communication are advised to get legal advice or seek the assistance of an experienced NGO or institution so as to provide a systematic account of alleged facts and relevant national law(s). The whole process of consideration of a communication normally takes around two years.

2.2 Submitting a communication

First of all, the communication must not be anonymous or contain abusive language. According to rule 84.1 of the rules of procedure of CERD, the following information should be also included:

- The name, address, age and occupation of the author and verification of their identity;
- The name(s) of the State party or States parties against which the communication is directed;
- The object of the communication;
- The provision or provisions of the Convention alleged to have been violated;
- The facts of the claim;

⁹² Please also refer to PART II 2.2 of this guide.

⁹³ Please also refer to PART II 2.2 a) of this guide and rule 91 of the Rules of Procedure of the CERD..

⁹⁴ Communication no. 8/1996 (B.M.S. v. Australia), paras. 6.1 and 6.2.

- Steps taken by the author to exhaust domestic remedies, including pertinent documents; and,
- The extent to which the same matter is being examined under another procedure of international investigation or settlement.

Several bodies dealing with such communication developed a model format for individual communications (can be found in the Annex IV). However, it should be noted that communications are considered even when they are not submitted in the model format. In any case, it should appear at the very beginning of the communication that it is to be submitted to the CERD, so as to ensure its easy and immediate channelling to the addressee.

Contact Information

Mail: Petitions Team
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
1211 Geneva 10, Switzerland
Fax: +41 22 917 9022 (particularly for urgent matters)
Email: tb-petitions@ohchr.org

2.3 After the submission

When a communication is submitted to the Committee, its admissibility is considered first. If all the formal requirements are met and the communication is decided to be admissible, the Committee confidentially transmits the text of the communication and other relevant information to the State party concerned. The identity of the individual is not revealed, unless they have given their consent. At the same time, the petitioner is also informed that the communication has been decided as admissible.

When a communication is considered admissible, the Committee examines whether there are any violation of rights set forth in ICERD. If the information provided to the Committee is not sufficient to get a complete picture of the situation, the Committee may ask the petitioner to give clarification or request more information within an appropriate time limit. During the consideration of a communication on its merits, CERD may ask the State concerned to take interim measures to avoid possible irreparable damage to the person(s) who claim to be victim(s) of the alleged violation. According to its rules of procedure CERD may also invite the petitioner or their representatives and the representatives of the State concerned to be present at the examination of the Communication in order to provide additional information. However, so far the Committee has never used oral hearings. Finally the Committee will formulate its opinion (with suggestions and recommendations) and send it to the petitioner and to the State party concerned.⁹⁵

It is as equally important that civil society actors follow up on CERD's suggestions and recommendation after this process as they do after the consideration of a State reports. This can be done in various ways e.g. monitoring government efforts in their implementation, and communicating with CERD's Rapporteur on Follow-up through its secretariat.

The opinion, suggestion or recommendation of the Committee should not, however, be confused with the jurisdiction of a court. A judgment of a court is legally binding, while suggestions and recommendations do not carry the same legal weight. Nevertheless, these suggestions and recommendations are generally considered as authoritative pronouncements of a competent quasi-judicial body and should be respected and complied with by the State party concerned.

⁹⁵ For more detailed working method / procedure of the Committee under this procedure, please refer to PART II 2.3 of this guide.

3. Early Warning measures and Urgent Procedures

Civil society actors can submit information on situations to which attention of CERD should be drawn under its early warning and urgent action procedure. Consistent with submissions given to the Committee during the course of the State reporting cycle, and as individual communications, information should be fact based, non-adversarial and as concise and precise as possible. There is no fixed or model format for information submission under this procedure, however, the revised guidelines of 2007⁹⁶ can be used as a reference. There are indicators that have been set out by the Committee according to which CERD collects information and considers the situation. These indicators can also be used by civil society actors when collecting and presenting information on a particular situation which requires the attention of CERD and its urgent action. The indicators are outlined in this guidebook, PART II, 2.3 a) in page 20 and 21. In providing information, civil society actors may also suggest what kind of actions should be taken by the State concerned.

4. Thematic Discussions

CERD regularly holds thematic discussions⁹⁷ on issues related to racial discrimination and ICERD. Civil society actors can submit written information on the subject of each discussion. In addition, civil society actors are allowed to orally express their views on the subject during the discussion. Usually the time allocated for each civil society actor for an oral intervention is 5 minutes. Those who wish to make such oral intervention should inform the CERD secretariat and provide one electronic version and 20 hard copies of their intervention.

⁹⁶ Official Records of the General Assembly, Sixty-second Session, Supplement No. 18 (A/62/18), annex III, the version in English, French and Spanish can be found at: <http://www2.ohchr.org/english/bodies/cerd/early-warning.htm>

⁹⁷ Please also refer to PART II 2.5 of this guide.

Annex I: Status of the Convention⁹⁸ (As of 5 July 2011)

1. Number of Signatories and States Parties

Signatories: 85, States parties: 174

2. States Parties and Signatories⁹⁹

Afghanistan	Congo	Honduras	Mongolia	Sierra Leone	United
Albania	Costa Rica	Hungary	Montenegro	Slovakia	Kingdom
Algeria	Côte d'Ivoire	Iceland	Morocco	Slovenia	United Republic
Andorra	Croatia	India	Mozambique	Solomon	of Tanzania
Antigua and Barbuda	Cuba	Indonesia	Namibia	Islands	United States of
Argentina	Cyprus	Iran (Islamic Republic of)	Nauru (s)	Somalia	America
Armenia	Czech Republic	Iraq	Nepal	South Africa	Uruguay
Australia	Democratic Republic of	Ireland	Netherlands	Spain	Uzbekistan
Austria	the Congo	Israel	New Zealand	Sri Lanka	Venezuela
Azerbaijan	Denmark	Italy	Nicaragua	St. Kitts and Nevis	(Bolivarian Republic of)
Bahamas	Djibouti (s)	Jamaica	Niger	St. Lucia	Viet Nam
Bahrain	Dominican Republic	Japan	Nigeria	St. Vincent and the Grenadines	Yemen
Bangladesh	Ecuador	Jordan	Norway	Sudan	Zambia
Barbados	Egypt	Kazakhstan	Oman	Suriname	Zimbabwe
Belarus	El Salvador	Kenya	Pakistan	Swaziland	
Belgium	Equatorial Guinea	Kuwait	Panama	Sweden	
Belize	Guinea	Kyrgyzstan	Papua New Guinea	Switzerland	
Benin	Eritrea	Lao People's Democratic Republic	Paraguay	Syrian Arab Republic	
Bhutan (s)	Estonia	Latvia	Peru	Tajikistan	
Bolivia	Ethiopia	Lebanon	Philippines	Thailand	
Bosnia and Herzegovina	Fiji	Lesotho	Poland	The former Yugoslav Republic of	
Botswana	Finland	Liberia	Portugal	Macedonia	
Brazil	France	Libyan Arab Jamahiriya	Qatar	Timor-Leste	
Bulgaria	Gabon	Liechtenstein	Republic of Korea	Togo	
Burkina Faso	Gambia	Lithuania	Republic of Moldova	Tonga	
Burundi	Georgia	Luxembourg	Romania	Trinidad and Tobago	
Cambodia	Germany	Madagascar	Russian Federation	Tunisia	
Cameroon	Ghana	Malawi	Sao Tome and Principe (s)	Turkey	
Canada	Grenada (s)	Maldives	San Marino	Turkmenistan	
Cape Verde	Guatemala	Mali	Saudi Arabia	Uganda	
Central African Republic	Guinea	Malta	Senegal	Ukraine	
Chad	Guinea-Bissau	Mauritania	Serbia	United Arab Emirates	
Chile	Guyana	Mauritius	Seychelles		
China	Haiti	Mexico			
Colombia	Holy See	Monaco			
Comoros					

⁹⁸ United Nations Treaty Collection: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en,

⁹⁹ States which have signed but not yet acceded to the Convention are indicated with (s)

3. States Parties' Reservations (or Declarations) to the ICERD

Article 2 (1) (d) of the Vienna Convention on the Law of Treaties (1969) defines the term of reservation as a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State. The texts of all the reservations (and declarations) made by States parties to ICERD can be found at:

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en.

Article 1	UK 1(1)
Article 2	FIJI; MONACO 2(1); SWITZERLAND 2(1)(a); UK; USA 2(1), 2(1)(c), 2(1)(d)
Article 3	FIJI; UK; USA
Article 4	ANTIGUA AND BARBUDA 4(a), 4(b), 4(c); AUSTRALIA 4(a); AUSTRIA 4(a), 4(b), 4(c); BAHAMAS 4(a), 4(b), 4(c); BARBADOS 4(a), 4(b), 4(c); BELGIUM 4(a), 4(b), 4(c); FIJI 4(a), 4(b), 4(c); FRANCE; IRELAND 4(a), 4(b), 4(c); ITALY; JAPAN 4(a), 4(b); MALTA 4(a), 4(b), 4(c); MONACO; NEPAL 4(a), 4(b), 4(c); PAPUA NEW GUINEA 4(a), 4(b), 4(c); SWITZERLAND; THAILAND 4(a), 4(b), 4(c); TONGA 4(a), 4(b), 4(c); UK 4(a), 4(b), 4(c); USA
Article 5	FIJI 5(c), 5(d)(v), 5(e)(v); TONGA 5(d)(v); UK 5(c), 5(d)(v), 5(e)(v); USA
Article 6	FIJI; FRANCE; ITALY; MALTA; NEPAL; TONGA; UK
Article 7	USA
Article 15	FIJI; FRANCE; TONGA; UK
Article 17	AFGHANISTAN; BELARUS 17(1); BULGARIA 17(1); HUNGARY 17(1); MONGOLIA 17(1); POLAND 17(1); ROMANIA; RUSSIAN FEDERATION 17(1); UKRAINE 17(1); VIET NAM 17(1); YEMEN 17(1)
Article 18	AFGHANISTAN; BULGARIA 18(1); HUNGARY 18(1); POLAND 18(1); ROMANIA; VIET NAM 18(1); YEMEN 18(1)
Article 20	FIJI; TONGA; UK
Article 22	AFGHANISTAN; BAHRAIN; CHINA; CUBA; EGYPT; EQUATORIAL GUINEA; INDIA; INDONESIA; IRAQ; ISRAEL; KUWAIT; LEBANON; LIBYAN ARAB JAMAHIRIYA; MADAGASCAR; MOROCCO; MOZAMBIQUE; NEPAL; SAUDI ARABIA; SYRIAN ARAB REPUBLIC; THAILAND; TURKEY; USA; VIET NAM; YEMEN

4. States Parties that have made a Declaration recognising the competence of the CERD under Art. 14 of the ICERD

(The first ten declarations recognizing the competence of the Committee on the Elimination of Racial Discrimination took effect on 3 December 1982, date of the deposit of the tenth declaration, according to Article 14, paragraph 1 of the Convention.)

Algeria (12 Sep 1989)	France (16 Aug 1982)	Norway (23 Jan 1976)	The former Yugoslav Republic of Macedonia (22 Dec 1999)
Andorra (22 Sep 2006)	Georgia (30 June 2005)	Peru (27 Nov 1984)	
Argentina (05 Feb 2007)	Germany (30 Aug 2001)	Poland (01 Dec 1998)	Ukraine (28 July 1992)
Australia (28 Jan 1993)	Hungary (13 Sep 1989)	Portugal (02 March 2000)	Uruguay (11 Sep 1972)
Austria (20 Feb 2002)	Iceland (10 Aug 1981)	Republic of Korea (05 March 1997)	Venezuela (Bolivarian Republic of) (22 Sep 2003)
Azerbaijan (27 Sep 2001)	Ireland	Romania (21 March 2003)	
Belgium (10 Oct 2000)	Italy (05 May 1978)	Russian Federation (01 Oct 1991)	
Bolivia (14 Feb 2006)	Kazakhstan (29 May 2008)	San Marino (22 Feb 2008)	(Total 54 States)
Brazil (17 Jan 2002)	Liechtenstein (18 March 2004)	Senegal (03 Dec 1982)	
Bulgaria (12 May 1993)	Luxembourg (22 July 1996)	Serbia	
Chile (18 May 1994)	Malta (16 Dec 1998)	Slovakia (17 March 1995)	
Costa Rica (08 Jan 1974)	Mexico (15 March 2002)	Slovenia (10 Nov 2001)	
Cyprus (30 Dec 1993)	Monaco (06 Nov 2001)	South Africa	
Czech Republic (11 Oct 2000)	Montenegro (confirmed upon succession)	Spain (13 Jan 1998)	
Denmark (11 Oct 1985)	Morocco (19 Oct 2006)	Sweden	
Ecuador (18 March 1977)	Netherlands	Switzerland (19 June 2003)	
Estonia (21 July 2010)			
Finland (16 Nov 1994)			

5. States Parties that have NOT made Declaration recognising the competence of the CERD to consider individual communication

Afghanistan	Egypt	Liberia	Sri Lanka
Albania	El Salvador	Libyan Arab Jamahiriya	St. Kitts and Nevis
Antigua and Barbuda	Equatorial Guinea	Lithuania	St. Lucia
Armenia	Eritrea	Madagascar	St. Vincent and the Grenadines
Bahamas	Ethiopia	Malawi	Sudan
Bahrain	Fiji	Maldives	Suriname
Bangladesh	Gabon	Mali	Swaziland
Barbados	Gambia	Mauritania	Syrian Arab Republic
Belarus	Ghana	Mauritius	Tajikistan
Belize	Greece	Mongolia	Thailand
Benin	Guatemala	Mozambique	Timor-Leste
Bosnia and Herzegovina	Guinea	Namibia	Togo
Botswana	Guinea-Bissau	Nepal	Tonga
Burkina Faso	Guyana	New Zealand	Trinidad and Tobago
Burundi	Haiti	Nicaragua	Tunisia
Cambodia	Holy See	Niger	Turkey
Cameroon	Honduras	Nigeria	Turkmenistan
Canada	India	Oman	Uganda
Cape Verde	Indonesia	Pakistan	UAE
Central African Republic	Iran	Panama	UK
Chad	Israel	Papua New Guinea	Tanzania
China	Jamaica	Paraguay	USA
Colombia	Japan	Philippines	Uzbekistan
Comoros	Jordan	Qatar	Viet Nam
Congo	Kenya	Republic of Moldova	Yemen
Côte d'Ivoire	Kuwait	Rwanda	Zambia
Croatia	Kyrgyzstan	Saudi Arabia	Zimbabwe
Cuba	Lao PDR	Seychelles	
Democratic Republic of Congo	Latvia	Sierra Leone	
Dominican Republic	Lebanon	Solomon Islands	
	Lesotho	Somalia	
			<i>(Total 120 States)</i>

Annex II: Individual complaints considered by CERD under Article 14 of ICERD (As of 14 March 2011)

(Source: Office of the United Nations High Commissioner for Human Rights: Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, Statistical survey of individual complaints considered, <http://www2.ohchr.org/english/bodies/cerd/procedure.htm>, edited by the author)

States*	Living Cases	Concluded Cases				Total
		Inadm.	Discont.	Views**		
				Yes	No	
Australia	1	3	0	0	4	8
Denmark	2	8	0	4	6	20
France	0	1	0	0	1	2
Germany	0	1	0	0	0	1
Netherlands	0	0	0	2	1	3
Norway	0	1	0	1	1	3
Russian Federation	1	0	0	0	0	1
Serbia	0	0	0	1	0	1
Slovakia	0	0	0	2	1	3
Sweden	0	3	0	0	0	3
Total	4	17	0	10	14	45
		41				

*Only those states on which consideration of individual complaints are recorded are listed.

** Whether cases disclose violations or not

Annex III: Model Complaint Form for an Individual Communications under ICERD

(Ref. Model questionnaires for communications or complaints at:
<http://www2.ohchr.org/english/bodies/docs/annex1.pdf>)

Contact Information:

Mail: Petitions Team
 Office of the High Commissioner for Human Rights
 United Nations Office at Geneva
 1211 Geneva 10, Switzerland
Fax: +41 22 917 9022
 (particularly for urgent matters)
Email: tb-petitions@ohchr.org

The blanks under the various sections of this model communication simply indicate where your responses are required. You should take as much space as you need to set out your responses

Invoking individual complaint procedure under International Convention on the Elimination of Racial Discrimination (ICERD),

Communication to: Committee on the Elimination of Racial Discrimination (CERD)

DATE:

I. Information on the complainant:

Name: First name(s):
 Nationality: Date and place of birth:
 Address for correspondence on this complaint:

Submitting the communication:
 on the author's own behalf:
 on behalf of another person:

[If the complaint is being submitted on behalf of another person:]

Please provide the following personal details of that other person

Name: First name(s):
 Nationality: Date and place of birth:
 Address or current whereabouts:

If you are acting with the knowledge and consent of that person, please provide that person's authorization for you to bring this complaint

Or

If you are not so authorized, please explain the nature of your relationship with that person:
 and detail why you consider it appropriate to bring this complaint on his or her behalf:

II. State concerned/Articles violated

Name of the State that has made the relevant declaration:

Articles of the Covenant or Convention alleged to have been violated:

III. Exhaustion of domestic remedies/Application to other international procedures

Steps taken by or on behalf of the alleged victims to obtain redress within the State concerned for the alleged violation – detail which procedures have been pursued, including recourse to the courts and other public authorities, which claims you have made, at which times, and with which outcomes:

.....

If you have not exhausted these remedies on the basis that their application would be unduly prolonged, that they would not be effective, that they are not available to you, or for any other reason, please explain your reasons in detail:

Have you submitted the same matter for examination under another procedure of international investigation or settlement (e.g. the Inter-American Commission on Human Rights, the European Court of Human Rights, or the African Commission on Human and Peoples' Rights)?

If so, detail which procedure(s) have been, or are being, pursued, which claims you have made, at which times, and with which outcomes:

IV. Facts of the complaint

Detail, in chronological order, the facts and circumstances of the alleged violations. Include all matters which may be relevant to the assessment and consideration of your particular case. Please explain how you consider that the facts and circumstances described violate your rights.

.....

.....

.....

Author's signature:

[The blanks under the various sections of this model communication simply indicate where your responses are required. You should take as much space as you need to set out your responses.]

V. Checklist of supporting documentation (copies, not originals, to be enclosed with your complaint):

- Written authorization to act (if you are bringing the complaint on behalf of another person and are not otherwise justifying the absence of specific authorization):
- Decisions of domestic courts and authorities on your claim (a copy of the relevant national legislation is also helpful):
- Complaints to and decisions by any other procedure of international investigation or settlement:
- Any documentation or other corroborating evidence you possess that substantiates your description in Part IV of the facts of your claim and/or your argument that the facts described amount to a violation of your rights:

If you do not enclose this information and it needs to be sought specifically from you, or if accompanying documentation is not provided in the working languages of the Secretariat, the consideration of your complaint may be delayed.

Annex IV: List of General Recommendations issued by CERD (As of 5 July 2011)

(Source: Office of the United Nations High Commissioner for Human Rights: Committee on the Elimination of Racial Discrimination – General Comments. At: <http://www2.ohchr.org/english/bodies/cerd/comments.htm>¹⁰⁰)

NUMBER	SUBJECT	SESSION (YEAR)
1	States parties' obligations (Art. 4)	5 th Session (1972)
2	States parties obligations (Art. 9)	5 th Session (1972)
3	Apartheid (Art. 3)	6 th Session (1972)
4	Demographic composition of the population (Art. 9)	8 th Session (1973)
5	Reporting by States parties (Art. 7)	15 th Session (1977)
6	Overdue reports (Art. 9)	25 th Session (1982)
7	Legislation to eradicate racial discrimination (Art. 4)	32 nd Session (1985)
8	Identification with a particular racial or ethnic group (Art. 1, par.1 & 4)	38 th Session (1990)
9	Independence of experts (Art. 8, par.1)	38 th Session (1990)
10	Technical assistance	39 th Session (1991)
11	Non-citizens (Art. 1)	42 nd Session (1993)
12	Successor states	42 nd Session (1993)
13	Training of law enforcement officials in the protection of human rights	42 nd Session (1993)
14	Definition of discrimination (Art. 1, par.1)	42 nd Session (1993)
15	Organized violence based on ethnic origin (Art. 4)	42 nd Session (1993)
16	References to situations existing in other States (Art. 9)	42 nd Session (1993)
17	Establishment of national institutions to facilitate implementation of the Convention	42 nd Session (1993)
18	Establishment of an international tribunal to prosecute crimes against humanity	44 th Session (1994)
19	Racial segregation and apartheid (Art. 3)	47 th Session (1995)
20	Non-discriminatory implementation of rights and freedoms (Art. 5)	48 th Session (1996)
21	Right to self-determination	48 th Session (1996)
22	Art. 5 and refugees and displaced persons	49 th Session (1996)
23	Indigenous Peoples	51 st Session (1997)
24	Reporting of persons belonging to different races, national/ethnic groups, or indigenous peoples (Art. 1)	55 th Session (1999)
25	Gender related dimensions of racial discrimination	56 th Session (2000)
26	Art. 6 of the Convention	56 th Session (2000)
27	Discrimination against Roma	57 th Session (2000)
28	The follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance	60 th Session (2002)
29	Art. 1, par.1 of the Convention (Descent)	61 st Session (2002)
30	Discrimination against Non Citizens	(2004)
31	Prevention of racial discrimination in the administration and functioning of the criminal justice system	(2005)
32	Meaning and scope of special measures in the ICERD	75 th Session (2009)
33	Follow-up to the Durban Review Conference	75 th Session (2009)

¹⁰⁰ Text of each recommendation can be found here too.

Useful addresses and sources

Information on ICERD

Text of the Convention: <http://www2.ohchr.org/english/law/cerd.htm>

Text of the Convention in PDF: <http://www2.ohchr.org/english/law/pdf/cerd.pdf>

States parties to ICERD including the reservations and declarations made by them:

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en

Information on CERD

Main page: <http://www2.ohchr.org/english/bodies/cerd/index.htm>

Sessions: <http://www2.ohchr.org/english/bodies/cerd/sessions.htm>

General Recommendations: <http://www2.ohchr.org/english/bodies/cerd/comments.htm>

Letters sent and decisions made by CERD through Early Warning and Urgent Action procedure:

<http://www2.ohchr.org/english/bodies/cerd/early-warning.htm#about>

CERD Secretariat contact: <http://www2.ohchr.org/english/bodies/cerd/contact.htm>

Model complaint form for the individual communication:

<http://www2.ohchr.org/english/bodies/docs/annex1.pdf>

UN petition team for submitting individual communications:

Postal Address:	Petitions Team Office of the High Commissioner for Human Rights United Nations Office at Geneva 1211 Geneva 10, Switzerland
Fax:	+41 22 917 9022 (particularly for urgent matters)
Email:	tb-petitions@ohchr.org

General Information on the UN Treaty Body System

OHCHR, “Human Rights Treaty Bodies”: <http://www2.ohchr.org/english/bodies/treaty/index.htm>

International Service for Human Rights, “Simple Guide to the UN Treaty Bodies”:

www.ishr.ch/guides-to-the-un-system/simple-guide-to-treaty-bodies

UN Documents

UN Official Documents System Search: <http://www.un.org/en/documents/ods/>

UN Treaty Body Documents: <http://tb.ohchr.org/default.aspx>

IMADR

ABOUT IMADR

IMADR is an international non-profit, non-governmental human rights organization devoted to eliminating discrimination and racism, forging international solidarity among discriminated minorities and advancing the international human rights system. Founded in 1988 by one of Japan's largest minorities, the Buraku people, IMADR has grown to be a network of concerned individuals and minority groups with regional committees and partners in different countries in Asia, Africa, Europe, North, Central and Latin America. IMADR's International Secretariat is based in Japan and maintains a UN liaison office in Geneva. IMADR is in consultative status with the United Nations Economic and Social Council (ECOSOC).

IMADR'S CORE VALUES

EMPOWERMENT: To promote the capacity of discriminated groups to raise their voices and represent themselves in activities to combat discrimination.

SOLIDARITY: To promote cooperation and solidarity among discriminated people in ways that rise above regional, national and gender differences.

ADVOCACY: To promote implementation of international human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination, through the voice and power of discriminated groups, and strengthen legal standards, institutions and organs for the elimination of discrimination and racism; to promote their effective use by the discriminated.

WHAT IMADR DOES

IMADR's primary focus is to combat racism, racial discrimination and multiple discrimination (in particular, discrimination based on both race and gender) and our activity are aimed at:

- Eliminating discrimination based on work and descent
- Eliminating exploitative migration & trafficking in women & children
- Upholding the rights of indigenous peoples
- Upholding the rights of minorities
- Eliminating racial discrimination in the administration of justice
- Strengthening international human rights protection mechanisms for the elimination of discrimination and racism, and promoting their effective use by the discriminated

IMADR's activities include developing grassroots movements around the world together with local partner organizations, and building links between

minority communities. Through local, regional and international events, IMADR also builds awareness that discrimination and racism are not just problems for minorities, but for society as a whole.

IMADR has been instrumental in raising awareness of international instruments and mechanisms to combat discrimination, and is one of the few NGOs that place special emphasis on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, the only legally binding global instrument that comprehensively addresses racial discrimination.

IMADR lobbies at UN meetings and major world conferences, linking grassroots minority groups with UN human rights bodies and mechanisms. Through its regional committees and local partners, IMADR also advocates for the rights of discriminated groups at the local level.

WHAT YOU CAN DO WITH US

In order to eliminate racism and racial discrimination, there are several things you can do with IMADR:

- Utilise and promote ICERD and CERD's work
- Disseminate and promote this Guide
- Translate this Guide into local languages
- Join our network

In order to know more about IMADR and help us:

- Subscribe to IMADR's monthly E-news E-Connect
- Purchase IMADR's publications (visit www.imadr.org for listing)
- Join IMADR and work with us
- Conduct internship
- Make donations

ICERD and CERD: A Guide for Civil Society Actors

Prepared by Daisuke SHIRANE (IMADR Geneva Office)

This Guide is prepared in order to provide practical information to civil society actors, e.g. NGOs, minority groups, indigenous peoples, and especially those who are facing various issues of racial discrimination in their society. It provides information on: ICERD, the Convention (PART I); the work of CERD (PART II); and how civil society actors can engage with them (PART III).

This book should serve as a practical tool for all those who want to learn about ICERD and CERD, and in particular those who seek to effectively utilise ICERD and engage with CERD in order to combat all forms of racial discrimination on the ground. It can also be used as a tool in human rights teaching and training.

It is our pleasure, if this publication could help you in your combat against racism and racial discrimination and we hope you find it useful. You can also download an electronic version of the Guide at our website: www.imadr.org. Any updated and related information on ICERD, CERD and our work can be found there too.

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US \$ 10.00

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION
CERD

94th session (20 November to 8 December 2017)
Ground Floor, Conference room, Palais Wilson, Geneva

INFORMATION NOTE
FOR NATIONAL HUMAN RIGHTS INSTITUTIONS (NHRIs)

States parties reports

The Committee will examine the reports of the following eight States parties during its 94th session: Algeria, Australia, Belarus, Jordan, Serbia and Slovakia.

CERD Committee Members

The CERD Committee consists of 18 members, serving in their personal capacity. For details about all CERD members, see: <http://www.ohchr.org/EN/HRBodies/CERD/Pages/Membership.aspx>

Participation of NHRIs

The Committee examines all periodic reports in public meetings which NHRIs representatives can attend. The Committee recognizes the important role that NHRIs play in combating racism and racial discrimination. In its General Recommendation 28, paragraph 2 (a), the Committee recommended that NHRIs assist their respective States to comply with their reporting obligations and closely monitor the follow-up to the concluding observations and recommendations of the Committee.

Furthermore, according to the Committee's rules of procedure (Rule 40, paragraph 2), NHRIs accredited to take part in the deliberations of the Human Rights Council may, with the consent of the concerned State party, address the Committee in plenary on issues related to the dialogue between the Committee and a State party, on the second day of the consideration of the report.

Documentation

The reports of the eight States parties to be considered at the 94th session, the provisional agenda (CERD/C/93/1) and other

documents pertaining to the session will be available soon at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1139&Lang=en

Venue

The 94th session of the Committee will take place in Geneva at the Office of the High Commissioner for Human Rights, Palais Wilson, Ground floor conference room.

NHRIs reports

The Committee welcomes written information submitted by NHRIs in relation to the implementation of the Convention by States parties whose reports are to be considered. NHRIs reports which follow the same form of presentation as the reports submitted by the States parties concerned are particularly welcome.

All submissions to CERD should:

1. Be submitted in English, French or Spanish. As most Committee members use English as their preferred working language, documents submitted in French and Spanish should, to the extent possible, be translated into English. Please note that the **UN Secretariat does not translate documents submitted by NHRIs**.
2. Be transmitted to the CERD Secretariat preferably before **30 October 2017** for the information to be more likely taken into account by the country rapporteur as well as the other Committee members.
3. Be transmitted to the CERD Secretariat electronically on CERD@ohchr.org before **30 October 2017** (hard copies not needed).

Accreditation

NHRIs representatives who wish to attend the CERD session are requested to register online on by clicking on [Accreditation for the 93rd session](#). In order to receive a ground pass, all applicants must bring the confirmation of registration (which will be sent to you by email upon successful registration online), a valid national passport or government issued ID bearing a photograph, and appear in person. Kindly ensure your registration well in advance. The registrations will remain open until **15 November 2017**.

Please note that OHCHR will not assist with travel or accommodation costs relating to the participation of NHRIs.

Informal meetings

NHRIs representatives who do not address the Committee in official meetings (in the absence of accreditation at the Human Rights Council) are welcome to attend the plenary sessions as observers. They may have *informal meetings* with the Committee members to present country-specific information on States parties whose reports are before the Committee.

NHRIs representatives are kindly requested to contact the CERD Secretariat (cerd@ohchr.org) preferably before **30 October 2017** to confirm their attendance.

CERD Concluding observations

Following the consideration of the States parties' reports during the 94th CERD session, the Committee will formulate concluding observations that will assist the States parties concerned in the implementation of the Convention. These concluding observations outline positive aspects, principal subjects or concerns and the Committee's recommendations on how to address challenges faced by the States parties. Once the concluding observations have been adopted, the documents will be posted on the CERD Webpage at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1139&Lang=en