Report of the Australian Human Rights Commission to the Office of the High Commissioner of Human Rights in preparation for the Durban Review Conference

The following is a response by the Australian Human Rights Commission (the Commission) to a questionnaire (see annexure 'A') issued by the Office of the High Commissioner of Human Rights as part of its preparation for the Durban Review Conference to be held from 20-24 April 2009. The Commission's response focuses on those issues that have been identified in its work as significant race related issues for Australia since the WCAR in 2001. It does not seek to provide an exhaustive account or assessment of all the developments that have taken place in the area of race relations in Australia since that time.

Section 1: Contemporary Manifestations of Racism in Australia

This section addresses Questions 1 and 2 of the Questionnaire.

The Australian Human Rights Commission has specific functions under the *Racial Discrimination Act 1975* (Cth) (RDA) aimed at promoting racial equality and combating racial discrimination. In carrying out this work the Commission considers that the most serious contemporary manifestations of racism in Australia fall within the following categories:

1. Discrimination against Indigenous peoples
2. Discrimination in a Racially Diverse Society
3. Discrimination against Refugees

Within each of these categories, consideration is given to the impact of racism on women, children, young people and religious groups where this is of particular concern.

1. Discrimination against Indigenous peoples

For Indigenous peoples in Australia, the following issues are significant barriers to their enjoying human rights to the same extent as non-Indigenous people.

(a) Northern Territory Emergency Response

The application of the RDA has been suspended in relation to the Northern Territory Emergency Response (NTER), an intervention strategy introduced

by the Australian Government in 2007 to protect Aboriginal children in the Northern Territory from sexual abuse and family violence.[1]

The *Social Justice Report 2007* assessed the NTER's compliance with Australia's human rights obligations and found that:

- the Government did have an obligation to promote and protect the right of Indigenous peoples to be free from family violence and child abuse
- the NTER legislation is inappropriately classified as a 'special measure' under the RDA because of the negative impacts of some of the measures on Indigenous people and the absence of adequate consultation with or consent by Indigenous peoples to the measures
- the NTER legislation contains a number of provisions that are racially discriminatory
- some provisions raised concerns for the compliance with human rights obligations (e.g. the lack of access to review of social security matters)[2]

The ease with which the RDA can be set aside highlights the weak status of protections against race discrimination in the Australian legal system. As indicated by the Committee on the Elimination of Racial Discrimination underlying this weakness is the absence of any constitutional protection against race discrimination and the absence of a federal Human Rights Act.[3]

The Northern Territory Emergency Response Review Board ('Review Board') reviewed the NTER and issued its report in October 2008. The three overarching recommendations made were:

- the continuing need to address the unacceptably high level of disadvantage and social dislocation being experienced by Aboriginal Australians living in remote communities throughout the Northern Territory;
- In addressing these needs both the Commonwealth and NT governments acknowledge the requirement to reset their relationship with Aboriginal people based on genuine consultation, engagement and partnership;

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[1] Minister for Families, Community Services and Indigenous Affairs, 'National emergency response to protect children in the NT', (Media Release, 21 June 2007). At: http://www.fahcsia.gov.au/internet/minister3.nsf/content/emergency_21june07.htm (viewed 18 October 2007). The catalyst for the measures was the release of Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, titled Ampe Akelyernemane Meke Mekarle: 'Little Children are Sacred'.

[2] Australian Human Rights Commission, *Social Justice Report 2007,* available at: http://www.humanrights.gov.au/social_justice/sj_report/sjreport07/index.html (viewed 22 September 2008).

[3] 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 Australia* (2005), CERD/C/AUS/CO/14 (2005).

- Government actions affecting Aboriginal communities respect Australia's human rights obligations and conform to the *Racial Discrimination Act 1975*.[4]

On 23 October 2008, the federal government issued an initial response to the Review Board's report,[5] outlining the government's intention to continue the current stabilisation phase of the NTER for the next twelve months before transitioning to a long-term, development phase. The government has indicated it will introduce legislation to lift the suspension of the RDA in the Spring 2009 sittings of the Parliament.

(b) Indigenous disadvantage

Aboriginal and Torres Strait Islander people continue to experience significant inequalities in the realisation of their rights. There is an estimated difference of 17 years between Indigenous and non-Indigenous life expectancy and a range of social and economic inequalities including lower incomes, higher rates of unemployment, poorer educational outcomes and lower rates of home ownership.[6] For example, in 2001 the unemployment rate for Indigenous peoples was 20% - three times higher than the rate for non-Indigenous Australians.

The UN Human Rights Committee has recognised that the high level of exclusion and poverty facing indigenous persons is indicative of the lack of adequate protection of indigenous peoples' cultural rights recognised in Article 27 of the ICCPR.[7]

The Commission notes that at the Indigenous Health Equality Summit in 2008, the Australian Government made accountable and measureable commitments to achieving equality in health status and life expectancy between Indigenous and non-Indigenous Australians by 2030. The Council of Australian Governments has similarly committed to closing the life expectancy gap within a generation, halving the mortality gap for children under five within a decade and halving the gap in reading, writing and numeracy within a decade.

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[4] Northern Territory Emergency Review Board, *Northern Territory Emergency Response: Report of the NTER Review Board*, Commonwealth of Australia (2008), p 12.
[5] Commonwealth Government, Statement: 'Australian Government Initial Response to the NTER Review' (23 October 2008).
[6] These issues are discussed in detail in the *Social Justice Report 2003*, available at: http://www.humanrights.gov.au/social_justice/statistics/index.html (viewed 9 September 2008); Australian Institute of Health and Welfare and Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2005*, available at: www.aihw.gov.au/publications/ihw/hwaatsip05/hwaatsip05.pdf (viewed 9 September 2008); Australian Institute of Health and Welfare, *Australia's Health No.11*, 2008, available at: http://www.aihw.gov.au/publications/aus/ah08/ah08-c03.pdf (viewed 9 September 2008).
[7] Human Rights Committee, *Concluding observations: Australia*, 24/07/2000UN Doc A/55/40, paras.498-528. At http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/e1015b8a76fec400c125694900433654?Opendocument.

(c) UN Declaration on the Rights of Indigenous Peoples

The *UN Declaration on the Rights of Indigenous Peoples* provides a clear guide for interpreting State parties' human rights obligations to Indigenous peoples. Although the Australian Government declined to sign the Declaration, the new Australian Government has since indicated that it will support the Declaration and has consulted with state and territory governments accordingly.

(d) Indigenous Representation and Participation in decision-making

The Commission's *Social Justice Reports* from 2004-2006 outline a reduction in Indigenous people's participation in decision-making bodies since the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC) and within the 'new arrangements' for the administration of Indigenous Affairs subsequently put in place by the Australian Government. The Commission particularly notes the absence of processes for systematic engagement with Indigenous people under the new arrangements.[8]

The new Australian Government has made a commitment to set up a new national representative body to provide an Aboriginal and Torres Strait Islander voice within government. To this end, the Australian Government has begun formal discussions with Indigenous people about the role, status and composition of this body.

(e) Indigenous people and the legal system

There continue to be high levels of incarceration of Indigenous people, particularly women and children, and the over-representation of Indigenous people in prisons and juvenile justice facilities. For example, Indigenous prisoners represented 24% of the total prisoner population at 30 June 2006, the highest proportion since 1996; and only 5% of Australians aged 10-17 years are Indigenous, but 40% of those aged 10-17 years under juvenile justice supervision were Indigenous.[9]

These issues have been dealt with extensively by the Social Justice Commissioner in the annual *Social Justice Reports*.[10] There is a pressing

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[8] These issues are noted in the Commonwealth of Australia, *Common Core Document* at pars 181-183. At http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_CommonCoreDocument (viewed 24 February 2009). See also Australian Human Rights Commission, *Building a National Indigenous Representative Body – Issues for Consideration*, available at: http://www.humanrights.gov.au/social_justice/repbody/index.html (viewed 23 September 2008).

[9] Australian Bureau of Statistics, *Prisoners in Australia 2006*. At: http://www.abs.gov.au/ausstats/abs@.nsf/ProductsbyReleaseDate/BA368B46230A4118CA2573AF0014B905?OpenDocument (viewed 23 September 2008). Australian Institute for Health and Welfare, *Juvenile Justice National Minimum Data Set 2005-06: Facts and figures*. At: http://www.aihw.gov.au/childyouth/juvenilejustice/jj_facts_and_figures.cfm (viewed 23 September 2008).

[10] See, for example, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2000*, Sydney; Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2001*, Sydney; Aboriginal and Torres Strait Islander

need for the continued implementation of the 339 recommendations contained in the Report of the Royal Commission into Aboriginal Deaths in Custody, including any outstanding recommendations.[11] A comprehensive response to the issues raised by this report requires government commitment in two key areas:

- ongoing community justice mechanisms which recognise Indigenous governance models and return control and decision-making processes to Aboriginal and Torres Strait Islander communities

- measures to address the impact of Indigenous marginalisation and socio-economic disadvantage on Indigenous peoples' contact with the criminal justice system[12]

(f) Indigenous family support and protection of children and young people

As exemplified by reports such as the *Little Children are Sacred Report* (NT) and the *Breaking the Silence Report* (NSW), child abuse, child sexual abuse and family violence are critical issues for Indigenous communities.[13] An Indigenous child is six times more likely to be involved with the statutory child protection system than a non-Indigenous child, but four times less likely to have access to child care or preschool service that can offer family support to reduce the risk of child abuse.[14]

The new federal government is currently developing a national framework for child protection that consolidates the different state and territory child protection systems, to ensure an integrated response across all government and non-Government organisations. As part of this framework, the government has looked to introduce income management schemes, where welfare incomes are quarantined or deducted subject to the enrolment and participation of children in schools.

The Commission has recommended against the introduction of such schemes and called for the government to adopt a human rights-based approach to the framework that would uphold the 'best interests of the child', 'non-discrimination', and the child's rights to life, educations and participation.

Social Justice Commissioner, *Social Justice Report 2002*, Sydney; and Aboriginal and Torres Strait Islander Commissioner, *Social Justice Report 2004*, Sydney.

[11] Commonwealth of Australia, *Common Core Document*, pars 285-288. At http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_CommonCoreDocument (viewed 24 February 2009).

[12] See the findings of the Cooperative Research Centre for Aboriginal Health regarding the links between preventing recidivism and improving the social, emotional and cultural wellbeing of Aboriginal people: Cooperative Centre for Aboriginal Health Research, *Research Priorities in Aboriginal Prisoner Health: Recommendations and Outcomes form the CRCAH Aboriginal Prisoner Health Industry Roundtable, November 2007*, Discussion Paper Series No. 6, August 2008.

[13] Commonwealth of Australia, *Common Core Document*, pars 365-368. At http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_CommonCoreDocument (viewed 24 February 2009). *ICCPR*, art 24.

[14] Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, p116.

The Commission's report on *Ending Family violence and Abuse in Aboriginal and Torres Strait Islander Communities* highlights the need for support for Indigenous community initiatives and networks, human rights education, government action, and robust accountability and monitoring.[15]

(g) Indigenous language, culture and arts

A recent *National Indigenous Languages Survey* shows that of the original estimated 300 Indigenous languages, only a third of these exist today and most are critically endangered.[16] Indigenous languages and cultures are closely intertwined. Safeguarding languages preserves Indigenous culture and identity. Currently, the promotion and protection of Indigenous languages and cultures is not sufficiently prioritised by the Australian Government. If languages are to survive, genuine commitment and policies are required for language maintenance and language revitalisation programs at all levels of Australia's educational institutions. This means making schools culturally familiar and appropriate for Indigenous children and embedding Indigenous perspectives across the curriculum.

(h) Stolen Generations

The *Bringing them Home* Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (1997) documents the experiences of the Stolen Generations, who were forcibly removed from their families under the guise of welfare.[17] This report recommended that reparation be made in recognition of the history of gross violations of human rights and that the *van Boven principles* guide the reparation measures, which should consist of: acknowledgment and apology; guarantees against repetition; measures of restitution; measures of rehabilitation; and monetary compensation.

The first of these steps for reparation was undertaken by the new Australian Government last year. The Prime Minister of Australia apologised to the Stolen Generations in February 2008.[18] The other recommendations for reparation remain largely outstanding, including the provision of monetary compensation.

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[15] 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.

[16] See Commonwealth of Australia, *Common Core Document*, pars 147-151, 594-597. At http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_CommonCoreDocument (viewed 24 February 2009). ICCPR, art 27.

[17] Australian Human Rights Commission, *Bringing them home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, 1997, Sydney. At: http://www.humanrights.gov.au/social_justice/bth_report/report/index.html (viewed 23 September 2008). See Commonwealth of Australia, *Common Core Document*, par 369. At http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_CommonCoreDocument (viewed 24 February 2009).

[18] House of Representatives, Official Hansard No.1 , Forty second Parliament, First Session, First Period (13 February 2008), p 167. At: http://www.aph.gov.au/hansard/reps/dailys/dr130208.pdf (viewed 10 June 2008).

(i) Native Title

The native title system is not operating in a way that gives protection to Indigenous peoples rights to land.[19] Only 111 determinations of native title have been made in 15 years, and another 504 determinations are waiting to be made. Litigated determinations take an average of seven years.[20] This is in part due to the technical and aggressive attitude sometimes taken by government parties in an adversarial setting. Another relevant factor is the inadequate funding by government for Indigenous peoples pursuing their rights.[21] Although some amendments to the system were made in 2007, these measures do not adequately improve the process. The Commission is concerned that while the system continues to progress so slowly, Indigenous peoples' rights are being denied and Indigenous elders are dying.

The *Native Title Act 1993* (Native Title Act) is the primary mechanism through which Aboriginal and Torres Strait Islander people access their rights to land.[22] The Act was intended to advance and protect Indigenous people by recognising their traditional rights and interests in the land.[23] However, the Native Title Act has been drafted and interpreted such that native title rights will only be recognised in very limited circumstances. For example:

- The courts require that Indigenous people claiming native title prove traditional laws and customs at sovereignty and their continued observance, generation by generation, until today. One of the cruel consequences is that the greater the Indigenous peoples were impacted on by colonisation (for example, if they were forcibly removed from their land), the more unlikely it is they will be able to access their native title rights.

- Indigenous peoples bear the burden of proof and strict rules of evidence apply. There is very limited flexibility for the court to take into account cultural differences in oral testimony and its significance in the hearing of native title cases.

- Only traditional laws and customs of Indigenous peoples that existed at the time of sovereignty and which are still observed and practiced today will be recognised. There is little room for adaptation of the traditions to today. Similarly, the rights recognised are severely limited in terms of

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[19] See Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2007*. At: http://www.humanrights.gov.au/social_justice/nt_report/index.html (viewed 23 September 2008).
[20] See Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2007*. At: http://www.humanrights.gov.au/social_justice/nt_report/index.html (viewed 23 September 2008).
[21] See Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2007*. At: http://www.humanrights.gov.au/social_justice/nt_report/index.html (viewed 23 September 2008).
[22] See Commonwealth of Australia, *Common Core Document*, pars 127-135. At http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_CommonCoreDocument (viewed 24 February 2009). ICCPR, arts 1, 2(1), 27.
[23] See the preamble to the *Native Title Act 1993* (Cth).

how the Indigenous peoples can utilise any resources associated with that land for economic or social benefit.

Native title is at the bottom of the hierarchy of proprietary rights in Australia. Through the Native Title Act, native title rights and interests are regularly permanently extinguished by overriding government and private interests.

(i) Discriminatory aspects of the Native Title Act

In 1999, acting under its early warning procedures, the Committee on the Elimination of Racial Discrimination considered amendments to the *Native Title Act 1998* (Cth) and expressed concern over their compatibility with Australia's international obligations under the *Convention on the Elimination of All Forms of Racial Discrimination.* The Committee noted several provisions that discriminate against Indigenous title holders under the newly amended Act.[24] These issues have remained unaddressed and the Committee has repeated its concerns in the 2000 and 2005 Concluding Observations.[25]

The Human Rights Committee has recognised that the protection of indigenous peoples' cultural rights under Article 27 of ICCPR includes their rights to land and the use of natural resources.[26] The Human Rights Committee raised concerns that the native title system does not comply with article 27 and the need for Indigenous people to have a stronger role in decision-making over their traditional lands and natural resources, as required by Article 1(2).[27]

(ii) Indigenous Land Use Agreements

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[24] These provisions included: validation provisions; the confirmation of extinguishment provisions; the primary production upgrade provisions; and restrictions concerning the right of indigenous title holders to negotiate non-indigenous land uses: Committee on the Elimination of Racial Discrimination, *Decision 2 (54) on Australia* (18/03/1999), UN Doc A/54/18, par 21(2). At: http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/a2ba4bb337ca00498025686a005553d3?Opendocument (viewed 23 September 2008).

[25] Committee on the Elimination of Racial Discrimination, *Concluding Observations: Australia* (2005), UN Doc CERD/C/AUS/CO/14, par 16. At: http://www.bayefsky.com/docs.php/area/conclobs/treaty/cerd/opt/0/state/9/node/3/filename/australia_t4_cerd_66 (viewed 23 September 2008). The Human Rights Committee and the Committee on Economic Social and Cultural rights also noted their concerns on these issues in 2000 (Committee on Economic social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia* (01/09/2000), UN Doc E/C.12/1/Add.50. At: http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/693c56f3d2694130c12569580039a1a2?Opendocument (viewed 23 September 2008); Human Rights Committee, *Concluding observations of the Human Rights Committee: Australia* (24/07/2000), UN Doc A/55/40, pars 498-528. At: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/e1015b8a76fec400c125694900433654?Opendocument (viewed 23 September 2008))

[26] See Human Rights Committee General Comment 23 – Rights of Minorities (Article 27)

[27] Human Rights Committee, *Concluding observations: Australia*, 24/07/2000UN Doc A/55/40, paras.498-528. At: http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/e1015b8a76fec400c125694900433654?Opendocument.

Indigenous Land Use Agreements have been taken up rapidly and the government is focused on pursuing these agreements.[28] The Commission considers that these Agreements should be subject to closer scrutiny to ensure that they are delivering tangible benefits. The Commission also considers that the government should do more to support and build the capacity of Indigenous people to undertake negotiations.

(iii) Indigenous participation in environmental management

Indigenous participation in the management of environment, cultural heritage and climate change Indigenous Australians have had very limited influence in decision-making affecting their natural environment and their means of subsistence. For example, while the Australian Government has been developing a policy for climate change, and while they developed laws and policies for water use and access, there has been minimal consultation or discussion with Indigenous peoples.

2. Discrimination in a Racially Diverse Society

In carrying out his statutory functions under the RDA the Race Discrimination Commissioner has noted that racism, in its contemporary manifestation, has taken on a multiplicity of forms to marginalise and exclude others. Increasingly, the older form of racism based on biological difference (e.g. skin colour) is replaced by allegations of social and cultural incompatibility as the basis for exclusion. Islamaphobia, for instance, usually takes this latter form.

In addition, with the rapid increase in the movement of people, commodities and ideas at the global level and the consequent increase in cultural, ethnic and religious diversity, ethnic minority groups are targeted as an obstacle to social cohesion and stability. The debate on multiculturalism in Australia from 2005 (following the London attacks), to 2007 was driven by such anxieties and racism.

In order to fight racism in its contemporary forms, as well as promote equality and harmonious community relationships, the Commission advocates the development of legislation, policies and programs that provide a strong and sustainable social framework that respects and promotes cultural diversity. The following report looks at key developments in the relevant period in order to ascertain whether such a framework has been maintained in Australia since the WCAR in 2001.

(a) Discrimination against Muslim and Arab Australians

In 2003-2004, the Commission conducted a series of national consultations with Arab and Muslim Australians, culminating in the publication of the Isma؏ report in 2005. The report highlighted an increase in the incidence of racial violence and discrimination directed towards Arab and Muslim Australians

[28] See Commonwealth of Australia, Common Core Document, pars 133-134. At http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_CommonCoreDocument (viewed 24 February 2009).

The report makes 11 recommendations directed to a range of stakeholders including government and civil society, police, the media and government agencies. While many of these recommendations have not been implemented, the Commission has received funding from government to carry out a number of projects to address discrimination against Muslim Australians. The majority of these are part of the Commission's Community Partnerships for Human Rights Program which has been funded to June 2010, under the joint Australian Government and COAG National Action Plan (NAP) and include projects in the areas of community education, policing, justice, art/culture, multi-media and interfaith.

The following issues raised in the Ismaع report continue to be of particular concern for Arab and Muslim communities in Australia:

- Counter Terrorism Legislation; Arab and Muslim Australians are concerned that counter terrorism legislation is being implemented in a way that has a disproportionate impact on their communities compared to other Australian communities. One mechanism for monitoring the operation of counter-terrorism legislation in order to ensure it is not applied in a discriminatory manner is the appointment of an independent reviewer with powers to consider whether such laws comply with Australia's international human rights obligations. Indeed the Independent Security Legislation Review Committee (the Sheller Committee) and Senate Standing Committee on Legal and Constitutional Affairs both recommended that an Independent Reviewer be appointed. This recommendation has not been implemented by the government.

- Use of Ethnic Descriptors by Police; In consultations with Arab and Muslim Australians the community made it clear that it had been unjustly stigmatised by the association between crime and their culture and way of life. Ethnic descriptors, and in particular the descriptor 'middle eastern appearance' used by NSW police in describing perpetrators of crime, is seen by the community as contributing to this stigmatisation. The Australian New Zealand Policing Advisory Agency is currently conducting a review of the use of ethnic descriptors by police.

(b) Discrimination against African Australians

A number of Reports have highlighted the hardships and that are experienced by people from African origins as a result of racial discrimination and prejudice.[29] These barriers include:

- Discrimination in employment including non-recognition of qualifications
- English language barriers
- Racism in the media
- Racism and discrimination in sport and recreational activities
- Discrimination in the accommodation rental market
- Targeting of young people by police
- Racial vilification and bullying in schools

The Commission has embarked on a project entitled, *African Australians: A Report on the Human Rights and Social Inclusion Issues,* to identify the barriers experienced by people from African backgrounds settling in Australia and strategies for addressing these issues.

(c) Discrimination in employment

A high proportion of the complaints of racial discrimination received by the Commission are in the area of employment. In 2007–08, the Australian Human Rights Commission received 669 complaints under the Racial Discrimination Act. 50% of these were in the area of employment. Of the 383 race based complaints received in 2006-07, 42% were in the area of employment.

A number of reports[30] have identified the following areas of concern for ethnic communities in relation to employment as: discrimination in recruitment; underemployment and lack of recognition of qualifications; multiple discrimination against women from ethnic communities seeking employment; discrimination and disadvantage in accessing and utilising job search agencies; over-representation of migrants in low skilled, low paid employment; under-representation of migrants in the public sector; bias against migrants in promotional opportunities; intimidation in the workplace; religious discrimination; additional discrimination related to gender; discrimination in small and medium enterprises; and the difficulty of proving that discrimination has occurred under the current legislative frameworks.

The Ismaɛ report identified the specific issues experienced by Muslim Australians in securing employment as: non-recognition of overseas qualifications or experience; lack of local experience; employer aversion to people with Arabic or Islamic names; fear of clients' reactions, especially to

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[29] Berman G, *Harnessing Diversity: addressing racial and religious discrimination in employment*, a collaborative partnership between the Victorian Multicultural Commission and the Victorian Equal Opportunity & Human Rights Commission (2008). Community Relations Commission NSW, *Investigation into African humanitarian settlement in NSW*, (2006).

[30] Human Rights and Equal Opportunity Commission, *Ismaɛ Report, (*2005), Berman G, *Harnessing Diversity: addressing racial and religious discrimination in employment*, (2008).

(d) Barriers to Citizenship

On 1 October 2007, changes were made to the *Australian Citizenship Act 2007* (Cth), to introduce a citizenship test for applicants applying to become Australian citizens. The test requires that applicants have:

- an understanding of the nature of their application,
- a basic knowledge of the English language, and
- an adequate knowledge of Australia and the responsibilities and privileges of Australian citizenship.

The available evidence on the operation of the test between October 2007 to April 2008, set out in the government's paper *Australian Citizenship Test: Snapshot Report*, *April 2008,* shows that applicants under the Humanitarian Program (refugee program) have failed the test at a significantly higher rate than other applicants[31] and that applicants from non-English speaking countries, like Afghanistan and Iraq, are not able to gain Australian citizenship as readily as other applicants who are born in English speaking countries.[32] The Commission has made a number of submissions to the government outlining the discriminatory impact of the test on these communities.

While the government has not repealed the test it has recently introduced significant changes that should reduce its discriminatory impact. In particular it has clarified that the level of English required to pass the test is that 'sufficient to be able to exist independently'. It has also linked the requirement that applicants have an adequate knowledge of Australia to the concepts and information people need to know in order to make the Pledge of Commitment.

3. Discrimination against Refugees

Australia's policies in relation to refugees have been a consistent focus of the Commission's work. Developments in these policies since the WCAR are summarised below.

(a) Asylum Seekers and immigration detention

Since 1992, Australia's *Migration Act 1958* (Cth) has made it mandatory for any person in Australia without a valid visa to be detained. These persons, called 'unlawful non-citizens' under the Migration Act, may only be released if they are granted a visa or removed from Australia. This can take weeks, months or even years.

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[31] *Australian Citizenship Test: Snapshot Report*, April 2008, p 5.
[32] *Australian Citizenship Test: Snapshot Report*, April 2008, p 10.

Prior to 2005, hundreds of children and their family members were detained in immigration detention centres with 1,923 children in detention in 1999-2000.

In 2004, the Commission released the report of its National Inquiry into Children in Immigration Detention entitled *A Last Resort*. The report found that the detention of children placed the Australian government in breach of its international human rights obligations, particularly under the *Convention on the Rights of the Child*.

In 2005 the Migration Act was amended to affirm 'as a principle' that a minor should only be detained as a measure of last resort. Since that change, children are no longer held in immigration detention centres. Many children are either given a bridging visa or are placed in community detention.

However, Australian law still requires that children who are 'unlawful non-citizens' are detained and this results in children being held in immigration residential housing, immigration transit accommodation and alternative places of immigration detention. The Commission continues to have significant concerns about this practice.

In July 2008, the Minister for Immigration announced new directions for Australia's immigration detention system based on seven key immigration values. Of these values, the Commission welcomed the following:

- 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, will be subject to regular review.
- Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.
- Children and, where possible, their families, will not be detained in an immigration detention centre.
- People in detention will be treated fairly and reasonably within the law.
- Conditions of detention will ensure the inherent dignity of the human person.

The Commission hopes to see these values translated into legislation, policy, and procedures as soon as possible.

(b) Offshore Processing

In September 2001 the Australian Government introduced laws which meant that unauthorised boat arrivals in Australia's excised offshore places (which as a result of amendments to the *Migration Act* included Christmas Island, Ashmore Island, Cartier Islands and the Cocos Islands) were either detained on Christmas Island or in offshore processing centres on Nauru or Manus Island (in Papua New Guinea).

In January 2008 the Australian Government ended the policy of sending asylum seekers to Nauru and Manus Island, a development the Commission

welcomed. However, the Minister for Immigration has stated that the asylum claims of people who arrive unauthorised in excised places will be processed on Christmas Island.

The Commission has recommended that the Australian Government should repeal the provisions of the Migration Act relating to excised offshore places. All unauthorised arrivals who make claims for asylum should have those claims assessed through the refugee status determination process on the Australian mainland.

(c) Bridging Visas

A bridging visa is a temporary visa granted to asylum seekers who are seeking refugee status in Australia or to people who are in the process of applying for a longer-term visa or making arrangements to leave Australia. The bridging visa enables people to reside legally in the community while they are applying for a permanent visa, appealing a decision related to their application, or waiting to depart Australia.

Bridging visas come with various conditions and restrictions, depending on the class of the visa and the circumstances of the visa holder. These conditions and restrictions may relate to access to social security benefits.

The Commission is concerned that these conditions and restrictions if applied may result in many asylum seekers and refugees facing poverty and homelessness. Without the ability to support themselves through work or social security, visa holders are entirely dependent on community services for their basic subsistence. This is an exercise in cost shifting from the Commonwealth Government to the under resourced community sector. The lack of access to adequate healthcare is also concerning since many asylum-seekers have elevated medical and mental health needs due to experiences prior to arriving in Australia, such as conflict and trauma.

(d) Temporary Protection Visas

Temporary Protection Visas (TPVs) were introduced in August 2004. Under the policy, all unauthorised arrivals who applied for asylum and who were found to be refugees were granted three year TPV's only. In contrast, asylum seekers who applied for protection while on a valid visa in Australia were granted Permanent Protection Visas (PPV's). In addition to their temporary nature, TPV's restricted the rights of TPV holders to family reunion and their right of return if they left Australia.

On 9 August 2008 Temporary Protection Visas (TPVs) were officially abolished. All initial applicants for a protection visa who are found to be a refugee now receive a Permanent Protection Visa.

(e) Complementary protection

In Australia, people who are found not to meet the Refugee Convention definition of refugee, but who nevertheless face significant human rights abuses if returned to their country of origin must apply to the Minister for Immigration to request that he exercise his personal discretion to issue a visa under section 417 of the *Migration Act 1958* (Cth).

The Commission is concerned that the section 417 discretion is non-compellable and non-reviewable. It is therefore very poorly suited to protecting against non-refoulement under the International Covenant on Civil and Political Rights, the Convention against Torture, and the Convention on the Rights of the Child. The Commission has recommended the introduction of a legislated complementary protection system.

The Commission understands that the Australian Government is currently considering the introduction of a system of complementary protection which will better meet its non-refoulement obligations.

Section 2. Measures to prevent racism and promote equality

This section responds to question 3 of the questionnaire.

The fight against racism requires the provision of effective remedies and redress, (including compensation) at the national, regional and international levels. At the domestic level remedies may include: recognition of rights by governments; restitution and compensation (for example in relation to loss of lands and for disruption and destruction of culture for Indigenous peoples); apology and acknowledgement of past injustices as the basis for genuine reconciliation and co-existence; entrenchment of non-discrimination through Constitutional or Treaty provisions; adequate funding and resources to overcome social and economic disadvantage; education, training and public information programs to counter prejudice and discrimination, and laws to prohibit the dissemination of race hate material.

The measures taken in Australia to respond to racism, either by providing remedies for racism that has occurred or by preventing future acts of racism from occurring, fall into one of three categories: policy measures, legislative measures or educational measures.

1. Policy Measures

(a) Australia's National Framework for Human Rights

Australia is one of the few Western countries that do not have a charter of rights although it does have a National Action Plan for Human Rights, completed in December 2004. The plan however does not adequately identify positive, forward-looking measures to address the human rights issues reported herein.

In December 2008 the government announced that it would conduct extensive consultations with the Australian community about the protection and promotion of human rights in Australia.

The consultations will end in June 2008 and the Committee conducting the consultations will, by 31 August 2008, report to the Government setting out the advantages and disadvantages of various ways of protecting and promoting human rights, including the social and economic costs and benefits. The report will be the basis for the Government to consider reforming the human rights framework in Australia.

The Australian Human Rights Commission is playing an active role in educating the public on the level of protection that currently exists for human rights in Australia and ways that this can be improved, including the enactment of a Human Rights Act that can provide mechanisms for ensuring that human rights are taken into account at all levels of Federal government.

(b) National Human Rights Institutions

The Australian Human Rights Commission is Australia's national human rights institution. It is established by a law of the federal Parliament, the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) (HREOC Act). The Commission operates in compliance with the *Principles for national institutions for the promotion and protection of human rights* (the 'Paris Principles') as approved by the United Nations General Assembly.[33]

The Commission has the following specific functions which implement or monitor Australia's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD):

1. Conciliation of individual complaints*:* the Commission attempts to conciliate complaints of racial discrimination and racial vilification brought under the RDA. Complaints that cannot be resolved through conciliation are terminated and may then be taken to the courts for determination.

2. Race Discrimination Commissioner: The Race Discrimination Commissioner has specific roles to promote and monitor compliance with the RDA. This includes promoting research and educational programs that combat racism and fostering awareness of and compliance with federal race discrimination and racial vilification legislation.

3. Aboriginal and Torres Strait Islander Social Justice Commissioner: The Commissioner has an independent monitoring role on the impact of government activity on the exercise and enjoyment of human rights by Australia's Indigenous peoples. The Commissioner reports annually to the federal Parliament on the status of enjoyment of Indigenous

[33] General Assembly Resolution 48/134, 20 December 1993, Annex.

human rights (the Social Justice Report) and the impact of native title legislation on the enjoyment of Indigenous human rights (the Native Title Report). The Commissioner also has functions to examine the impact of proposed or actual legislation on the enjoyment of Indigenous peoples' human rights and the conduct of activities to promote respect for enjoyment of human rights by Indigenous peoples.

4. Education: The Commission has a role to promote understanding of human rights, as well as specific functions to promote understanding and awareness about racial discrimination.

5. Amicus curiae role*:* Where a complaint of unlawful discrimination has been lodged with the courts, Commissioners may seek the leave of the court to provide assistance on the interpretation of discrimination law as a friend of the court ('*amicus curiae*'*).* This includes advising on the interpretation of Australia's obligations under ICERD or its domestic implementation through the RDA.

6. Legal intervener role: In addition to the role of Commissioners as *amicus curiae*, the Commission may seek leave to intervene in matters before the courts that relate to its mandate. To date the Commission has intervened in over 40 matters before the courts. These matters include some in which the provisions of ICERD and the RDA have been relevant, such as the interpretation of the race power in section 51(xxvi) of the Commonwealth Constitution;[34] and the consideration and application of native title principles.[35]

The HREOC Act provides for the Commission to consist of six members – a President and five Commissioners. The Commissioners are designated as follows: a Human Rights Commissioner, Race Discrimination Commissioner, Aboriginal and Torres Strait Islander Social Justice Commissioner, Sex Discrimination Commissioner and Disability Discrimination Commissioner.

The five Commissioner positions are currently held by three people. Since 1999, the positions of Aboriginal and Torres Strait Islander Social Justice Commissioner and Race Discrimination Commissioner have been held by the one person.

(c) Multicultural policy

Australia's multicultural policy came to an end in 2006. Although the policy has not been renewed since the election of a new government in 2007 a Multicultural Advisory Council has recently been appointed to begin work in this area. In addition, on 28 January 2009, the Australian government launched a new *Diverse Australia* Program to target racism and intolerance.

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[34] *Kartinyeri v Commonwealth* (1997) 152 ALR 540.
[35] *Western Australia & Ors v Ward & Ors* [2002] HCA 28 (8 August 2002); *Members of the Yorta Yorta Aboriginal Community v Victoria* [2002] HCA 58 (12 December 2002).

In August 2007 the Commission released its position paper on Multiculturalism which identifies the human rights principles that provide a strong and sustainable framework for the promotion of cultural diversity in Australia. These include:

- The freedom for all Australians to practice their culture and religion.

- Equal access and opportunity for all Australians to participate fully in economic, social, cultural and political life within Australia.

- Responsibility of all Australians to commit to the democratic system and institutions in Australia and to respect the rights of all individuals.

(d)Australian/New Zealand Race Relations Roundtable

Since 2006 the National Race Discrimination Commissioner has convened an annual race relations roundtable meeting of representatives of Human Rights Commissions from Australian States and Territories and New Zealand dealing with race issues. The meeting provides an opportunity to discuss race relations issues and encourage a collaborative approach to addressing issues of common concern.

2. Educational Measures

The Australian Human Rights Commission has a role to promote understanding of the RDA and to develop education programs aimed at combating racial discrimination and promoting tolerance among racial groups in Australia. Educational programs conducted by the Commission include:

- The Australian Human Rights Commission is funded by the Federal Government to deliver a *Community Legal Education Training Program* to raise awareness amongst Indigenous peoples about the standards of Australian law that are relevant to family violence, and to clarify the relationship between Australian law and customary law. This education module is for Community Legal Education workers (CLEs) employed in Family Violence Prevention Legal Services around Australia.
  The aim of the training program is to provide CLE workers with appropriate skills and knowledge to fulfil their role. The training program was underpinned by community development theory and practice and the content of the training focused on Australian law and customary law as they are relevant to preventing violence in Indigenous communities.

- The *Adult English as a Second Language Program* is a partnership project shared by the Commission and the Adult Multicultural Education Services (Victoria). This project aims to reach any new arrivals that are learning English - initially in the *Adult Multicultural Education Program's* around Australia and later in many of the other settings that offer ESL programs. Two separate curriculum resources will be produced with key messages about human rights and discrimination in an everyday understanding.

- *Human Rights Resources for Young People* have been developed in collaboration with Community Languages Australia and will produce a bilingual LOTE (Language other than English) learning resource about discrimination and human rights.

- The *Voices of Australia* project features a collection of real-life stories about diversity and living together in contemporary Australia and adapts this as an educational resource useful to schools and adapted to the school curriculum.

- *Face the Facts: Some Questions and Answers about Indigenous Peoples, Migrants and Refugees and Asylum Seekers:* This is a plain-English, user friendly resource that provides a current snapshot of social, demographic and population data relating to Indigenous Australians, migrants and asylum seekers and refugees. Face the Facts addresses common myths about these groups by drawing on primary research information from a variety of sources including laws made by Australian Parliament, government policies, academic research and data gathered by the the Australian Bureau of Statistics. The publication is accompanied by an expanded internet version as well as a *Face the Facts* education resource. The activities link with a range of key learning areas for students in Years 7 - 10 across all states and territories. Teaching notes, student activities and worksheets are provided, plus a range of recommended online resources and further reading.

- *Human Rights Education Resources for the Classroom:* A series of documents for teaching human rights, including about race discrimination, in Australian schools that includes links to curriculum documents as well as teaching resources.

The Federal government has also introduced programs to provide human rights education in schools. These include:

- the Civics and Citizenship program which promotes civics and citizenship education in the primary and secondary education curriculums. The program provides resources for teachers and students, including human rights education resources. Curriculum links were also made between major human rights instruments and primary and secondary teaching units and texts.

- a National Framework for Values Education in Australian Schools which emphasises values such as respect, responsibility and understanding, tolerance and inclusion, which help students appreciate their local, national, regional and global responsibilities and help them to understand human rights. One of the themes of the program is to: "Use values education to consciously foster intercultural understanding, social cohesion and social inclusion."

While the Commission has taken an active role in the Civics and Citizenship program through its educational programs, the Commission has limited

resources to develop an extensive range of materials to support human rights education in secondary schools.

3. Legislative Measures

Federal, State and Territory laws provide protection against racial discrimination in Australia. The RDA makes it unlawful to directly or indirectly discriminate against a person on the basis of their race, colour, descent or national or ethnic origin. The RDA also includes specific prohibitions on discrimination in the following areas of public life:

- Access to places and facilities;
- Land, housing and other accommodation;
- Provision of goods and services;
- Right to join trade unions; and
- Employment.

A number of issues have arisen in relation to the adequacy and effectiveness of the legislative protection against racial discrimination in Australia. These issues include:

- A lack of constitutional protection against racial discrimination in Australia: The Committee on the Elimination of Racial Discrimination, considering Australia's report in 2005, expressed concern about the absence of any entrenched guarantee against racial discrimination that would override the law of the Commonwealth. A constitutional guarantee of this type would have protected Indigenous people in the Northern Territory from the laws recently introduced which suspended the operation of the RDA. (discussed at Page 2)
  The Australian Human Rights Commission and the independent Review Board[36] of the Northern Territory Intervention have called for an end to the suspension of the RDA under the Northern Territory Intervention. The Government has indicated that it will look to introducing legislation to lift the suspension of the RDA in July 2009. In the interim, the government continues to implement legislation under the Northern Territory Intervention that is racially discriminatory.
- There is currently no requirement that the legislative, executive or judicial arms of the Australian state take human rights into consideration in the exercise of their respective powers. As indicated above the Australian government is currently conducting consultations that will assist them gauge the level of support for legislation that would require human rights, such as racial equality, be taken into account at all levels of government.
- There is no Federal law to address religious discrimination or vilification although some states have legislative provisions that make religious discrimination and/or vilification unlawful. The Australian Human Rights Commission is currently compiling a report on this issue and has called for

[36] Northern Territory Emergency Review Board, *Northern Territory Emergency Response: Report of the NTER Review Board*, Commonwealth of Australia (2008).

submissions to gauge the level of support for legislative protection against religious discrimination and vilification.

- Serious acts of racial hatred or incitement to racial hatred are not criminal offences under federal law, although they are made criminal offences in most Australian states and territories.
- A number of cases under the RDA illustrate the difficulties faced by complainants seeking to prove racial discrimination in the absence of direct evidence. The difficulty for the complainant is compounded by the high standard of evidence required by the court to prove discrimination and by the reluctance of the Courts to draw inferences from the existence of systemic discrimination. This is particularly acute in cases in the employment context in which the true basis for a decision will often be within the peculiar knowledge of the decision-maker.
  As a result of these factors, there have been very few successful cases in which direct racial discrimination (as opposed to racial vilification) has been proven under Australian federal law.
- The RDA provides remedies for unlawful discrimination but it does not contain a duty on government agencies to promote equality either within the organisation or in the provision of services to the public.

Section 3. International mechanisms and their operation within Australia

This section responds to Questions 4 and 5 of the questionnaire.

1. Human Rights Treaties

Australia has ratified the main international human rights conventions and protocols, including the International Convention on the Elimination of All Forms of Racial Discrimination.

Under Australian law a treaty only becomes a source of individual rights and obligations when it is directly incorporated by legislation. Australia has passed legislation that largely implements its obligations under ICERD. However it has not directly incorporated the International Covenant on Civil and Political Rights (ICCPR), the International Convention on Economic, Social and Cultural Rights (ICESCR), or the Convention on the Rights of the Child (CRC) into Australian law.

In relation to ICERD Australia made a reservation to Article 4(a) (dealing with criminalising serious acts of racial vilification) at the time of ratification stating that it is 'the intention of the Australian Government, at first suitable moment, to seek from Parliament legislation specifically implementing the terms of article 4(a)'.

In 2005 the Committee on the Elimination of Racial Discrimination expressed concern that the Commonwealth, the state of Tasmania and the Northern Territory have no legislation criminalising serious acts of racial hatred or incitement to racial hatred and reiterated its recommendation that Australia

'make efforts to adopt appropriate legislation with a view to giving full effect to the provisions of, and to withdrawing its reservation to, article 4 (a) of the Convention.

2. Effectiveness of the Durban follow-up mechanisms

In the period since the WCAR the Australian Government has not actively relied on the Durban Declaration or the Program of Action to develop or measure the effectiveness of its policies on addressing racism. At the time of writing this document the Australian Government had not decided whether it would participate in the Durban Review Conference in April 2009.

The Commission is of the view that the Durban Declaration and Program of Action provide a useful framework for considering the major race issues outlined in this report as well as valuable tools to evaluate the measures adopted by States to respond to these issues. It is important however that these core documents themselves continue to be responsive and incorporate the more recent standards emerging at international law. This is particularly important in relation to Indigenous peoples.

The outcomes of the World Conference Against Racism (2001) (WCAR) in relation to Indigenous peoples were mixed, with some positive outcomes and some provisions that were regressive, as a result of the limited participation of Indigenous peoples in the negotiation of the Durban Declaration and Program of Action.

On the positive side, the Durban Declaration states unequivocally that the full realisation by Indigenous peoples of their human rights and fundamental freedoms is indispensable for eliminating racism and expressed determination 'to promote [Indigenous peoples'] full and equal enjoyment of civil, political, economic, social and cultural rights, as well as the benefits of sustainable development, while fully respecting their distinctive characteristics and their own initiatives'.[37]

However, on the negative side, the strong declaratory statements and standards contained in the Declaration were not met by commitments in the Program of Action. For example, the outcome documents qualified recognition of Indigenous peoples as 'peoples'.[38]

Since the Durban conference the international community has advanced its understanding of the application of human rights standards to Indigenous peoples, primarily through the adoption of the UN Declaration on the Rights of

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[37] World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Declaration* (2001), para 41. At http://www.un.org/WCAR/durban.pdf (viewed 13 February 2009).

[38] World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Declaration* (2001), para 24. At http://www.un.org/WCAR/durban.pdf (viewed 13 February 2009).

Indigenous Peoples. We also welcome the Committee on the Rights of the Child's General Comment on Indigenous Children (2009).[39]

In order to fully recognize and protect the rights of Indigenous peoples the Durban Declaration and Program of Action needs to be reviewed in order to:

- Recognise the UN Declaration on the Rights of Indigenous Peoples ('Declaration') as providing the ***minimum standards*** for the human rights of Indigenous peoples, and for the Durban Review documents to reflect this.

- Remove of the qualification of Indigenous peoples as 'peoples' in light of the Declaration's recognition of Indigenous peoples as 'peoples'.

- Recognise the following issues pertaining to Indigenous peoples, previously identified in the Sydney Declaration[40,] but which continue to be relevant today:

    - The root cause of the discrimination, which has been suffered by Indigenous peoples and which continues to affect the lives of Indigenous peoples today, is racism. Inherent in the colonial experience and in the policies of the independent states, which succeeded the colonies, is the notion or belief that Indigenous peoples and Indigenous culture are inferior.

    - The contemporary manifestations of racism towards Indigenous peoples can be seen in indifference towards remedying the disadvantage and inequality suffered by Indigenous peoples, the failure to commit resources at the level required, and the refusal to acknowledge the wrongs and injustices that have been perpetrated upon Indigenous peoples and to remedy and redress these wrongs.

    - In respect of land, territories and resources, the full resources of the State and the legal system are in many situations brought into play to deny, obstruct and minimise the legitimate rights and aspirations of Indigenous peoples.

    - The failure of many States to adequately protect the right to substantive equality of treatment. The Committee on the Elimination of Racial Discrimination (CERD) has indicated the need to entrench non-discrimination in the legal systems of nation States so that it is not vulnerable to political pressures.

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[39] Committee on the Rights of the Child, *General Comment No. 11: Indigenous children and their rights under the Convention*, UN Doc CRC/C/GC/11 (2009).

[40] In the lead up to the World Conference Against Racism (2001) there was a regional Indigenous peoples satellite meeting of Indigenous peoples from Australia, New Zealand, Hawaii, the USA and Canada. The outcomes of this meeting were reflected in the 'Sydney Declaration'.

- Denial of the right to be consulted about all matters directly affecting them on the basis of their right to give or withhold their informed consent. Too often Indigenous peoples have been marginalised by developments on their own lands, they have been left as by-standers, often suffering severe environmental and social disruption from development which benefits others, not themselves. Without effective control over proposed developments native title and land rights remain a sham.

- Recognise the right of free, prior and informed consent as an emergent rule of international law. It is recognized in General Recommendation XXIII by the Committee on the Elimination of Racial Discrimination which has emphasised the importance of ensuring that members of Indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent.[41] The principle is also recognised in the UN *Declaration on the Rights of Indigenous Peoples.*

- Recognise the cultural rights of Indigenous peoples. The survival, maintenance and flourishing of Indigenous peoples as distinct societies depend on maintaining culture and language in the face of enormous difficulties.

Section 4. Good Anti-Racism Practices

This section responds to question 6 of the questionnaire.

It is clear from the issues raised in the present report that contemporary racism takes on a multiplicity of forms to marginalise and exclude others. It follows that anti-racism strategies must be similarly multifarious and tailored to respond to the particular form of racism being perpetrated. Two examples of anti-racism strategies implemented by the Commission that represent good practice in addressing the specificity of racism in its contemporary manifestation are:

1. The Living Spirit Project

This project engaged Australian Muslim women in a dialogue about human rights and responsibilities. The project drew on the findings of the Commission's *Isma*ع Report, which found that many Muslim women wearing the hijab experience racial and religious vilification in public areas such as shopping centres and on public transport.

The project aimed to build greater understanding among Muslim women about human rights principles and avenues for promoting racial, religious, and

[41] Committee on the Elimination of Racial Discrimination, *General Comment No. 23: Indigenous Peoples*, UN Doc A/52/18, annex V (1997) para 4(d).

cultural and gender equality in Australia. It also highlighted existing legal protections against discrimination and vilification.

A key goal of the project was identifying strategies to support individuals and communities to respond to discrimination and vilification, in particular racial and religious discrimination and vilification.

The project represents good practice in a number of respects including: the range of voices represented at the forum; the depth of community engagement at all levels of the project; capacity building of Muslim women about the human rights protections that currently exist and the development of a range of strategies to deal with human rights abuses.

A report of the project can be found at:
http://humanrights.gov.au/racial_discrimination/livingspirit/overview.html

2. Close the Gap Campaign

The Aboriginal and Torres Strait Islander Social Justice Commissioner ('Commissioner') has successfully led the Close the Gap on Indigenous Health Equality Campaign ('Close the Gap Campaign') since 2005.

The campaign responds to the low health status of non-Indigenous people, exemplified by the 17 year gap in life expectancy between Indigenous and non-Indigenous people in Australia. The campaign has two prongs: firstly, achieving equality of health status and life expectation between Aboriginal and Torres Strait Islander and non-Indigenous people within 25 years; secondly achieving equality of access to primary health care and health infrastructure within 10 years for Aboriginal and Torres Strait Islander peoples. The campaign aims to achieve these outcomes by 2030.

In December 2007 the Council of Australian Governments (COAG) agreed to a partnership between all levels of government to work with Indigenous communities to achieve the target of 'closing the gap' on Indigenous disadvantage, and agreeing to close the 17- year gap in life expectancy between Indigenous and non-Indigenous Australians within a generation.

In March 2008, at the National Indigenous Health Equality Summit, government signed the Close the Gap Indigenous Health Equality Summit Statement of Intent (Statement of Intent).

The Statement of Intent is one of the most significant compacts between Australian governments and civil society in Australian history. Through the statement the government committed to:

- 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;

- respect and promote the rights of Aboriginal and Torres Strait Islander peoples, including by ensuring that health services are available, appropriate, accessible, affordable, and of good quality;

- measure, monitor, and report on our joint efforts, in accordance with benchmarks and targets, to ensure that we are progressively realising our shared ambitions.

Annexure A

Questionnaire on the Implementation of the Durban Declaration and Plan of Action

Question 1: Can you assess the implementation of the Durban Declaration and Programme of Action in your country?

Question 2: Can you assess contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance as well as initiatives in this regard with a view to eliminating them in your country?

Question 3: Please identify concrete measures and initiatives for combating and eliminating all manifestations of racism, racial discrimination, xenophobia and related intolerance in order to foster the effective implementation of the Durban Declaration and Programme of Action.

Question 4: How would your Government assess the effectiveness of the existing Durban follow-up mechanism and other relevant United Nations mechanisms dealing with the issue of racism, racial discrimination, xenophobia and related intolerance in order to enhance them?

Question 5: What are the steps taken by your Government to ratify and/or implement the International Convention on the Elimination of All Forms of Racial Discrimination and give proper consideration of the recommendations of the Committee on the Elimination of Racial Discrimination?

Question 6: Please identify and share good practices achieved in the fight against racism, racial discrimination, xenophobia and related intolerance in your country.