United Nations CERD/C/SR.2024

International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
20 September 2010

Original: English

Committee on the Elimination of Racial Discrimination

Seventy-seventh session

Summary record of the 2024th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 10 August 2010, at 3 p.m.

Chairperson: Mr. Kemal

Contents

GE.10-44255 (E) 180810 200910

The meeting was called to order at 3 p.m.

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

Fifteenth to seventeenth periodic reports of Australia (CERD/C/AUS/15-17; CERD/C/AUS/Q/15-17; HRI/CORE/AUS/2007)

1. *At the invitation of the Chairperson, the delegation of Australia took places at the Committee table.*

2. **Mr. Woolcott** (Australia) said that, since the submission of the latest periodic report (CERD/C/AUS/15-17), there had been significant changes in Australia. He welcomed the alternative reports produced by civil society and the Australian Human Rights Commission, and their attendance at the meeting. Australia was proud of its strong and vibrant civil society engagement on human rights issues.

3. A federal election would be held in Australia on 21 August 2010. Consistent with long-standing practice, the Government had assumed a "caretaker" role. It was important to note that future policies and priorities in relation to some of the matters before the Committee might depend on the outcome of the election. Consequently, his delegation would limit itself to describing past positions, since it would be inappropriate to elaborate or speculate on how policy might develop after the election. Although Australia as a State was party to the Convention, the implementation of obligations under the Convention was effected through Government policy. It would have preferred to appear before the Committee after the election, as the delegation would have been in a much better position to discuss Australia's notable achievements in eliminating racial discrimination, and areas where more work needed to be done.

4. Although Aboriginal and Torres Strait Islander Australians occupied a special place in Australian society as the country's first peoples, it was clear that many of them suffered profound disadvantages compared with the rest of society, and more must be done to ensure enjoyment of their human rights. The Government had strived to rebuild relations with Australia's indigenous peoples, in line with the Committee's previous concluding observations. On 13 February 2008, the Prime Minister had delivered the "National Apology" to the indigenous peoples, particularly the Stolen Generations, for past Government policies that had resulted in profound suffering on the part of indigenous Australians, who had warmly welcomed the Apology. On 3 April 2009, Australia had announced its support for the United Nations Declaration on the Rights of Indigenous Peoples. In August 2009, the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people had visited Australia and held frank and constructive dialogue with a number of government agencies. In November 2009, Australia had also been visited by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, whose subsequent report had touched on a number of issues relevant to discussions with the Committee and whose recommendations had been welcomed. The Government had also supported the election of Megan Davis, a prominent Aboriginal human rights lawyer, to serve on the United Nations Permanent Forum on Indigenous Issues.

5. The Council of Australian Governments (COAG), representing the Federal Government and all state and territory governments, had set six specific targets to improve the situation of indigenous peoples with respect to the rest of the population, most importantly closing the gap in life expectancy within a generation. Other targets focused on child health, education and employment. In November 2009, the Australian Government had agreed to support the national indigenous representative body now known as the National Congress of Australia's First Peoples, which had been formally incorporated in

April 2010 and would be fully operational by January 2011. The move addressed some of the concerns expressed in the Committee's concluding observations of 2005.

6. With regard to the progress of legislation to reinstate the 1975 Racial Discrimination Act (RDA) in relation to the Northern Territory Emergency Response (NTER), a number of legislative NTER measures had been amended, following consultation of Aboriginal people in the Northern Territory. Provision had been made for the current suspension of the RDA in relation to NTER measures to be lifted from 31 December 2010, allowing time for new measures consistent with the RDA to be put in place and for an effective transition. In addition, the RDA applied to the new non-discriminatory income management scheme as of 1 July 2010.

7. In December 2008, the Australian Government had launched the National Human Rights Consultation, conducted by an independent committee of eminent Australians, to inquire into the protection and promotion of human rights and responsibilities in Australia. The Committee had reported that most of those consulted considered Australia to be one of the best countries in the world to live in. It operated under the rule of law, and had a strong parliamentary democracy with universal suffrage and a clear system of checks and balances through strong and independent democratic institutions. The judiciary was robust and independent, with constitutional protections to ensure that it operated free from fear and favour.

8. Australia's common law recognized a number of human rights principles, such as the right to procedural fairness and protection against self-incrimination. Alongside anti-discrimination laws, human rights principles were reflected in criminal and civil provisions providing for fair trial and administrative review. The Government supported, including with financial assistance, a robust non-governmental sector that worked to promote human rights. The Australian media were free and independent. The Committee's report had overwhelmingly demonstrated that Australians supported the protection of human rights.

9. However, more could be done. Many different opinions had been expressed on how to further protect and promote human rights, such as by enacting a Human Rights Act. In response to the Consultation report, the Government had released Australia's Human Rights Framework in April 2010, reaffirming the country's commitment to the core United Nations human rights treaties to which Australia was party. The Framework was based on positive and practical changes to promote and protect human rights and on overwhelming feedback from submissions to the Consultation that education must be the highest priority.

10. A range of other initiatives, particularly with respect to indigenous Australians in their encounters with the justice system, had also been undertaken. For example, the Government funded the delivery of high-quality and culturally sensitive legal aid services to indigenous Australians. In the previous budget, a significant increase of funding for indigenous legal aid had been provided, in line with communications received from the Committee in 2010 under its early warning and urgent action procedures. More funding was allocated to regions where demand for legal services and the cost of delivering those services were likely to be higher. Indigenous persons could seek funding from any legal aid body, not just indigenous legal aid providers.

11. In November 2009, a National Indigenous Law and Justice Framework had been endorsed by all Australian governments. It focused in particular on measures to make indigenous communities safer and to reduce the extent of incarceration of indigenous Australians, particularly young people. In the area of native title, Parliament had enacted targeted reforms to the 1993 Native Title Act in 2009 in order to improve its operation. The reforms made the Federal Court of Australia primarily responsible for managing the resolution of native title claims, and included measures to assist indigenous and other stakeholders in achieving quicker and better native title claim settlements.

12. The diversity of Australia's population had increased since 2005. Australians spoke more than 260 languages, including indigenous languages, identified with 270 ancestries, and observed a wide variety of cultural and religious traditions. Almost half the population had been born overseas or had a parent who had emigrated to Australia. In less than a lifetime, Australia had changed from a primarily Anglo-Celtic society of fewer than 8 million to a multicultural society of more than 22 million. On the whole, migration had made Australia a more cosmopolitan and outward-looking society.

13. The cohesive and inclusive nature of Australia's cultural, religious and linguistic diversity was promoted and celebrated each year on 21 March, Harmony Day, which coincided with the International Day for the Elimination of Racial Discrimination. The continuing message "Everyone Belongs" encouraged people to participate in their community, to respect cultural and religious diversity, and to foster a sense of belonging for everyone. Thousands of schools, community groups and organizations across Australia had hosted Harmony Day events, and surveys had shown an increase in events over time.

14. Consistent with the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, Australia was committed to providing protection to refugees. The decision to suspend processing of all new asylum claims from Sri Lankan and Afghan nationals announced on 9 April 2010, to be reviewed within three months and six months respectively, had been taken in response to evidence that the situation was evolving in Sri Lanka and parts of Afghanistan, particularly in areas relevant to Australia's asylum-seeker caseload. The suspension had not been applied for reasons of race. It had been lifted in respect of Sri Lankan asylum-seekers on 6 July 2010, following assessment of up-to-date information on conditions in Sri Lanka collected during the suspension period. All Sri Lankan asylum-seekers affected by the suspension were now having their claims assessed on a case-by-case basis. The suspension of processing remained in place for claims from Afghan nationals.

15. With regard to immigration detention, the Government recognized the need to ensure that people were not kept in detention any longer than necessary and were treated fairly, humanely and with dignity, with access to a range of health, recreational and educational services.

16. Under enhanced non-statutory refugee status assessment arrangements for irregular arrivals, asylum-seekers received publicly funded independent advice and assistance, access to independent review of unfavourable assessments, and external scrutiny by the Commonwealth Ombudsman. Such measures built on strengthened procedural guidance for departmental officers conducting refugee status assessments.

17. From 1 July 2009, Australia had applied new permission-to-work arrangements for asylum-seekers, including the abolition of the "45-day rule", under which only those asylum-seekers in the community who had applied for a protection visa within 45 days of arriving in Australia had been potentially eligible to work and gain access to free basic health and hospital services. Under the new arrangements, protection visa applicants who had remained lawful on a substantive visa were granted work rights and access to those services. Protection visa applicants who had become unlawful but had voluntarily engaged with the authorities to resolve their status, and who had a compelling need to work, could also be granted work rights. Access to work rights now depended on the class of bridging visa held and the stage of processing the application had reached.

18. The Australian Department of Immigration and Citizenship had a non-delegable duty of care towards people in immigration detention, and must therefore exercise reasonable care in order to prevent any reasonably foreseeable harm. A high standard of care was owed to people in immigration detention in view of their substantially restricted independence. The Department provided a range of services in line with the values of

respect for human dignity, fair and reasonable treatment within the law, and appropriate accommodation and services. Detention services and their delivery were subject to an external scrutiny and accountability framework, in which the Australian Parliament and a number of statutory authorities, such as the Commonwealth Ombudsman, the Privacy Commissioner and the Australian Human Rights Commission, participated.

19. Over the past three years, the Department had worked closely with stakeholders, particularly the Detention Health Advisory Group, to improve mental health provision for all people in immigration detention, based on three policies reflecting best practice approaches for identifying and supporting survivors of torture and trauma and for preventing self-harm in immigration detention.

20. The Government took the safety of international students seriously, and condemned any racially motivated attacks in Australia. Immigration, encouraged by the core values of acceptance, tolerance and open-mindedness, was a key ingredient in sustaining Australia's economic and social success. While Australia was one of the world's safest and most tolerant countries, it was impossible to stop all urban crime, but the Government was committed to minimizing urban crime rates by increasing police resources. In June 2009, the Prime Minister had established a special task force to deal with attacks on international students, chaired by the National Security Adviser.

21. The international student safety issue had revealed deficiencies in education and visa arrangements for international students, which governments at all levels had taken steps to address. To ensure that those who applied to study in Australia were genuine students and not irregular workers open to exploitation, such arrangements had been reformed and strengthened, including by increasing the amount of money that international students must prove they had to support themselves before they could obtain a student visa. The general skilled migration programme had also been reformed as of 1 July 2010, largely removing the incentive for overseas students to apply for a course simply in the hope of being granted permanent residency.

22. Education standards had been enhanced to improve the quality of education institutions by tightening financial viability and student fee protection requirements. The Victoria, New South Wales and Queensland governments had established a programme of rapid audits of private education providers, and action had been taken against providers shown to be operating outside legislative requirements. A review of the Education Services for Overseas Students Act 2000 had resulted in legislative changes, and an international student strategy was being finalized by COAG. Australian governments wanted to ensure that international students, whether from India or elsewhere, obtained a high-quality education, could support themselves financially, and had a positive experience in Australia.

23. **Mr. Heferen** (Australia) highlighted a number of significant recent developments in Aboriginal and Torres Strait Islander affairs. The National Apology had marked a special day in Australia's history, representing a first step in acknowledging the damage that had been caused by past government policies, including the removal of indigenous children from their families. State-based compensation schemes had been introduced in Queensland, Tasmania and Western Australia for those who had been physically and sexually abused in State care. In recognition of the need for healing services to overcome the trauma of removal and the associated intergenerational effects, the Australian Government had allocated $A 26.6 million over four years to establish a foundation to address trauma and healing in the wider indigenous community, with a focus on the Stolen Generations. As outlined by Mr. Woolcott, clear targets had been set with the aim of narrowing differences between indigenous and other populations in the areas of: life expectancy; child mortality rates; access to early childhood education; children's reading, writing and numeracy; school leaver attainment; and employment outcomes. Those actions were consistent with the Committee's concluding observations of 2005.

24. With regard to the reinstatement of the RDA and legislative reforms to the NTER, he said that, from June to late August 2009, wide-ranging consultations with Aboriginal people in the Northern Territory had been undertaken concerning future directions for the NTER. The consultations had involved people in all 73 NTER communities, along with several other Northern Territory Aboriginal communities and town camps. Over 500 consultation meetings in communities and 11 workshops with regional leaders and stakeholder organizations had been held, with interpreters engaged for larger community meetings. The consultations had given participants an opportunity to tell the Government how the measures were working and what changes, if any, community members wanted.

25. The core of the NTER had been retained. However, several measures had been redesigned and improved, more clearly constituting special measures within the terms of the RDA. Accordingly, the RDA had been reinstated in relation to the NTER as of 31 December 2010, allowing time for redesigned measures to be put in place and for an effective transition. In addition, the new non-discriminatory income management scheme had come into effect on 1 July 2010, with no exemption from the RDA.

26. Some positive outcomes had been reported since the inception of the NTER. Key achievements in the health field included a school nutrition programme, provision of dental, audiology and ear, nose and throat services to children, and more than 450 health professionals in short-term placements through the Remote Area Health Corps. In terms of law and order, 18 additional communities now had a police presence and 5 existing police stations had been upgraded, with 60 additional police officers deployed in communities.

27. Land occupied an important place in the cultural, spiritual, social and economic lives of many indigenous Australians. His Government had worked closely with indigenous landowners and state and territory governments to ensure appropriate land tenure arrangements were in place ahead of any major government investment in housing or infrastructure. The negotiation of leases with traditional owners provided formal recognition of indigenous people as owners of the land, making it clear who could use land and who was responsible for looking after it. Ownership of leased land remained with indigenous owners. Residents would not be removed from their land as a result of the grant of a lease.

28. Requiring secure tenure on indigenous-held land ahead of major financial investment was consistent with arrangements operating in property markets elsewhere in Australia. Traditional owners continued to be actively involved in decision-making, through consultative forums established under whole-of-township leases or housing reference groups established under housing precinct leases. Voluntary long-term leases were in place or agreed in 13 of the 15 Northern Territory communities identified as priority sites for remote service delivery. Priority sites in the Northern Territory would receive major new housing construction under the Strategic Indigenous Housing and Infrastructure Programme. By July 2010, 67 houses had been built, with another 53 under construction, and 381 houses had been refurbished. The indigenous employment target of 20 per cent had been exceeded by just over 15 per cent.

29. Addressing indigenous family violence was a major focus for all Australian governments, which had agreed to national priorities in several areas, including boosting efforts to reduce violence against indigenous women and their children. They had also agreed to the development of a national plan on the issue, and the Federal Government had been working with states and territories to identify priority areas for action. It had recently announced the Indigenous Family Safety Agenda to fund indigenous family safety community initiatives focused on priority action areas, including addressing alcohol abuse, providing more effective police protection, strengthening of social norms against violence and coordinating support services.

30. With regard to the creation of the National Congress of Australia's First Peoples, he explained that the Australian Government had undertaken a nationwide consultation with indigenous Australians on the possible role and structure of a national indigenous representative body in 2008. The model recommended to the Government would: have a diverse membership base drawn from indigenous organizations and individuals; draw its initial funding from government, but seek to become financially independent over the long term; and focus on national strategic issues. The model reflected key articles in the United Nations Declaration on the Rights of Indigenous Peoples. The National Congress, designed by and for indigenous Australians, was an independent company limited by guarantee with membership open to Aboriginal and Torres Strait Islander peak organizations, service delivery organizations and individuals over the age of 18 years. It was currently governed by an interim national executive, which was charged with establishing a body to facilitate a fully elected Congress by November 2010, to commence formal operations in January 2011, providing a strong voice for Australia's indigenous peoples.

31. **Ms. Jones** (Australia) outlined the work of the National Human Rights Consultation Committee, which had received more than 35,000 submissions and conducted over 65 community round tables and public hearings throughout Australia, including in remote communities. It had commissioned qualitative research on Australians' views on human rights, used innovative strategies to reach out to as broad a range of stakeholders as possible, and conducted three days of public debate with a variety of experts and academics, non-governmental organizations (NGOs), community groups and interested individuals. In line with the Committee's recommendations, the Human Rights Framework proposed actions in a number of areas, including: enhancing human rights education; establishing a new parliamentary joint committee on human rights; introducing a requirement that all new primary and secondary legislation brought before Parliament be accompanied by a statement of compatibility with Australia's international human rights obligations; consolidating federal anti-discrimination laws to remove overlap; developing a new national action plan on human rights; and creating an annual NGO human rights forum. Initial steps had been taken to implement the Framework, but subsequent legislative and administrative measures would be a matter for the incoming Government.

32. Australia's reservation to article 4 (a) of the Convention still pertained, and Australia did not criminalize acts of racial hatred at the federal level. Nevertheless, most states and territories classed racial hatred as a criminal offence, with penalties ranging from 6 months' to 3 years' imprisonment. In November 2009, the State of Victoria had amended its sentencing legislation to take into account racially motivated crimes, making racial hatred an aggravating factor. At national level, discrimination in areas of public life because of a person's race was illegal under the RDA, which also classed offensive behaviour based on racial hatred as an offence. Under the Act, complaints of racial discrimination were made to the Australian Human Rights Commission, which was required to attempt to achieve a conciliated outcome, which would consist of an apology or payment of damages. In 2008–2009, the Commission had received 396 complaints, 8 per cent of them involving racial hatred. Conciliation had been achieved in 55 per cent of complaints settled. If conciliation was unsuccessful, complaints could be taken to court. Since 2005, a number of discrimination cases had been successfully brought under the RDA. In one case, an applicant had been awarded over $A 70,000 in damages after a court had found that racist comments by colleagues amounted to racial discrimination.

33. In addition to legislation, Australia was strongly committed to preventing racial vilification and discrimination through human rights education, as the basis of a genuine and lasting respect for human rights and obligations. The Government had given the Australian Human Rights Commission a human rights education role.

34. Justice for indigenous people and community safety were vital preconditions for achieving other Australian Government initiatives aimed at overcoming indigenous disadvantage. Under the Australian Constitution, responsibility for the criminal justice system rested with state and territory governments. However, given the significant challenges in those areas and the high rates of incarceration of indigenous Australians, the Federal Government had been working closely with states and territories to develop better responses, such as the National Indigenous Law and Justice Framework. In November 2009, the Government had hosted a round table on indigenous community safety, involving justice ministers, indigenous affairs ministers, and police ministers and commissioners from each state and territory, along with Aboriginal delegates. The round table had focused on community policing, alcohol reduction strategies, information sharing, integrated service delivery, and supporting victims of family violence. In addition to measures such as indigenous courts, diversionary and prevention programmes and restorative justice strategies undertaken by states and territories to reduce levels of indigenous incarceration and improve indigenous justice, the Government also funded complementary initiatives under the Indigenous Justice Programme.

35. The Federal Government had allocated additional funding of $A 154 million to legal assistance services over four years, including $A 34.4 million for Aboriginal and Torres Strait Islander legal aid services, to which $A 63.7 million had been allocated in total for 2010. Through the Family Violence Prevention Legal Services programme, it also funded 31 indigenous-controlled community organizations to provide legal and other support to victims of family violence, amounting to $A 19.5 million for 2010.

36. With regard to native title claims, the Government had undertaken targeted legislative reform to improve the operation of the native title system. The Federal Court of Australia now played the central role in proactively managing the resolution of native title claims and was empowered to encourage parties to develop broader and more flexible negotiated outcomes. Stakeholders in the native title system had been strongly supportive of the change. Additional funding of $A 50 million had been provided to speed up the resolution of native title claims, of which approximately $A 46 million would be given to native title representative bodies to assist native claimants. A further 80 native title claims had been settled since Australia had last appeared before the Committee, bringing the total to 136, with an increasing number resolved by consent. While a significant number were still outstanding, the resolution rate was expected to increase in light of recent reforms to the native title system and increased levels of funding. As at 31 December 2009, registered determinations of native title covered some 12.1 per cent of the land mass of Australia, approximately equal to Poland, Italy and Norway combined.

37. The Australian Human Rights Commission played an important role in education initiatives to tackle racism and promote greater cultural understanding in the community. At the request of the Government, the Commission was undertaking further work to tackle cyber-racism. In April 2010, together with the Internet Industry Association, it had convened a summit on the issue. In the 2010–2011 budget, the Government had committed $A 4.3 million to enable the Commission to continue its work addressing social marginalization and alienation of vulnerable groups, such as international students. Australia's Human Rights Framework also included provision of $A 6.6 million for the Commission to expand its role in educating the community on human rights.

38. **Ms. Maurer** (Australia) said that, since the end of the Second World War, nearly 750,000 people had been welcomed by Australia under its humanitarian programme, which continued to expand. Some 13,750 settlement places had been made available during 2009–2010. The onshore component of the programme offered protection to people in Australia who were found to be refugees under the 1951 Convention relating to the Status of Refugees, including people who sought asylum in Australia, such as irregular maritime

arrivals. The offshore component offered resettlement to people outside Australia in need of humanitarian assistance, including refugees identified and referred to Australia by the Office of the United Nations High Commissioner for Refugees (UNHCR), along with victims of substantial discrimination amounting to gross violation of human rights in their home countries who had close links with Australia. The country ranked among the top three resettlement countries in the world.

39. Concerning immigration detention, the Department of Immigration and Citizenship was committed to managing the lawful and orderly entry and stay of people in Australia. Immigration detention in Australia was purely administrative in nature, intended to ensure that people with no authority to stay in Australia remained available while their claims were processed. If their claims were unsuccessful, immigration detention was used to facilitate their departure. It also permitted appropriate health, identity and security checks to manage any potential risks to the Australian community. Recent changes to the system included significant improvements to the standard and availability of health services and access to legal advice and representation. Under the reformed policy, immigration detention was used in the following situations: unauthorized arrivals, i.e. non-Australian citizens arriving in Australia without a valid visa, were detained for the purpose of managing health, identity and security risks to the community; and unlawful non-citizens who presented unacceptable risks to the community and unlawful non-citizens who had repeatedly refused to comply with their visa conditions were also detained. Strengthened detention case management and review processes ensured that every decision to detain a person was subject to rigorous examination to ensure that detention was appropriate and lasted for the shortest practicable time. Detention in immigration detention centres was used only as a last resort, and indefinite or otherwise arbitrary detention was not acceptable. Where appropriate, temporary (bridging) visas were used to release eligible clients from detention while their status was resolved, allowing them to live and move within the community. Children were not detained in immigration detention centres. The key immigration detention values also affirmed that people in immigration detention would be treated fairly and reasonably within the law, and with regard for the inherent dignity of the human person.

40. There had been positive feedback on the immigration detention environment from people who had previously been highly critical of it, including Professor Patrick McGorry, and Senator Sarah Hanson-Young. From March 2008 to April 2010, there had been a 72 per cent reduction in the number of people detained for more than two years.

41. Australian society was made up of people from a rich variety of cultural, ethnic, linguistic and religious backgrounds. The Government operated a number of programmes to provide social and economic opportunities, build understanding and acceptance of shared responsibilities, and enhance respect among all Australians. Initiatives included funding for community organizations and partnerships with larger business and government organizations to build social cohesion. Research had demonstrated that personal experience of engaging with people from a variety of cultural, religious and linguistic backgrounds was crucial to building understanding and mutual respect. Under a diversity and social cohesion programme launched in May 2010, grants were given to non-profit community organizations to build stronger community relations through projects to promote respect, fairness and a sense of belonging for everyone. Special community liaison officers maintained contact with a wide variety of ethnic community organizations and individuals across Australia, providing advice on community relations issues, disseminating information about government services and programmes, and engaging directly with migrant community groups. Harmony Day was held each year on 21 March to celebrate the cohesive and inclusive nature of Australia and to promote the benefits of Australia’s cultural diversity. Its increasing popularity could be seen in the 1.65 million views registered on its website in 2010, its tenth anniversary year.

42. **Mr. Vines** (Australia) said that, in recent years, his Government had implemented a number of measures to further improve the well-being of indigenous Australians and eliminate workplace discrimination generally, including by addressing racial discrimination in the workplace and strengthening the labour rights of migrants and asylum-seekers in Australia. Under the Workplace Relations Act 1996, protection against racial discrimination had been limited to prohibiting employers from dismissing employees on the grounds of race. The new Fair Work Act 2009 prohibited a range of adverse actions by employers, including dismissal, but also making it unlawful for an employer to refuse to employ a person, or to prejudicially alter the position of an employee, on the basis of their race. In addition, the Migration Legislation Amendment (Worker Protection) Act 2008, which had come into force in September 2009, sought to ensure that migrant workers received the same wage entitlements as local workers. The Government had also demonstrated its commitment to fairer labour rights for asylum-seekers by abolishing the "45-day rule".

43. With a view to closing the gap in opportunities between indigenous and non-indigenous Australians, his country was committed to providing access to high-quality education for Aboriginals and Torres Strait Islanders. In 2010, some 50,000 Aboriginal secondary and tertiary students had received financial assistance from the Australian Government, which was expecting to meet its target of 200 additional teachers in the Northern Territory by the end of 2012 by supporting education providers to develop career pathways for Aboriginal and Torres Strait Islander staff. To date, the equivalent of 140 full-time teachers had been recruited.

44. His Government was committed to indigenous language education, which it recognized as playing an important role in schools and communities. In August 2009, the Government had announced a new national policy aimed at keeping indigenous languages alive and helping indigenous Australians to connect with their language, culture and country.

45. **Mr. Commar** (Australia) said that his country was committed to delivering improved, high-quality health care across its geographically and culturally diverse population, regardless of race or social standing, through the world-class efficiency and equity of access of the universal public health system. The system provided Australians with affordable access to a broad range of health services that were either free or subject to substantial Government rebates. Subsidies were available through two national schemes for services provided by a comprehensive range of health professionals, and for a high proportion of prescription medications bought from pharmacies. Public hospital services were free of charge, under funding arrangements agreed between the Commonwealth Government and states and territories. Safety nets applied to national subsidy schemes to protect Australians from high out-of-pocket costs for medical services and pharmaceuticals provided outside hospitals. The two schemes were integrated with social welfare arrangements, with larger rebates and/or lower safety net thresholds provided for individuals or families receiving certain income support payments, such as for unemployment or disability.

46. The Government's various programmes were complemented by a robust private health sector, to ensure all Australians equitable access to appropriate health care. The Government recognized the need, however, for enhanced efforts and targeted programmes for groups especially vulnerable to disadvantage and discrimination, particularly Aboriginals and Torres Strait Islanders. Such programmes had three objectives: to improve access to and responsiveness of the mainstream health system; to ensure complementary action through specific health and substance-use services for Aboriginal and Torres Strait Islander peoples; and to ensure collaboration between governments and the health sector to improve service delivery and outcomes.

47. Strategies to improve indigenous population health and close the gap in life expectancy between indigenous and mainstream Australians must tie in with other policy strategies. In 2008, COAG had invested more than $A 4.6 billion to address indigenous disadvantage and close the gap in the key areas of health, early childhood, housing, employment and remote service delivery through a National Partnership Agreement, under which the Commonwealth Government had committed $A 805.5 million over four years to tackle chronic disease among indigenous Australians. The package provided significant new funding for preventive health, focusing on Aboriginal and Torres Strait Islander individuals, families and communities; support and funding for more coordinated and patient-focused primary health care for Aboriginal and Torres Strait Islander people in both Aboriginal community controlled health services and mainstream general practice; and an expanded indigenous health workforce. Relevant overall Government investment had increased by 33 per cent since 2007–2008. It included funding for some 245 organizations to provide primary health care, substance-use services and social and emotional well-being services to indigenous people, including in some of the most remote parts of the country. Indigenous health had been addressed by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health during his visit to Australia. His recommendations included a suggestion that Australia should develop a detailed plan for full realization of the right to health. The COAG National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes provided a comprehensive framework of objectives and outcomes for social inclusion. Any other aspects of the recommendation would be a matter for the next Australian Government to consider.

48. **Mr. Calí Tzay** (Country Rapporteur) said that, in his role as rapporteur for Australia, he had attempted to take account of the caretaker conventions applicable to officials during the current pre-election period in the State party. He considered, however, that the delegation's appearance before the Committee was covered by paragraph 6.5.2 of Australia's *Guidance on Caretaker Conventions 2010*, which stated: "In most instances, agencies should also decline requests for policy advice during the caretaker period. There might, however, be urgent domestic or international issues on which policy advice should clearly be provided to Ministers to allow responsible ongoing administration or to protect Australia's interests." He emphasized that the Committee was examining compliance with the Convention by the State party as a whole, not just the Government.

49. While welcoming the comprehensive information provided in the State party's periodic report, he expressed concern that the report had been submitted late and did not follow the Committee's guidelines. The Committee had considered Australia three times under its early warning procedure, and had welcomed the solution reached by the State party in the last of those cases. Noting that Australia had not signed the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights allowing for consideration of communications, he welcomed its undertaking to pursue a more constructive relationship with the various United Nations human rights mechanisms and the steps taken in that regard.

50. He requested further information in relation to the International Labour Organization (ILO) Convention concerning Discrimination in respect of Employment and Occupation (No. 111), to which Australia was party, particularly in terms of education, training and employment opportunities for indigenous peoples. The State party had accepted the UNESCO Convention against Discrimination in Education. Welcoming the government funding being given to multiculturalism projects, he sought further information on the lack of integration of the issue of human rights, especially racial discrimination, into the school curriculum. He expressed concern that the State party had yet to ratify the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169).

51. He requested further information on developments referred to in the periodic report that had occurred after the end of the reporting period, including the National Human Rights Consultation, Australia's support for the United Nations Declaration on the Rights of Indigenous Peoples, and the reinstatement of the RDA in relation to the NTER, which were positive steps, despite concerns relating to the continued application of the NTER. More action was now needed to ensure full enjoyment of all rights by indigenous persons in the State party. Welcoming the creation of the National Congress of Australia's First Peoples, he asked for more details regarding its functions and whether it provided genuine representation. The National Apology was an important and positive move, although reports of long and arduous processes to obtain damages were worrying, and he sought clarification of the situation. The "Closing the Gap" initiative was also welcome, particularly in its aim to improve health conditions among indigenous groups.

52. Based on his own experience as a member of an indigenous community, where children were cared for by all, he expressed surprise at the reported treatment of children in Aboriginal and Torres Strait Islander communities. He sought more information in that regard, and also enquired about possible links with previous government policies.

53. According to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, who had visited Australia in August 2009, indigenous people were still seriously disadvantaged. One of the main problems was lack of consultation. Other problems concerned identity, language, culture, land ownership and use of sacred sites. The Special Rapporteur claimed that the State's interventions in the Northern Territory had had a discriminatory impact on the indigenous population. He invited the delegation to comment on the matter.

54. The Committee had shown a special interest in the Aboriginal land title system since 1995. According to the report, a package of reforms to the native title system comprising six elements had been announced on 7 September 2005. He asked whether the indigenous peoples were satisfied with the reforms and whether they facilitated recognition and registration of ownership. What was the procedure and what documents were required to secure recognition by the Federal Government? He noted that the burden of proof under the Native Title Amendment Act lay with the Aboriginal peoples. It would be more equitable, in his view, to transfer the burden of proof to the State.

55. The former Government's Australian Human Rights Commission Legislation Bill 2003 aimed at reforming the Commission had lapsed and the current Government was considering its position with respect to an appropriate structure for the Commission. He asked whether any proposals for reform were currently on the table.

56. The National Human Rights Consultation Committee had conducted over 65 round tables and public hearings in more than 50 urban, regional and remote areas and had received more than 35,000 submissions. He was interested in hearing about the positive and negative factors identified in the submissions and asked what stage had been reached in their assessment.

57. He noted that there was no federal law establishing the right to non-discrimination. The report stated that, while there was no specific prohibition against racial discrimination in the Constitution, human rights were currently protected through strong democratic institutions, constitutional rights and anti-discrimination legislation at the Commonwealth, state and territory levels. The State party claimed to have implemented its obligations under the Convention through the RDA. He asked how the Committee's recommendations were disseminated, whether civil society had been involved in the preparation of the report and whether it would be involved in preparing the follow-up report.

58. He found it difficult to understand why the State party maintained its reservation to article 4 (a) of the Convention. Although Australia had been concerned about the human

rights situation of indigenous people in his own country, Guatemala, since the 1980s, it was still not in a position to declare that the dissemination of ideas based on racial superiority or hatred was punishable by law. Surely a country with a democratic Government should be prepared to take action against individuals and organizations that provided assistance to racist activities, including the financing thereof.

59. He was surprised to note that the offence of racial discrimination was prosecuted through civil proceedings. The Committee had repeatedly drawn attention to the need to include a definition of the offence in the Criminal Code. Moreover, the reference to "unlawful discrimination" in paragraph 27 of the report seemed to imply that some types of discrimination could be lawful.

60. He noted that the Government had taken action to combat Internet-based racism in 2007 and had provided funding for the "NetAlert – Protecting Australian Families Online" programme, which had launched a hotline and website to provide information about security risks on the Internet and had provided free Internet filters to help families to block racist online content. Such action was highly commendable, but it implied that the authorities feared the possibility of wider dissemination of racist ideas in the country.

61. He thanked the State party for its comprehensive information concerning "bill of rights" initiatives and legislation at the state and territory level.

62. The Committee would have welcomed statistics and disaggregated data in the report concerning the composition of Australian society.

63. He was concerned about the State party's interpretation of "special measures" and asked the delegation to clarify its approach to the matter.

64. He welcomed the steps that had been taken to abolish the temporary protection visa arrangements for asylum-seekers and to reform the policy of mandatory detention of immigrants. However, he was still concerned about the detention for a period of between 6 and 12 months of persons arriving by sea from Afghanistan and Sri Lanka without a visa. According to information provided to the Committee by NGOs, children were also held in detention centres and were accompanied by security guards even when they were allowed out to play.

65. The delegation had referred to the State party's open-door policy and announced that Australia was now a multicultural society whose citizens spoke more than 260 languages. He asked how multiculturalism was defined.

66. He expressed concern about the situation of foreign students, especially those from India and China. The State party apparently claimed that attacks against such students were directed against individuals and were not racially based.

67. **Mr. Avtonomov** commended the State party on the progress made in recognizing the rights of the indigenous population. However, discrimination and segregation persisted. For instance, Aboriginals were 13 times more likely than other Australians to be imprisoned and Aboriginal juveniles were 28 times more likely to be detained than other Australian juveniles. The imprisonment rate for Aboriginal women had increased by 46 per cent between 2002 and 2008 and the imprisonment rate for Aboriginal men by 27 per cent. He asked what action the State party was taking to reduce those rates.

68. He welcomed the action taken with respect to the NTER.

69. He also commended the decision to issue a "Basics Card" that could be used to purchase basic necessities at certain stores. However, he asked whether the Government's list of commodities had been compiled in consultation with indigenous people. The Committee had been informed that users sometimes had to travel quite a distance to obtain basic goods and that they were required to stand in separate queues, which could be

humiliating and frustrating. Moreover, one fifth of the listed goods were apparently unavailable.

70. Although Australia was a multicultural and multi-ethnic society, candidates from all parties in the current election campaign were reportedly vying with each other to demonstrate their resolve to halt immigration, a policy that seemed to appeal to broad sections of the electorate. He recommended that steps should be taken to promote awareness of the benefits of immigration in order to counteract xenophobic trends.

71. **Mr. Diaconu** noted that, according to the report, the application of the RDA to the Northern Territory had been suspended primarily with a view to reducing alcohol consumption and preventing domestic violence and child abuse. Although those were praiseworthy goals, he queried the decision to suspend the basic legislation that afforded protection against racial discrimination, particularly in the light of the State party's obligations under article 5 of the Convention. He also questioned the desirability of measures such as the compulsory acquisition and control of specified Aboriginal land and community living areas through renewable five-year leases. Why were indigenous peoples prevented from taking legal action against violations of their human rights in the Northern Territory? According to the delegation, the RDA was now being reinstated. However, the newly introduced legislation failed to cover some provisions of the Act, so that there was still a gap to be filled in terms of implementation of the Convention.

72. With regard to the land title system, the Committee had been informed that no compensation had been granted for native title claims that were deemed to have lapsed before 1975. The State party should seek a solution to that problem.

73. He also deplored the fact that there had been only one successful "Stolen Generations" court claim to date.

74. It was difficult to assess the State party's compliance with the principle of non-discrimination because of the different laws in force in the states and territories. For instance, the delegation had announced that three states had introduced compensation schemes for those who had been physically and sexually abused in state care. He wondered about the situation in the other states and the autonomous territories. As federal legislation had primacy over state laws, he asked whether there was a federal oversight body that could impose uniform measures or propose them to the Federal Parliament.

75. The National Human Rights Consultation Committee had conducted consultations with 65 communities. He would welcome further information about the outcome, especially in terms of the rights of indigenous peoples.

76. The State party described Australia as a multicultural country and referred to a multicultural policy. There were 3 million people whose mother tongue was not English. What action was being taken to ensure that members of all ethnic and linguistic groups participated in the cultural life of the country?

77. Australia had supported the Durban Declaration, paragraph 42 of which stated that indigenous peoples should be free from all forms of discrimination so that they could express their identity and exercise their rights freely. Paragraph 43 recognized the special relationship that indigenous peoples had with the land as the basis for their spiritual, physical and cultural existence and encouraged States to ensure that indigenous peoples were able to retain ownership of their lands and natural resources. He wondered how the compulsory acquisition and control of Aboriginal land through renewable five-year leases could be reconciled with those obligations.

78. Many Australian corporations operating abroad were involved in activities that might adversely affect the rights of indigenous communities in the host countries. He urged

the State party to pay greater attention to their activities and to render them accountable for acts of pollution and other human rights violations in host countries.

79. The State party's reservation to article 4 (a) had been entered in 1975. It had been presented as a temporary measure pending the enactment of appropriate legislation. As some states had already adopted such legislation, he wondered why no action had been taken to date at the federal level.

80. He also recommended that the State party should ratify ILO Convention No. 169.

81. **Mr. Thornberry** welcomed the National Apology to Australia's indigenous peoples and action on behalf of the Stolen Generations.

82. He noted that indigenous issues were addressed from a social perspective and not as issues with deep cultural roots. The doctrine of *terra nullius*, which implied non-recognition of the existence of indigenous inhabitants, had been repudiated by the Australian High Court in the *Mabo v. Queensland* case. The Court had stated, inter alia, that "the common law should neither be nor be seen to be frozen in an age of racial discrimination". There was no original treaty with local leaders in Australia that could be invoked in support of arguments concerning sovereignty and the appropriate relationship between settlers and the original inhabitants. Some NGOs had advocated the conclusion of a treaty between the Aboriginal peoples and the State to ensure recognition, reconciliation and a fresh start. It was an attractive idea, especially in view of the lack of any positive mention of indigenous peoples in the Constitution and the fact that some provisions, including sections 25 and 51, raised issues of racial discrimination.

83. He stressed the importance of land as a source of spirituality for the indigenous communities and not just as a source of material wealth. It had taken the State party a long time to recognize the idea of native title and difficult questions persisted, such as the burden of proof of native title and evidence of continuity of attachment since colonial times. It was important to seek participatory and creative ways to address imbalances in terms of resources and expertise, usually to the detriment of the indigenous parties, in the context of negotiations or litigation.

84. There had been a major decline in the indigenous language heritage since the eighteenth century. Language retrieval could greatly boost the communities' self-esteem. He understood that relatively few indigenous languages were taught in school. Were there any plans to promote the retrieval of languages that were in decline, taking advantage of international expertise in the area?

85. He asked how the culture and history of indigenous peoples would be reflected in the new national curriculum. Would there be sections on human rights and non-discrimination?

86. He welcomed the State party's acceptance of the United Nations Declaration on the Rights of Indigenous Peoples, which included provisions regarding self-determination and free prior and informed consent. However, he joined others in urging Australia to ratify ILO Convention No. 169.

87. If the State party had adopted a rights-based approach to the NTER from the outset, it might have avoided some of the problems to which it had given rise. Some of the action taken, such as the compulsory acquisition of land through leases, must have been extremely distressing. The Convention could form part of the solution, since it combined the legal prohibition of racial discrimination with provisions regarding education. As already noted, the reinstated RDA would not deal with the remaining discriminatory elements of the NTER.

88. The past practice of relegating indigenous peoples to the status of a social problem must be rejected. New concepts and instruments were available to replace that paradigm with a rights-based approach to indigenous claims and interests.

89. **Mr. Kut** noted that, although the State party did not currently criminalize acts of racial hatred at the federal level, it nonetheless condemned all racially motivated attacks. If statistics of such attacks were available over a period of years, they would indicate whether there had been an upward or downward trend and whether existing methods of addressing racially motivated violence were effective. He asked whether provision had been made for the assessment of policy implementation under the existing legislation concerning discrimination and racial violence.

90. He enquired about the mechanism used to translate international obligations into administrative responsibility at the level of individual states in the federal system.

91. He was pleased to hear that top priority was being given to the promotion of human rights in the education system. How would that commitment and, in particular, the objective of combating racism be reflected in the national curriculum that was currently being prepared? He also wished to know how Australian history would be approached.

92. He asked how the authorities proposed to ensure that counter-terrorism measures did not lead to racial or ethnic profiling and the stigmatization of certain minority groups.

93. **Mr. Prosper** said the Committee had been informed that asylum-seekers arriving by boat were treated differently from those arriving by other means. Was that information accurate and were the persons concerned intercepted at sea rather than being allowed to land? Was Christmas Island, to which some asylum-seekers were transported, treated as part of Australian territory? He also wished to know whether the courts had adopted a position on the legal status of such action.

94. There was currently a debate on whether some asylum-seekers could be processed in East Timor. He advised the State party to reconsider such an approach, since East Timor lacked the requisite infrastructure and capacity. It was Australia's responsibility to deal with the matter.

95. **Mr. Murillo Martínez** said that Australia had taken commendable action on behalf of indigenous peoples, such as its support for the United Nations Declaration on the Rights of Indigenous Peoples and its ambitious efforts to close the gap between the indigenous and non-indigenous population. It was to be hoped that such policies would be pursued regardless of the outcome of the forthcoming elections.

96. Eighty per cent of Australia's territory consisted of arid lands, so that the area available for farming was limited. He enquired about the procedures and timetable for assigning farmland to indigenous peoples.

97. Noting that the State party had allocated $A189 million to the fight against racism and other abuses on the Internet, he asked whether progress had been made in that regard and whether any legal action had been taken against offenders.

98. According to the report, the Government had allocated an estimated $A4.4 billion to indigenous-specific programmes in 2007–2008. However, as no figures were provided for previous periods, it was difficult to assess the trend in expenditure.

99. He had been struck by the reference in the report to indigenous justice as though it constituted a separate category. Moreover, $A 130 million had been earmarked for the development of community legal education programmes, judicial training in customary law and cultural principles and other similar activities. Was it the State party's policy to develop a separate legal system for the indigenous population?

100. **Mr. Lahiri** noted that Australia was now proud to portray itself as a tolerant multicultural country that was making amends for the atrocities committed in the past against the indigenous population.

101. He was troubled by reports of racially motivated violence against students from Africa and Asia. The singling out of Indian students, especially in Victoria, coincided with an energetic campaign to attract them to Australia. Apparently expenditure by foreign students was a major source of foreign exchange. According to the media, there had been between 15 and 25 cases of attacks on Indian students in 2008 and 2009. Students had been killed and stabbed, and petrol bombs had been thrown into cars and houses. A major demonstration had been organized by Indian students in Melbourne in May 2009, following which several had been arrested for creating a disturbance. In 2010 thousands of Indians, Australians and other nationals had held "Vindaloo against violence" sit-ins at Indian restaurants. The Government had initially been reluctant to admit that the attacks were racially motivated but its attitude had begun to change in early 2010. The Victoria police authorities and members of the Australian Government visiting India had explicitly recognized the existence of racially motivated violence. The State party's report, on the other hand, failed to address the problem and the delegation had mentioned it only in passing.

102. The Australian Government was under an obligation to prevent such attacks. However, the State party's reservation to article 4 (a) of the Convention meant that there was no specific legislation prohibiting racially motivated acts or offences. He recommended that the State party should begin keeping police records of such crimes and should urge the states and territories to enact laws criminalizing racially motivated attacks.

103. **Mr. Peter**, referring to the core document (HRI/CORE/AUS/2007), welcomed the State party's acknowledgement of the historical fact that the Aboriginal and Torres Strait Islander peoples had inhabited Australia for more than 60,000 years before the arrival of British settlers. The original inhabitants had suffered major grievances at the hands of the latecomers, who had declared the land *terra nullius*.

104. According to paragraph 83 of the core document, the Australian Government was not convinced of the need for a bill of rights because human rights were protected, inter alia, by anti-discrimination legislation. He pointed out, however, that if a bill of rights had been enshrined in the Constitution, it could have been invoked by the Aboriginal peoples. Other legislation did not have the same status.

105. Table 39 of the core document provided statistics for deaths in custody. During the period from 1990 and 1994 a very large number of detainees — 974 non-indigenous persons and 226 indigenous persons — had died either in police custody or in prison. He enquired about the causes of death.

106. Table 37 provided figures for the prison population. The proportion of indigenous prisoners in 2005 was 22.3 per cent and that of non-indigenous prisoners 75.7 per cent. He would have appreciated figures showing the ratio of the prison population to the overall indigenous and non-indigenous population.

107. **Mr. Lindgren Alves** said that although the State party's report was of very high quality, it was difficult to digest because of the complexity of the Australian federal system. As international responsibility lay with the Federal Government, it was difficult to ascertain which law was applicable in each case.

108. Like Mr. Diaconu, he was surprised to find that damages had so far been awarded to only one member of the "Stolen Generations".

109. He enquired about the results of the Isma project concerning discrimination against Arab and Muslim Australians in the aftermath of the terrorist attacks in the United States on 11 September 2001. Had any improvement been recorded?

110. He asked for more information about the National Congress of Australia's First Peoples. It was unclear to him whether it was some form of council or commission or a legislative body composed of Aboriginal peoples and dealing with indigenous issues.

111. Lastly, he joined the Country Rapporteur in requesting a definition of multiculturalism.

The meeting rose at 6 p.m.