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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 916th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 6 August 1991, at 3.00 p.m.

Chairman: Mr. SHAHI

CONTENTS

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued)

Sixth, seventh and eighth periodic reports of Australia (CERD/C/146/Add.3 and CERD/C/194/Add.2) (continued)

1. The CHAIRMAN drew attention to the fact that the seventh and eighth reports were submitted together in document CERD/C/194/Add.2.

At the invitation of the Chairman, Mr. Tickner (Australia) took a place at the Committee table.

2. Mrs. SADIQ ALI said the reports submitted by the Government of Australia showed that the country had made impressive strides in its efforts to eradicate racism and racial discrimination. But much still remained to be done to prevent mistreatment of the Aboriginal population.

3. Concerning Aboriginal deaths in custody, a final report on the inquiry conducted by five regional commissioners had been expected in 1990, and it was therefore to be hoped that information on the subject would appear in Australia's next report. She would like to know whether any Aboriginal organizations, such as the Committee to Defend Black Rights or the Aboriginal Islander Legal Services Secretariat, had been allowed to participate in those inquiries. With regard to the Royal Commission, it seemed that action on the interim report was being left in the main to either corrective services ministers or individual police stations, the very people whose behaviour had given rise to the demand for the Commission. The Federal Government, although it had established the Commission in cooperation with the States, had again

handed its responsibility back to the States. The Committee should be provided with more information on that point.

4. Drunkenness and disorderly conduct made up 63.8 per cent of the offences with which Aboriginal people had been charged, despite the Royal Commission's interim report recommendation that in jurisdictions where it had not been decriminalized, Governments should legislate to abolish the offence of public drunkenness. The police authorities in every State of Australia were still apparently arresting and holding Aboriginal people in custody on such minor charges as intoxication and the use of "offensive" language.

5. As the majority of Aboriginal people who had been found dead in custody since the announcement of the Royal Commission's establishment had died within two hours of their arrest on minor charges, the failure of the Federal and State Governments to act on that and other related recommendations was tantamount to genocide.

6. The reintroduction in 1988 in New South Wales of the Summary Offences Act authorizing the police to make arrests on the basis of "behavioural deviations" rather than criminal offences, ran counter to the spirit of the Royal Commission's interim recommendations. She would like to know whether any police officer had been charged in connection with any of the Aboriginal deaths in custody examined by the Royal Commission. The Australian Government must deal with police brutality severely, and it was also to be hoped that it would take steps to implement article 4 of the Convention.

7. In New South Wales, Aboriginal children, who made up only 1.8 per cent of the State's total juvenile population, accounted for at least 25 per cent of the institutionalized juvenile population. The Royal Commission had found that Aboriginal children were routinely abducted from their families, which were considered unable to care for them adequately, and were institutionalized in juvenile homes, and it had concluded that it was essential to stop treating Aboriginal people as dependents whose welfare must be looked after by others and to give them back opportunities for self-reliance, independence and self-respect. In that connection, she asked whether Australia had ratified the Convention on the Rights of the Child. The Federal Government must assert itself when it found that States had not fulfilled their obligations and responsibilities in the area of human rights.

8. She welcomed the establishment in 1990 of the Aboriginal and Torres Strait Islander Commission (ATSIC), a first step on the road to an Aboriginal structure of local and regional government within the Commonwealth. But ATSIC had no resources of its own, and its activities on behalf of the Aboriginal population were apparently being curtailed. She would like further information on that point.

9. The Aboriginal population had proposed a five-year moratorium on the proposed Queensland space port on Cape York peninsula, a project that would have a serious impact on the environment and on the lives of the 8,000 to 10,000 Aboriginal people living there. Although they made up the majority of the Cape York population, the Aboriginal people had almost no control over land-use decisions. In that context, she asked for more information on the role of the Cape York Aboriginal Land Council.

10. The protection of sacred sites was an important issue for the Aboriginal population, and she requested further details on the situation in Western Australia, where the fringe dwellers of the Swan Valley had been trying to stop the State Government's plan to restore the old Swan Brewery in Perth because of the site's special significance to them.

11. Mr. YUTZIS commended the Australian delegation on its detailed and comprehensive eighth report, which would, however, have been clearer if the

articles of the Convention had been dealt with in their proper order. He also regretted that he had not received the document in time to study it thoroughly.

12. With regard to the substance of the document, the scope and the limits of freedom constituted a matter of overriding importance for the Committee. It was dealt with in paragraph 179 of the eighth report, which set out the view of the Australian Human Rights and Equal Opportunity Commission that the right to free speech was undeniably an important human right but, as human rights did not exist independently of each other, that right needed to be considered and balanced with other competing rights. Inasmuch as certain regions in Australia enjoyed special rights, the central Government must take a closer look at the criteria it used for ensuring that the Convention was implemented equally throughout Australian territory. While he conceded the possibility of different laws existing in different regions, he thought there must be a unified method of combating the problems that were at the heart of the Convention.

13. Concerning paragraph 17 (a) of the report, he drew attention to the phrase "within carefully defined limits" and asked who defined such limits.

14. Paragraph 21 stated that the problems confronting Aboriginal and Torres Strait Islander peoples should not be seen exclusively in terms of racial discrimination. He would like to know what other factors were involved and what problems confronting those peoples should not be viewed in the context of the Convention. It was to be hoped that the Government of Australia could provide further information on that subject so that it could be discussed more fully at a later date.

15. It was stated in paragraph 111, that the impact of mining in certain areas had raised concern in Aboriginal communities and that a study group had presented a report on the subject to the State Government in July 1989. He asked when the State Government would respond to that report. He agreed with other speakers that there was a close relationship between racism and ecology.

16. A subject that had been highlighted in the report was the death in custody of a number of Aboriginals. The Government of Australia had stated that it was unable to detect any objective reason, such as violence against Aboriginal persons, for those deaths, but the deaths had nevertheless occurred, and a precise analysis of the causes was needed.

17. He appreciated the detailed statistics provided in table 2 in paragraph 239, on complaints lodged under the Racial Discrimination Act of 1975. In that connection, he asked whether the sharp increase in the number of complaints in the area of employment between the periods 1 July 1988-30 June 1989 and 1 July 1989-30 June 1990 had been due to a worsening in the employment situation or to the fact that more people were lodging complaints.

18. The CHAIRMAN, speaking in his personal capacity, said Australia was to be commended on its devotion to multiculturalism, which was particularly welcome in a period of rising xenophobia and intolerance toward minority cultures. He also welcomed Australia's willingness to allow the performance of its obligations under the Convention to be scrutinized. The Australian delegation had reported on the results of the investigation by the Royal Commission into Aboriginal Deaths in Custody and had spoken of the suffering experienced by many Aboriginal persons because of their separation from their natural families. Unemployment, alcoholism and other problems had also been mentioned. All those issues must be tackled, especially within the context of the proposed council for reconciliation to be set up under Australian legislation. Aboriginal persons were the victims of violence, and the point raised by Mrs. Sadiq Ali in that connection was highly pertinent.

19. With regard to the implementation of the provisions of the Convention the Australian representative had stated that legislation was contemplated instituting specific criminal offences at federal level to curb racist violence and intimidation, and he suggested that, in enacting that legislation, Australia might give special consideration to reflecting the provisions of article 4 of the Convention. When the model legislation was approved by the General Assembly, it was to be hoped that Australia would make it the basis of its legislation to combat racial discrimination. Inasmuch as Australia had decided to accede to the Optional Protocol to the International Covenant on Civil and Political Rights, it should also consider acceding to article 14 of the Convention.

20. He asked for some elucidation of the reference made in paragraph 10 of the sixth report (CERD/C/146/Add.3) to clashes of value systems, and also inquired, with regard to paragraph 73 of the same report, how far work had progressed on formulating and implementing legislation to accord partial recognition to Aboriginal customary laws.

21. Mr. TICKNER (Australia) drew attention to two technical errors in document CERD/C/194/Add.2. Paragraph 66 should be deleted, and in paragraph 96, the word "repealed" should be replaced by "amended".

22. The Special Rapporteur had asked to what extent Aboriginal and Torres Strait Islander Peoples Australians were represented in the Office of Multicultural Affairs. The Australian Government had given priority to ensuring their representation in commissions of direct relevance to Aboriginal communities. The proportion of Aboriginal persons working in the Aboriginal and Torres Strait Islander Commission, an important Government body, was 40 per cent or more. In the Department of Employment, Education and Training, the proportion of Aboriginal employees was significantly higher than the proportion of Aboriginal persons in the overall population. He did not know what the situation was in the Office of Multicultural Affairs, but that was a small body, and the ratio of Aboriginal to non-Aboriginal employees was therefore relatively unimportant. The head of the secretariat established within the Prime Minister's own department to facilitate the process of reconciliation was an Aboriginal person, as was the acting deputy head of the Prime Minister's own department.

23. The Special Rapporteur had asked for information on the results of the strategies adopted by the Government to promote multiculturalism and to bar discrimination. The law reform policy he had mentioned was not, however, a separate strategy; the reference in paragraph 34 of the eighth report was to an inquiry undertaken by the Law Reform Commission, which had not yet presented its final report. He had unfortunately been unable to obtain the information requested by the Special Rapporteur in the time available, but it would be included in Australia's next report.

24. In response to the request for an explanation of the removal of discriminatory provisions in the Australian Citizenship Act, he referred the Committee to paragraph 40 of document CERD/C/194/Add.2 for the main objectives of the amendments made by Parliament.

25. Questions had been asked by several members about the overriding of State laws by the federal Racial Discrimination Act and the latter's relationship with State and Territory anti-discrimination legislation. He referred the Committee to section 6A of the Racial Discrimination Act of 1975, which preserved the operation of State and Territory laws that furthered the objectives of the Convention and were capable of operating concurrently with the Racial Discrimination Act. The section had been inserted after the High Court had held that the Act evinced an intention to cover the field of racial discrimination legislation, with the result that inconsistent State and Territory legislation on the subject would be invalidated by the operation of

the Australian Constitution, which provided, in section 109, that where the law of a State was inconsistent with national law, Commonwealth law prevailed to the extent of the inconsistency and the State law became invalid. Had that situation been allowed to prevail, State and Territory legislation that went even further than federal legislation, such as the racial vilification provisions of the New South Wales Anti-Discrimination Act, would be overridden by federal law.

26. A person alleging racial discrimination was entitled to lodge a complaint with either the federal Human Rights and Equal Opportunity Commission or, where applicable, with a commission or board established under State anti-discrimination legislation. If a complainant chose to lodge a complaint with a State body, section 6A operated to remove the possibility of federal action before the federal Commission. There would be cases where a complainant did not have that choice, because only federal or only State legislation covered the subject of the complaint. The Racial Discrimination Act, for instance, bound both the federal and State authorities, whereas State legislation could not bind the federal authorities. The provision, therefore, guaranteed maximum choice by the complainant, ensured the highest achievable standard, and sought to bring about a workable relationship between the components of the federal system.

27. He could assure the Committee that the federal Government was fully committed to meeting its international obligations, including those under the Convention. He was not aware of any gap in the legal protection provided against racial discrimination. The Racial Discrimination Act, which was the relevant federal legislation, applied throughout Australia, and no separate legislation by States was required to ensure Australia's compliance with the provisions of the Convention. Section 6A of the Racial Discrimination Act was designed to prevent any problems arising from conflicting or overlapping jurisdiction.

28. The powers of the Race Discrimination Commissioner were comparable with, and at least as broad as, those of the other Commissioners of the Human Rights and Equal Opportunity Commission. In some instances, her powers are much greater as they all extend to State government whereas those of other commissioners do not.

29. With regard to the attitude of Aboriginal and Torres Strait Islander people to the Human Rights and Equal Opportunity Commission, it should frankly be conceded that there were differences of opinion, but there was also evidence of some regard for the Commission's work. For instance, the Aboriginal and Torres Strait Islander people were among the most numerous users of the Commission, indeed in a proportion (25 per cent) very much higher than their representation in the total population (1.5 per cent) according to the 1986 population census. They had been instrumental in prompting many of the inquiries conducted by the Commission, including the Toomelah and Cooktown inquiries. The Commission, for its part, was aware of its responsibilities in informing them about their rights and about its own role and functions, and was continually taking action to ensure the exercise of those rights.

30. He would certainly comply with the request for copies of that Commission's reports by providing the Committee with two recent annual reports and requesting that it should receive past and future reports. Regarding Australia's periodic reports, he would address the matters of improved presentation, prompt submission and documentary backup raised by Committee members.

31. Although there was no formal legal mechanism connecting the Human Rights and Equal Opportunity Commission, the Aboriginal and Torres Strait Islander Commission and the former Royal Commission into Aboriginal Deaths in Custody, they had had, and continued to have, a very close working relationship; the

two current Commissions were deeply committed to the same cause.

32. He was unable to say why the Equal Opportunity Act of Victoria had been re-enacted, but would ensure that a reply was given in the near future. In answer to the question about why it had taken so long for anti-discrimination legislation to be enacted in Queensland, he said that there had been a recent change of government in the State after 30 years. He understood that the new Government was in favour of enacting such legislation; developments would be reported in the next periodic report. That being said, federal legislation required all States to protect their citizens. In a famous action brought by an Aboriginal Australian, John Koowarta, against the former Queensland Government, the validity of the Racial Discrimination Act had been upheld, and the former Queensland Government's practice of refusing to transfer leaseholds of pastoral properties to Aboriginal interests had been abolished.

33. As to the absence of anti-discrimination legislation in Tasmania, the Northern Territory and the Australian Capital Territory, he was able to inform the Committee that legislation against racial discrimination was being prepared in all three areas. He hoped that he would be able to report the enactment of such legislation by the time of the next periodic report. In the meantime, the federal Racial Discrimination Act of 1975 would continue to have full force throughout Australia.

34. Details had been requested about the exceptions to the Western Australian Equal Opportunity Act. Under the exception concerning general occupational qualification, the Act exempted participation in, for example, a dramatic performance or other entertainment, or as an artist's model, where authenticity required a person of a particular race. A second exception concerned the provision of services for the welfare of persons of a particular race where those services could most effectively be provided by a person of the same race, such as in Aboriginal medical centres. Under the "special needs" exception, the Act permitted special measures in the provision of services or access to facilities needed by persons of a particular race; that exception was consistent with article 1, paragraph 4, of the Convention. Regarding citizenship, the Act permitted public sector authorities to discriminate in employment between Australian citizens and non-citizens; the Government believed that to be a reasonable provision, consistent with article 1, paragraph 3, of the Convention. General exceptions also applied to charities, enabling them to confer benefits on persons of a particular race, including ethnic minorities or disadvantaged groups, such as Aboriginal and Torres Strait Islander people; and to voluntary bodies, enabling special interest groups to exist for the purpose of promoting and providing benefits to persons of a particular race or ethnic minority, religious bodies and religious educational institutions. Discrimination was permitted where it was necessary to avoid injury to religious susceptibilities, and in the training and ordination of priests, ministers, etc., in order to preserve the rights of religious bodies to follow their beliefs and practices. Another exception concerned housing for aged persons, in order to enable such persons to be accommodated, if they so wished, in institutions providing for a special group, such as one sex only, or a religious or ethnic group. Short-term exceptions could be granted by the Equal Opportunities Tribunal for a period not exceeding five years, the purpose being to enable affirmative action to be taken in circumstances where there were long-standing inequities. Only one such exception had been granted and it had related to sex discrimination.

35. On the subject of economic ties with South Africa, Australia permitted private economic links with South Africa, although it was among the least important of that country's commercial partners. The value of exports to South Africa had fallen in the period since the imposition of sanctions, amounting to $A 140 million in 1989, while the value of imports from South Africa was only $A 110 million. Australian companies were authorized to invest in South Africa but there was no official encouragement of such

investment, and total direct investment represented a tiny proportion of Australia's total overseas investment. All new investment in South Africa by the Australian Government had been suspended. All Australian banks and other financial institutions had been asked to suspend making new loans, directly or indirectly, to borrowers in South Africa. Direct investment in Australia by the South African Government or its agencies was prohibited.

36. He would convey the very important question about Australia's implementation of article 4 (a) of the Convention to his Government. By way of a preliminary reply, he said that, for a number of years the Government had been considering the question of withdrawing its reservation under article 4. While fully committed to the spirit of the article, the Government was also mindful of its obligations to guarantee to all Australians the right to freedom of expression, assembly and association. Those rights were guaranteed by the International Covenant on Civil and Political Rights and by article 5 (d) of the International Convention on the Elimination of all Forms of Racial Discrimination. Australia also believed that there was already a degree of protection against the forms of racial discrimination dealt with in article 4 of that Convention. Incitement to, assisting in and promoting racial discrimination were offences under section 17 of the Racial Discrimination Act of 1975. Under the general criminal law, acts of violence, including racist violence, and incitement to such acts, were offences. In various jurisdictions, there were also offences relating to the use of threatening, abusive or insulting words in a public place. Significant criminal prosecutions of perpetrators of racist violence had taken place in Australia recently. In Western Australia, in September 1990, the leader of the Australian Nationalist Movement, a racist organization, had been tried and found guilty of 53 offences under the criminal law. He and a number of other members of the Movement had received substantial prison sentences. The Government was also conscious that the reports, completed in 1991, of the Human Rights and Equal Opportunity Commission's National Enquiry into Racial Violence, and of the Royal Commission into Aboriginal Deaths in Custody had both recommended the enactment of Commonwealth legislation against racial vilification and harassment. There had, therefore, been significant developments in regard to the issues raised by article 4 of the Convention since the Committee's consideration of Australia's previous report. One of the issues which the Government would bear in mind in considering the reports of the two Commissions was that any action to suppress racist groups by law could give them and their views a degree of publicity which they did not currently receive in Australia. The Government would be considering in the near future various options, including possible legislation on racist violence and intimidation, incitement to racist violence and hostility and racial hatred, harassment and vilification. He assured the Committee that a very clear response would be provided in Australia's next periodic report.

37. The Committee's persistent questions about article 4 (a) of the Convention, and the suggestion that Australia did not fully meet the requirements of the Convention in that regard, would be conveyed to his Government. Although there was no specific offence relating to the existence and activities of racist organizations, the Australian Security Intelligence Organization had functions which included the protection of the Commonwealth of Australia and its people from politically motivated violence and the promotion of communal violence, including violent acts or threats for the purpose of influencing Government policy or promoting violence between different groups. The provisions of the general criminal law would apply to acts of violence or threats by racist organizations, as evidenced by recent successful prosecutions of the Australian Nationalist Movement.

38. Questions had been asked about the reference to "clashes of value systems and cultures" in paragraph 21 of the seventh and eighth reports (CERD/C/194/Add.2). He was aware and concerned that the statement might lead to some misinterpretation. Although it was true to say that the disadvantages

or hardships suffered by the Aboriginal people might in some cases be due more to their geographical location, it could not be denied that they were primarily caused by the discriminatory attitudes of the dominant group. The Australian Government had enacted legislation and was implementing programmes to combat racial discrimination. A recent example of government action to protect the interests of a minority group had been its decision to prohibit a proposed mining venture at Coronation Hill in the Northern Territory because of the traditional significance of the land to the local Aboriginal People. The decision had been taken in the face of substantial opposition, and demonstrated the Government's serious resolve to protect the Aboriginal people's traditional interests.

39. A question had been raised about Australia's international obligations concerning affirmative action for minority groups, with reference to a statement in a previous report quoting from a report by the Australian Law Reform Commission. He wished to point out that that Commission was an independent body established to streamline the law, and its views did not necessarily reflect those of the Government. He confirmed that the Government had initiated affirmative action for Aboriginal and Torres Strait Islander people.

40. With regard to the opposition of the Aboriginal and Torres Strait Islander Australians to the so-called preferred model for Aboriginal land rights, that model had allowed for the inalienable freehold title to land for Aboriginals, but the rights granted had been fewer than those provided for in Northern Territory legislation. Although the Commonwealth Government had a large responsibility, the State-by-State approach was, in his view, more appropriate. As he had reported to the Working Group on Indigenous Populations, legislation was being drawn up in Queensland to ensure Aboriginal land rights, but the Aboriginal Peoples considered that it did not go far enough. Tasmania had introduced a land rights bill, which had been defeated in the Tasmanian Upper House, but he hoped that the decision would be reconsidered and that the law would be passed by the end of the year.

41. With respect to the administration of land rights in the States, particularly the Northern Territory, he would provide the Committee with documentation, including a summary of the enabling legislation setting up bodies to administer land. As far as the leasehold of land by Aboriginal Peoples was concerned, leases could be revoked for non-compliance with the lease conditions, a rule which applied to Aboriginal Peoples as well. However, only Crown land could be leased. It was open to Aboriginal Peoples and others to buy leases from private companies. The States had not as a rule adopted a policy of acquiring private land for occupation by Aboriginal Peoples.

42. Information had been requested on the nature of the agreement between the Prime Minister and the Chief Minister of the Northern Territory. That was a long overdue, cooperative agreement, intended to provide for the people whom the Land Rights Act had forgotten. They were mostly pastoral people and were the most disadvantaged group in Australian society. Their needs were at last starting to be addressed, and the Prime Minister, the Chief Minister and he himself attached a high priority to the improvement of their lot.

43. With regard to the question whether Aboriginal people formed a higher proportion of the prison population than of the population at large, the relevant information would be found in table 22 (a) of the National Prison Census, 1988, which classified prisoners by gravity of offence and status (Aboriginal or non-Aboriginal). The Commonwealth Government recognized the need to provide legal aid for Aboriginals and contributed $17.5 million a year for the 20 independent Aboriginal and Torres Strait Islander legal aid centres existing around the country, in addition to jointly funding other legal services with State governments.

44. With regard to the assertion that Aboriginal Peoples were too often arrested where a summons would have been more appropriate, the Royal Commission into Aboriginal Deaths in Custody had emphasized the need for a change of practice and was putting forward guidelines, which would be finalized by March 1992. The Commission's 339 recommendations did not cover police practice alone, but were an agenda for the reform of all aspects of the law relating to Aborigines, including housing, employment, health, resources for roads and other services, the Aboriginal historical and cultural heritage, and relations between Aboriginal and Torres Strait Islander Australians and the rest of the population. The Government's response had not yet been made public, but the interest of the international community would be a vital element in that response. He gave a commitment that the next report would contain details of proposed and enacted legislation.

45. With regard to the police raids which had been carried out in the Sydney suburb of Redfern, serious concern, which he himself shared, had been expressed, particularly by the Human Rights and Equal Opportunity Commission. He trusted that police practice had improved, especially in the light of the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

46. Turning to the case in which a court in New South Wales had refused to order the extradition of an Aboriginal to Queensland, he said that the decision had been taken on the ground that in Queensland Aboriginal Peoples tended to choose not to serve on juries, the state of prisons was inadequate and there was a risk of hostile media coverage. The accused might not have received a fair trial; the conditions in which he was kept might have been oppressive and decisions might have been biased. Following the establishment of a royal commission on the state of justice in Queensland, conditions had improved. He was confident that there would be no repetition of the incident, which nonetheless did credit to the openness of the courts and judges.

47. With regard to the question concerning Aboriginal unemployment and, more generally, the results of the Aboriginal Employment Development Policy adopted in 1987, he stated that according to the 1986 census, Aboriginal unemployment amounted to 35 per cent, compared with a 1991 average of 9 per cent for the whole country. On the wider issue, it had not been possible to obtain the information requested, but it would be provided in the next report. The Policy was in the process of being reviewed and a decision would be taken in 1992. Government action had not in fact begun in 1987, but that had been the year when an Aboriginal, Mr. Mick Miller, had reviewed the old policy and written a report on which the 1987 Policy was based.

48. On the question of the need for more Aboriginal housing, he was unable to supply statistics, but could confirm that the need was immense. The Minister responsible for Aboriginal housing policy was conducting a comprehensive review of the matter but the Royal Commission into Aboriginal Deaths in Custody had said that a survey of Aboriginal housing infrastructure also needed to be carried out. The Government was committed to meeting Aboriginal demands that they should have the key role in schemes to improve housing infrastructure. The Aboriginal and Torres Strait Islander Commission had already spent $53,888,000 and a further $91 million had been provided by the Ministry of Housing.

49. It had been asked why action had not been taken earlier to improve Aboriginal health services. The difference between the current Aboriginal Health Strategy and previous schemes was that it was run by Aboriginal and Torres Strait Islander Peoples themselves. The aim was to ensure that bureaucrats and health workers were answerable to Aboriginal and Torres Strait Islander Peoples. Generally, the Government's policy was that Aboriginal and Torres Strait Islander Peoples should be in charge of improvements in their conditions.

50. With regard to the need for alcohol rehabilitation programmes, given the terrible impact of alcohol on the Aboriginal community, he referred the Committee to the action brought by Christian, Ryan and Lucas against brewers and the Government, claiming that the rights of Aboriginal and Torres Strait Islander Peoples under international treaties had been abused and that the Government had been negligent in not providing alcohol rehabilitation programmes. The Court had ruled against the plaintiffs, on the ground that no legislation on the matter existed and that under the law no rights had therefore been abused. He considered that the judgement underlined the importance of Australia's proposed accession to the First Optional Protocol to the International Covenant on Civil and Political Rights. He added that the Commonwealth Government did in fact run an alcohol rehabilitation programme.

51. In response to the question asked about the agreement between Australia and Papua New Guinea, any suggestion that it involved a change in Torres Strait Islander Peoples' citizenship was completely mistaken. The agreement was already in existence and concerned only the continuance of the current arrangements relating to traditional visiting rights. The Australian citizenship of Torres Strait Islanders was not affected.

52. As far as reconciliation was concerned, he fully shared the motives behind the question. He believed that what was required was a decade-long programme to increase public awareness of Aboriginal history, culture, dispossession and general disadvantages and of the need to improve the situation.

53. With regard to the safeguarding of the Aboriginal cultural heritage, it was essential that skeletal remains in museums around the world should be returned and he welcomed the recent promise by the University of Edinburgh to return a major collection. Heritage protection legislation existed in most Australian States. He strongly supported the policy of developing "keeping places", controlled by Aboriginal Peoples, which contained either sacred objects restricted to Aboriginal viewing or other cultural objects to be shared with their fellow Australians.

54. AIDS testing was mandatory for immigrants over the age of 15, or for younger children if they belonged to a high-risk group or had been brought to Australia for adoption. He stressed that the procedure was not prejudicial. Similar tests were carried out for cancer, heart disease or tuberculosis with a view to identifying the range of problems.

55. So far as acceptance of refugees by Australia was concerned, 11,400 had been admitted in 1987/1988, 11,300 in 1988/1989, 12,415 in 1989/1990 and 11,339 in 1990/1991.

56. He confirmed that the ninth report would be written in accordance with the Committee's guidelines. He was glad that the current reports had met with approval, but he was conscious that improvements were needed.

57. He was interested in the suggestion that a special Aboriginal commissioner should be appointed and promised to convey it to the relevant minister. Pointing out that the deaths in custody mentioned by the Royal Commission were not confined to the Torres Strait Islanders, but related to deaths in the whole of Australia, he conceded that Mr. Lechuga Hevia's question about why no action had been taken earlier was justified. The Royal Commission had recommended an ongoing review of deaths in custody. The Government had not yet formally responded to the recommendation, but would do so very shortly. It was determined that deaths in custody would be subject to careful monitoring.

58. He did not have the recommendations of the interim report of the Royal Commission to hand, but would forward them in due course. He recalled,

however, that one of its recommendations had been that there should be independent monitoring of the responses of State Governments to the recommendations.

59. Mr. Banton had asked what the situation would have been had the States not agreed to the establishment of the Royal Commission. The answer was that, while the federal Government had the authority on its own initiative to establish the Royal Commission, most of the resultant recommendations would affect State Governments, whose active participation was therefore essential in ensuring their implementation. With regard to the question of relations between the Commonwealth and State Governments, he said that, in the specific case of Queensland, the efforts made by the previous Government had been less than satisfactory with regard to implementing the Convention, but that it was hoped that they would be stepped up by the current administration.

60. Mention had been made of Toomelah and Mornington Island, and in that connection he wished to point out that reports prepared by non-governmental organizations such as the World Council of Churches tended to focus on local issues at the expense of the wider, national considerations taking into account the issues of hundreds of local situations. In the case of Toomelah, while much remained to be done, great improvements had been made in the fields of housing, roads, sewage and public health.

61. In reply to Mr. Banton's question regarding statistics for the release of Aboriginals on bail, he said that no figures were immediately available, but that they would be forwarded in due course. The same applied to his question regarding the small township of Fingal in northern New South Wales.

62. With regard to the need to modify behaviour in order to combat racism, he said that more than half the Royal Commission's recommendations were designed to bring about changes in attitude.

63. A very important question had been raised regarding the deaths of 99 people in custody. Of those 99, 30 had died by hanging, 12 from trauma, 4 from gunshot wounds and 7 from other external wounds. An exhaustive investigation had concluded that no unlawful violence had been used, but it was recognized that measures must be taken as a matter of priority to prevent further deaths in custody.

64. The full report of the Royal Commission into Aboriginal Deaths in Custody would be made available to members of the Committee on request.

65. It should be pointed out that the proceedings of the Royal Commission had been both open and comprehensive, but that responsibility for preferring charges lay with a prosecuting authority independent of the Government. In fact some minor charges had been brought against police officers, and the cases were being considered by the relevant State and Territory jurisdictions.

66. Reference had been made to the question of the decriminalization of drunkenness, which had been recommended by the Royal Commission in its report. So far no general provision had been introduced to that effect, but the issue would be addressed as a matter of priority in the Government's response to the report.

67. The question had been raised of Australia's position with regard to the Convention on the Rights of the Child, and he was able to inform the Committee that his country had ratified that Convention in December 1990. In answer to a further question regarding the death penalty, he said that Australia had abolished capital punishment.

68. Referring to the question of the resources available to the Aboriginal and Torres Strait Island Commission, he said that the Commission had

approximately $600 million at its disposal, and that the Federal Government had no direct control over the way in which those funds were spent. Of the 20 Commissioners, 17 were elected, while it was his responsibility as Minister to appoint the remaining 3.

69. Concerning the proposed space port at Cape York, he said that the decision of the federal authorities was that, if the project was to proceed, it must be acceptable to the Aboriginal community. In that connection, some improvement in land legislation in Queensland had been introduced in order to facilitate the acquisition of land on behalf of the Aboriginal people of Cape York.

70. In the context of heritage protection, he recalled that mention had been made of the old Swan Brewery case. The situation with regard to that case was that, although the former Minister for Aboriginal Affairs had issued a statement, it had subsequently been withdrawn, and that no final decision had as yet been taken. Mrs. Sadiq Ali and Mr. Yutzis had raised the question of federal authority in relation to heritage issues and the implementation of the Convention. In fact, pursuant to an Act approved in 1984, the federal Government did have the power to protect the Aboriginal and Torres Strait Islander heritage, and had done so, for example in the case of a dam-construction project at Alice Springs. It should be emphasized, however, that the first recourse in such matters should be to the State or Territory legislature. The substantive initiative in implementing the Convention was the adoption by the Commonwealth in 1975 of the Racial Discrimination Act, and that federal legislation had often proved highly effective in that area, as cases brought before the courts had shown.

71. In reply to a further point raised by Mr. Yutzis in connection with deaths in custody, he said that the underlying issue to be addressed was that of Aboriginal living conditions, which were in large measure responsible for the incarceration of Aboriginal Peoples on such a disproportionate scale. In its report the Royal Commission had given due consideration to social problems.

72. The Chairman had asked about the status of legislation to give effect to the report of the Law Reform Commission. That report was both detailed and intellectually challenging, but it raised wide-ranging moral, ethical and political issues which would require further reflection.

73. In conclusion, he said that every effort would be made in future to enhance the timeliness of his country's periodic reports and to expand their scope.

74. Mr. YUTZIS said that he had difficulties with paragraph 78 of the eighth periodic report of Australia (CERD/C/194/Add.2) in that the "exceptions" to which it made a reference seemed to be tantamount to positive discrimination, an approach which in his view was incompatible with the provisions in article 1, paragraph 4, and article 2, paragraph 2, of the Convention, which referred to "protection". In his opinion, all forms of discrimination were negative.

75. Mr. FERRERO COSTA said he shared the previous speaker's misgivings with regard to paragraph 78, and was not entirely happy with the explanations provided in connection with article 2, paragraphs 3 and 4, of the Convention, which were more limited in scope than had been suggested.

The meeting rose at 6.15 p.m.