



**International Convention on  
the Elimination  
of all Forms of  
Racial Discrimination**

Distr.  
RESTRICTED\*

CERD/C/62/D/26/2002  
14 April 2003

Original: ENGLISH

---

COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION  
Sixty-second session  
3-21 March 2003

**OPINION**

**Communication No. 26/2002**

Submitted by: Stephen Hagan (represented by counsel)

Alleged victim: The petitioner

State Party: Australia

Date of the communication: 31 July 2002

Date of the present decision: 20 March 2003

[ANNEX]

---

\* Made public by decision of the Committee on the Elimination of Racial Discrimination.

**Annex**

**OPINION OF THE COMMITTEE ON THE ELIMINATION OF RACIAL  
DISCRIMINATION UNDER ARTICLE 14 OF THE INTERNATIONAL  
CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL  
DISCRIMINATION**

**sixty-second session**

**concerning**

**Communication No. 26/2002**

Submitted by: Stephen Hagan (represented by counsel)

Alleged victim: The petitioner

State party: Australia

Date of the communication: 31 July 2002

The Committee on the Elimination of Racial Discrimination, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 20 March 2003,

Adopts the following:

**Opinion**

1. The petitioner, Stephen Hagan, is an Australian national, born in 1960, with origins in the Kooma and Kullilli Tribes of South Western Queensland. He alleges to be a victim of a violation by Australia of articles 2, in particular, paragraph 1 (c); 4; 5, paragraphs d (i) and (ix), e (vi) and f; 6 and 7 of the International Convention on the Elimination of All Forms of Racial Discrimination. He is represented by counsel.

**The facts as presented**

2.1 In 1960, the grandstand of an important sporting ground in Toowoomba, Queensland, where the author lives, was named the "E.S. 'Nigger' Brown Stand", in honour of a well-known sporting and civic personality, Mr. E.S. Brown. The word "nigger" ("the offending term") appears on a large sign on the stand. Mr. Brown, who was also a member of the body overseeing the sports ground and who died in 1972, was of white Anglo-Saxon extraction who acquired the offending term as his nickname, either "because of his fair skin and blond hair or because he had a penchant for using 'Nigger Brown' shoe polish". The offending term is also repeated orally in public announcements relating to facilities at the ground and in match commentaries.

2.2 On 23 June 1999, the petitioner requested the trustees of the sports ground to remove the offending term, which he found objectionable and offensive. After considering the views of numerous members of the community who had no objection to the use of the offending term on the stand, the trustees advised the petitioner by letter of 10 July 1999 that no further action would be taken. On 29 July 1999, a public meeting chaired by a prominent member of the local indigenous community, and attended by a cross-section of the local Aboriginal community, the mayor and the chair of the sports ground trust, passed a resolution “That the name ‘E.S. Nigger Brown’ remain on the stand in honour of a great sportsman and that in the interest of the spirit of reconciliation, racially derogative or offensive terms will not be used or displayed in future”.<sup>1</sup>

2.3 On 11 May 2000, the petitioner brought a federal court action, on the basis that the trustees’ failure to remove the offending term violated sections 9 (1)<sup>2</sup> and 18 C (1)<sup>3</sup> of the federal Racial Discrimination Act 1975 (“the Act”). He sought removal of the offending term from the grandstand and an apology from the trustees. On 10 November 2000, the Federal Court dismissed the petitioner’s application. The Court considered that the petitioner had not demonstrated that the decision was an act “reasonably likely in all the circumstances to offend, insult, humiliate or intimidate an indigenous Australian or indigenous Australians generally”. Nor was the decision an act, in the words of the statutory language, “done because of the race ... of the people of the group”. Finally, the Court considered that the Act did not protect the “personal sensitivities of individuals”, as it considered to be the case here, but rather “render[ed] acts against individuals unlawful only where those acts involve treating the individual differently and less advantageously than other persons who do not share the membership of the complainant’s racial, national or ethnic group”. On 23 February 2002, the Full Court of the Federal Court rejected the petitioner’s appeal. On 19 March 2002, the High Court of Australia refused the petitioner’s application for special leave to appeal.

2.4 The petitioner also pursued a complaint to the Human Rights and Equal Opportunities Commission (HREOC), which could not be pursued further because of a subsequent restriction by law of the Commission’s jurisdiction to investigate certain individual complaints.

### **The complaint**

3.1 The petitioner contends that the use of the offending term on the grandstand and orally in connection therewith violates articles 2, in particular, paragraph 1 (c); 4; 5, paragraphs d (i) and (ix), e (vi) and f; 6 and 7 of the Convention. He contends that the term is “the most racially offensive, or one of the most racially offensive, words in the English language”. Accordingly, he and his family are offended by its use at the ground and are unable to attend functions at what is the area’s most important football venue. He argues that whatever may have been the position in 1960, contemporary display and use of the offending term is “extremely offensive, especially to the Aboriginal people, and falls within the definition of racial discrimination in Article 1” of the Convention.

3.2 He clarifies that he has no objection to honouring Mr. Brown or naming a football stand in his honour, but that at the time the nickname “Nigger” was applied to Mr. Brown, non-Aboriginal Australians “either were not aware of or were insensitive to the hurt and offence

that term caused to Aboriginal people”. He argues further that it is not necessary to repeat Mr. Brown’s nickname in order to honour him, for other stadia named after well-known athletes utilize their ordinary names, rather than their nicknames.

3.3 He argues that under article 2, paragraph 1 (c), in particular, any State party to the Convention has an obligation to amend laws having the effect of perpetuating racial discrimination. He contends that use of words such as the offending term in a very public way provides the term with formal sanction or approval. Words convey ideas and power, and influence thoughts and beliefs. They may perpetuate racism and reinforce prejudices leading to racial discrimination. The lawfulness (in terms of domestic law) of the use of this term also runs counter to the objectives of article 7, which indicates that States parties undertake to combat prejudices leading to racial discrimination.

3.4 The petitioner further argues that section 18 (1) (b) of the Act, requiring the offensive conduct to be “because of” a racial attribute is narrower than the associative terms “based on” found in the definition of racial discrimination in article 1 of the Convention. He characterizes that the dismissal of his complaint, inter alia on the grounds that the offensive term was not “because of” a racial attribute, was “technical”.

3.5 By way of remedy, the petitioner seeks the removal of the offending term from the sign and an apology, as well as changes to Australian law to provide an effective remedy against racially-offensive signs, such as the one in question.

### **The State party’s submissions on admissibility and merits**

4.1 By submission of 26 November 2002, the State party disputed both the admissibility and merits of the petition.

4.2 As to admissibility, the State party, while conceding that domestic remedies have been exhausted, considers the petition incompatible with the provisions of the Convention and/or insufficiently substantiated. Concerning incompatibility, the State party refers to jurisprudence of the Human Rights Committee that it will not review the interpretation of domestic law, absent bad faith or abuse of power,<sup>4</sup> and invites the Committee on the Elimination of Racial Discrimination to take the same approach. The State party notes that its courts and authorities considered the petitioner’s complaints expeditiously and according to laws enacted in order to give effect to its obligations under the Convention. The courts, at first instance and appeal, held that the petitioner’s complaints had not been made out. Accordingly, the State party submits it would be inappropriate for the Committee to review the judgements of the Federal Court and to substitute its own views. As to the specific claim under paragraph 1 (c) that the State party should amend the Racial Discrimination Act (being a law having the effect of perpetuating racial discrimination), the State party argues that this claim is incompatible with the Convention, as the Committee has no jurisdiction to review the laws of Australia in the abstract. It invites the Committee to follow the jurisprudence of the Human Rights Committee to this effect.<sup>5</sup>

4.3 In view of the thorough consideration and rejection of the complaint before domestic instances, the State party also argues that the petition is insufficiently substantiated, for purposes of admissibility.

4.4 On the merits, the State party disputes that the facts disclose a violation of any articles of the Convention invoked. As to the claim under article 2, the State party submits that these obligations are of general principle and programmatic in character, and therefore accessory to other articles of the Convention. Accordingly, in the same way that the Human Rights Committee only finds a violation of article 2 of the International Covenant on Civil and Political Rights<sup>6</sup> after finding a separate substantive violation of the Covenant, a violation of article 2 of the Convention could only arise after a violation of the other substantive articles (which is denied in its submissions under articles 4 to 7 below).<sup>7</sup> Even if the Committee considers that article 2 can be directly breached, the State party submits that it has satisfied its obligations: it condemns racial discrimination, has enacted legislation and policy to make its practice by any person or body unlawful as well as to eliminate all forms of racial discrimination and actively promote racial equality, and has provided effective mechanisms of redress.

4.5 In terms of the specific paragraphs of article 2, as to paragraph 1 (a), the State party cites academic commentary to the effect that this provision does not deal with private acts of discrimination (which are referred to in subparagraphs (b) and (d)).<sup>8</sup> As the Toowomba Sports Ground Trust is a private body rather than a public authority or government agent, its acts fall outside the scope of paragraph 1 (a). As to paragraph 1 (b), the State party relies on commentary that this provision is intended to prevent any actor engaged in racial discrimination from receiving State support.<sup>9</sup> The State party submits that neither the establishment of the Sports Ground Trust, its continued existence, nor its response to the communication can be taken as any State sponsorship, defence or support of any racial discrimination committed by the Trust (which is denied).

4.6 As to paragraph 1 (c), the State party refers to its submissions below that no racial discrimination has been suffered.<sup>10</sup> That the petitioner's complaint under the Racial Discrimination Act was unsuccessful does not detract from the effectiveness of that legislation, nor does it suggest that the Act creates or perpetuates racial discrimination. As to paragraph 1 (d), the State party again refers to its submissions that no racial discrimination has occurred, and to its general remarks above on article 2.<sup>11</sup> As to paragraph 1 (e), the State party refers to commentary that this provision is "broadly and vaguely worded", leaving undefined "[w]hat 'integrationist' movements are, and what 'strengthens' racial division".<sup>12</sup> The State party recalls that Australia is a multicultural society, and that its laws and policies are designed to eliminate direct and indirect racial discrimination and actively to promote racial equality. It refers to its periodic reports to the Committee for in-depth description of these laws and policies. As to paragraph 2, the State party submits that the petitioner has failed to indicate how the circumstances of his case warrant the implementation of "special measures". Alternatively, it refers to its submissions that no discrimination has taken place for the conclusion that no need for "special measures" arises.

4.7 As to the petitioner's claim under article 4, the State party invokes its reservation to this article.<sup>13</sup> The State party recalls that pursuant to its obligations under this article, it enacted Part II A of the Racial Discrimination Act, including section 18 C, under which the petitioner

filed his claim. It further argues, based on the jurisprudence of the Human Rights Committee,<sup>14</sup> that States parties must be accorded a certain “margin of appreciation” in implementing their Convention obligations.

4.8 The State party argues that the use of the term “because of” in section 18 of the Act, requiring a causal relationship between offensive conduct and the race, colour or national or ethnic origin of the “targeted group”, is an appropriate manner to implement the obligation to prohibit the intentionally racist acts described in article 4. This is consistent with the Convention and avoids uncertainty. Accordingly, the State party argues that to use “based on” in section 18 of the Act would not give appropriate effect to article 4 of the Convention as implemented in Australian law.

4.9 The State party contends that the petitioner’s complaint was not dismissed on technical grounds, but for lack of substance. The Federal Court, rejecting the contention that any use of the offending term must necessarily be racially offensive, concluded that in the context in which the offending term was used and the community perceptions of the sign on the stand, the decision of the Trust to leave the sign intact did not breach section 18 C of the Act. The State party invites the Committee to adopt the approach of the Federal Court and take into consideration the context in which the word is used in determining issues under article 4.

4.10 The State party refers to the following contextual elements: (i) the fact that the offending term is displayed as “an integral part of the name of a person who is clearly being honoured by having his name publicly attached to the stand”, (ii) the Federal Court’s finding that “[e]ven if the nickname ‘Nigger’ was originally bestowed long ago on Mr. Brown in circumstances in which it then had a racial or even a racist connotation, the evidence indicates that for many decades before the author’s complaint, its use as part of the customary identifier of Mr. Brown had ceased to have any such connotation”, (iii) the consultations with local indigenous persons, (iv) the evidence of a former Aboriginal rugby league personality in the area for whom the name was unproblematic and “simply part of history”, and (v) the absence of any complaint (until the petitioner’s) over 40 years of display at a ground often frequented by many indigenous persons despite increased sensitivities and willingness to speak out in recent years.

4.11 In the light of the above, the State party contends that the Federal Court’s conclusion (upheld on appeal) that the trustees’ refusal, conveyed only after “in good faith [having] taken care to avoid offending the members of a racial group” and which “is not, on an objective view, likely to offend members of that group”, was not an “act done because of the race of” any person. While accepting that the petitioner subjectively felt offended, the Committee should apply an objective test similar to that of the Federal Court in finding that there was no suggestion that the trustees were attempting to justify, promote or incite racial discrimination, contrary to article 4 of the Convention.

4.12 In terms of the specific paragraphs (a) to (c) of article 4, the State party argues that the petitioner has supplied no evidence as to how it may have violated any of these obligations, including that it may be abetting racist activities. It points to Part II A of the Act, which makes unlawful offensive behaviour based on racial hatred, and to further legislation at both State and

Territory level that proscribes racial hatred and vilification, as implementing its obligations under these paragraphs. As to paragraph (a) it recalls its reservation, and, as to paragraph (c), that the Trust is not a public authority or institution.

4.13 As to the petitioner's claim, under article 5, that he is unable to enjoy functions at the sports ground, the State party refers to the jurisprudence of the European Court of Human Rights in assessing discrimination. Under that approach, there must be a clear inequality of treatment in enjoyment of the relevant right, as compared to others in an analogous position. If there is such inequality between similarly situated persons, there must be reasonable and objective justification as well as proportionality of the means applied to achieve a particular aim.<sup>15</sup> The State party observes that sections 9 (making racial discrimination unlawful)<sup>16</sup> and 10 (ensuring equality before the law) of the Act were enacted to implement articles 2 and 5 of the Convention, and section 9 closely follows the definition of racial discrimination in article 1 of the Convention.

4.14 The State party notes that the Federal Court (upheld on appeal) interpreted the phrase "based on" section 9 (1), upon which the author relied, as not "requiring a causal relationship between the act complained of and race etc., but [that it] should rather be read as meaning 'by reference to', i.e., as capable of being satisfied by a less direct relationship than that of cause and effect". Turning to the petitioner's case in terms of section 9 (1), the Court did not consider that the trustees' decision to retain the sign was an act "based on" race. This was so for the decision was not "an act that involved treating members of the Aboriginal race differently, let alone less favourably, from other members of the community", as the offending term was simply part of the customary identifier of a well-known person which had long ceased to have any inappropriate connotation.

4.15 The Court considered that, even if the decision was based or motivated on race, these racial considerations "were taken into account to satisfy the trustees that maintenance of the sign would not give offence to Aboriginal persons generally, as distinct from offence to [the petitioner] personally". Thus, the Court concluded, in finding that there was no racial discrimination, that: "[I]t cannot be said that the act, even if based on race, involved any distinction etc. having either the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom of the kind referred to in section". The State party therefore submits that, as found by the Federal Court, the petitioner has failed to establish that he was treated by the trustees any differently from, or less favourably than, any other person in a similar position, and therefore no racial discrimination has been established.

4.16 In terms of the specific paragraphs of article 5 invoked by the petitioner (paras. (d) (i), (d) (ix), (e) (vi) and (f)), the State party submits that as he failed to establish a racially based distinction in the circumstances of his case, no question of discrimination arises in respect of his freedom of movement, freedom of assembly or association, right to equal participation in cultural activities, or right of access to any public place or service, respectively. As to paragraph (e) (vi), the State party refers to the Committee's jurisprudence that it is beyond its mandate to ensure that this right is established, but rather to monitor its implementation once the right is granted on equal terms.<sup>17</sup>

4.17 On article 6, the State party notes that States possess a wide margin of discretion in fulfilling their obligation under article 6.<sup>18</sup> It submits that its domestic law, which provides for the filing and determination of complaints of racial discrimination and the award of remedies, including monetary compensation for successful complaints, appropriately implements the obligation under article 6. The State party emphasizes that the dismissal of the petitioner's complaint by the Federal Court is no reflection on the effectiveness of the Act's remedies against racial discrimination, or of the remedies available when complaints are successful.

4.18 In any event, the State party submits that article 6, providing for remedies, is accessory in nature and can only be found to have been violated once a separate violation of the specific rights in the Convention has been established.<sup>19</sup> As no other violation of the Convention has been established (under arts. 2, 4, 5 or 7), nor can there be a consequent violation of article 6.

4.19 As to the claim under article 7, the State party notes that the Act came into effect the day after the Convention entered into force for the State party. Moreover, federal, State and Territory governments have, over the years, adopted a wide array of measures to combat effectively racial prejudice and promote racial harmony, which are detailed in the State party's periodic reports. That the petitioner was unsuccessful before the domestic courts does not detract from the immediacy or effectiveness of measures taken by the State party's governments to combat racial prejudice and to promote racial harmony.

### **The petitioner's comments**

5.1 By submission of 20 December 2002, the petitioner responded to the State party's observations. He confirms that he is not asking the Committee to review decisions of the domestic courts, but rather to assess compliance with the Convention of the public display and repeated use in announcements of the offending term. It is apparent from the outcome of the domestic proceedings that the State party's domestic law is cast in overly restrictive terms and does not give full effect to Convention obligations. Nor does the petitioner ask the Committee to review the State party's law in abstracto; rather, he complains of a specific breach of the Convention and the State party's failure to provide a corresponding remedy.

5.2 The petitioner considers that subjective views of individuals referred to by the State party who were not offended by the term in question is of no relevance, as the question is whether the offence was felt by the petitioner and his family. In any event, a considerable number of other persons shared the petitioner's views on the stand, namely the Toowoomba Day Committee, the Toowoomba Multicultural Association, over 80 people participating in a "practical reconciliation" walk and 300 persons who signed a petition. Affidavits to this effect were submitted to the Federal Court, but were not admitted as evidence on technical grounds.<sup>20</sup> The petitioner invites the Committee to take notice of these views. In any event, the petitioner requests the Committee to conclude that the offending term is objectively offensive, whatever the subjective views of various individuals.

5.3 As to the inferences to be drawn from the failure of his domestic proceedings, the petitioner argues that this failure derived from the State party's legislation being so narrowly drawn that it is exceedingly difficult to prove discrimination, and thus it did not give full effect

to the Convention. This failure shows that the State party's law does not provide effective protection against racial discrimination. He emphasizes that he does not approach the Committee arguing a violation of domestic legislation, but rather of the Convention itself.

5.4 As to the State party's specific arguments under article 2, the petitioner observes that the State party has taken no steps to have the offending sign removed, despite the controversy surrounding it for years. This is said to be in violation of the duty, under article 2, to eliminate and bring to an end all forms of racial discrimination. The petitioner rejects the characterization of the Sports Ground Trust as a "private body". He points out that trustees are appointed and can be removed by the Minister, and that their function is to manage land for public (community) purposes. Indeed, the State party's legislation provides that any liability of the trustees attaches to the State.<sup>21</sup> It is therefore a public authority or institution for Convention purposes.

5.5 As to the State party's specific arguments under article 4, the petitioner objects to the reference to its reservation. He contends that the reservation is "probably invalid" as incompatible with the object and purpose of the Convention. Even if valid, he points out that the reservation is temporally limited as it refers to the State party's intention "at the first possible moment, to seek from Parliament legislation implementing the terms of Article 4 (a)". Given that the State party contends that the Part II A of the Act implements its obligations under the article, the reservation must now have lapsed.

5.6 The petitioner points out that he is not objecting to use of the offending term in the distant past, but rather its contemporary use and display. He points out that it is not necessary to repeat the offensive nickname in order to honour Mr. Brown, and it is not common in the State party for stands to feature the nicknames of famous sportspeople in addition to their proper names.

5.7 As to the State party's specific arguments under article 5, the petitioner contends that he has established a racially-based distinction on the basis that the offending term is racially offensive and derogatory, and that white Australians are not affected as the petitioner and his family have been. The inability as a consequence of the petitioner and his family to attend the ground impaired their rights under article 5, including their right to equal participation in cultural activities. As to the State party's specific arguments under article 5, the author observes that the State party failed to identify any measure of "teaching, education, culture and information" directed at combating the trustees' discriminatory conduct, or at promoting reconciliation amongst the many persons offended by the sign.

## **Issues and Proceedings before the Committee**

### *Consideration of admissibility*

6.1 Before considering any claims contained in a petition, the Committee on the Elimination of Racial Discrimination must, in accordance with rule 91 of its rules of procedure, decide whether or not it is admissible under the Convention.

6.2 The Committee notes that the State party concedes that domestic remedies have been exhausted. As to the State party's arguments that the petition falls outside the scope of the Convention and/or is insufficiently substantiated, the Committee considers that the petitioner has sufficiently substantiated, for purposes of admissibility, that his individual claim may fall within the scope of application of the provisions of the Convention. Given the complexity of the arguments of both fact and law, the Committee deems it more appropriate to determine the precise scope of the relevant provisions of the Convention at the merits stage of the petition.

6.3 In the absence of any further objections to the admissibility of the communication, the Committee declares the petition admissible and proceeds to its examination of the merits.

*Consideration of the merits*

7.1 Acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee has considered the information submitted by the petitioner and the State party.

7.2 The Committee has taken due account of the context within which the sign bearing the offending term was originally erected in 1960, in particular the fact that the offending term, as a nickname probably with reference to a shoeshine brand, was not designed to demean or diminish its bearer, Mr. Brown, who was neither black nor of aboriginal descent. Furthermore, for significant periods neither Mr. Brown (for 12 years until his death) nor the wider public (for 39 years until the petitioner's complaint) objected to the presence of the sign.

7.3 Nevertheless, the Committee considers that that use and maintenance of the offending term can at the present time be considered offensive and insulting, even if for an extended period it may not have necessarily been so regarded. The Committee considers, in fact, that the Convention, as a living instrument, must be interpreted and applied taking into the circumstances of contemporary society. In this context, the Committee considers it to be its duty to recall the increased sensitivities in respect of words such as the offending term appertaining today.

8. The Committee therefore notes with satisfaction the resolution adopted at the Toowoomba public meeting of 29 July 1999 to the effect that, in the interest of reconciliation, racially derogatory or offensive terms will not be used or displayed in the future. At the same time, the Committee considers that the memory of a distinguished sportsperson may be honoured in ways other than by maintaining and displaying a public sign considered to be racially offensive. The Committee recommends that the State party take the necessary measures to secure the removal of the offending term from the sign in question, and to inform the Committee of such action it takes in this respect.

[Adopted in English, French, Russian and Spanish, the English text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

### Notes

<sup>1</sup> It is not clear whether the petitioner attended this meeting.

<sup>2</sup> Section 9 of the Racial Discrimination Act 1975 (Commonwealth) provides:

#### **Racial discrimination to be unlawful**

(1) “It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.”

<sup>3</sup> Section 18 C of the Racial Discrimination Act provides:

#### **Offensive behaviour because of race, colour, or national or ethnic origin**

(1) It is unlawful for a person to do an act, otherwise than in private, if:

(a) The act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and

(b) The act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.

<sup>4</sup> Maroufidou v. Sweden Case No. 58/1979, Views adopted on 9 April 1981.

<sup>5</sup> MacIsaac v. Canada Case No. 55/1979, Views adopted on 25 July 1980: “[The Committee’s] task is not to decide in the abstract whether or not a provision of national law is compatible with the Covenant, but only to consider whether there is or has been a violation of the Covenant in the particular case submitted to it.”

<sup>6</sup> Article 2 of the Covenant sets out the right to an effective remedy for violations of the Covenant.

<sup>7</sup> Paras. 4.7 to 4.9, *infra*.

<sup>8</sup> Lerner, N.: The UN Convention on the Elimination of All Forms of Racial Discrimination. The Netherlands, Sijthoff Noordhoff Publishers, 1980, at 37.

<sup>9</sup> *Ibid*.

<sup>10</sup> Paras. 4.19 to 4.15, *infra*.

<sup>11</sup> Para. 4.4, *supra*.

<sup>12</sup> Op.cit., at 38.

<sup>13</sup> The reservation provides: “The Government of Australia ... declares that Australia is not at present in a position specifically to treat as offences all the matters covered by article 4 (a) of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing criminal law dealing with such matters as the maintenance of public order, public mischief, assault, riot, criminal libel, conspiracy and attempts. It is the intention of the Australian Government, at the first suitable moment, to seek from Parliament legislation specifically implementing the terms of article 4 (a).”

<sup>14</sup> Hertzberg et al. v. Finland Case No. 61/1979, Views adopted on 2 April 1982.

<sup>15</sup> Airey v. Ireland (A 32 para. 30 (1980)), Dudgeon v. United Kingdom (A 45 para. 67 (1981)), Van der Musselle v. Belgium (A 70 para. 46 (1983)), The Belgian Linguistic Case (Merits) (A para. 6 (1968)).

<sup>16</sup> For full text of the provision, see footnote 2, supra.

<sup>17</sup> Demba Talibe Diop v. France Case No. 2/1989, Opinion of 18 March 1991.

<sup>18</sup> Valencia Rodriguez, L.: “The International Convention on the Elimination of All Forms of Racial Discrimination” in Manual on Human Rights Reporting Under Six Major International Instruments, New York, United Nations, 1997, at 289.

<sup>19</sup> See para. 4.4 and footnote 4, supra.

<sup>20</sup> This evidence is supplied to the Committee.

<sup>21</sup> Section 92 Lands Act 1994 (Queensland).

-----