



International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
4 December 2017
Original: English

Committee on the Elimination of Racial Discrimination Ninety-fourth session

Summary record of the 2596th meeting

Held at the Palais Wilson, Geneva, on Monday, 27 November 2017, at 3 p.m.

Chair: Ms. Crickley

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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*)

Combined eighteenth to twentieth periodic reports of Australia (CERD/C/AUS/18-20 and CERD/C/AUS/Q/18-20)

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

2. **Mr. Strahan** (Australia), introducing his country's combined eighteenth to twentieth periodic reports (CERD/C/AUS/18-20), said that, while the Federal Government of Australia was the State party to the Convention, state and territory governments shared responsibility for fulfilling the country's international human rights obligations and had been consulted in the course of the drafting of the report. Civil society had also been involved in the preparations for the interactive dialogue with the Committee.

3. Australia took its reporting obligations seriously and by 2018 would have submitted reports on its efforts to implement all seven of the international human rights treaties to which it was a party. It had accepted 150 of the 290 recommendations made to it during its second universal periodic review in November 2015 and was on track to accept a further 32 recommendations. The Committee's previous concluding observations (CERD/C/AUS/CO/15-17) had influenced policy development, yielding concrete outcomes in relation to multiculturalism, racism and education. The country's campaign for election to the Human Rights Council had been underpinned by a commitment to international accountability, scrutiny and transparency. Australia looked forward to working with the treaty bodies during its three-year term on the Council.

4. Built on mass migration, Australia was a diverse nation with strong public institutions where civil and social unrest were rare. The country had a high rate of intermarriage, as a result of which many Australians had an intercultural background. Many migrants had prospered in the country. Indeed, the unemployment rate was currently lower for migrants than for native-born Australians. Despite signs of a rise in xenophobia, Australia continued to accept a large number of migrants on a non-discriminatory basis, some 190,000 each year since 2012. The Indian and Chinese communities were currently the two largest groups of migrants in the country. The Scanlon Foundation's survey on social cohesion had revealed that around 85 per cent of Australians supported multiculturalism and were satisfied with the current high level of immigration or wished for that trend to continue. According to the Pew Research Centre, the majority of the population believed that diversity in race, ethnicity and nationality made Australia a better place.

5. The Federal Government considered cultural diversity to be one of the country's greatest assets and rejected outright racist behaviour, racial vilification and hate speech, as well as structural barriers that entrenched racism. The current Prime Minister of Australia had publicly advocated a zero-tolerance approach towards racism and racist abuse and had underscored the need for citizens to show greater respect for the cultural diversity of the population. According to the Race Discrimination Commissioner, there was evidence to suggest that, despite its being one of the most racially tolerant countries in the world, racism continued to exist and to be a blight on the lives of many in Australia. In order to better understand the scope of the problem, the Federal Government had allocated \$1 million to research initiatives under the Challenging Racism Project. Research conducted as part of the Project showed that 20 per cent of Australians had experienced racial hate speech and that around 5 per cent had been victims of racially motivated attacks. Certain groups, such as indigenous Australians and persons of African descent, experienced racism more keenly than others, while there was also evidence to suggest that attacks motivated by Islamophobia, particularly against women, were also on the rise.

6. All jurisdictions had legislative provisions prohibiting racial discrimination. At the federal level, the Racial Discrimination Act 1975, which effectively implemented the Convention, prohibited both direct and indirect racial discrimination. Victims of racial discrimination could lodge a complaint with the Australian Human Rights Commission. If

attempts at conciliation failed, victims could refer their complaint to the federal courts. Three states had introduced sentencing laws which allowed judges to take into account whether a crime had been motivated by hatred or prejudice. Such legislative mechanisms were vital in tackling those phenomena and had helped secure the conviction of three far-right activists found guilty of vilifying Islam in the state of Victoria.

7. Civil and criminal penalties had also been introduced for conduct constituting online hate speech and cyberracism. Major social media platforms had been requested to take steps to prohibit the dissemination of harmful material and to establish complaint mechanisms. While social media could be used to fuel hatred and violence in the name of race or religion, they could also serve to promote inclusion and acceptance, as demonstrated by a spontaneous Twitter campaign launched in response to the fallout from a terrorist incident that had taken place in the country in December 2014.

8. Since it had last appeared before the Committee, the Federal Government had launched the National Anti-Racism Strategy in partnership with the Australian Human Rights Commission and non-governmental organizations (NGOs). The Strategy's key objectives were to raise awareness of racism and its impact, to prevent and reduce the prevalence of racism and to empower communities and individuals to take action and to seek redress. As part of the Strategy, the Australian Human Rights Commission had launched the "Racism. It stops with me" campaign, a public awareness initiative aimed at preventing and countering racism. Major sporting bodies and sports players had likewise taken a strong stand against racism at sporting events.

9. The Federal Government had reaffirmed its long-standing commitment to multiculturalism by issuing a statement in March 2017 entitled "Multicultural Australia: United, Strong, Successful", which it had drafted with the assistance of the Australian Multicultural Council. The statement underscored the importance of effective integration and unity in Australian society, recognizing that Australia, as an immigration nation, was not defined by race, religion or culture but by shared values such as freedom, democracy, the rule of law, tolerance and equal opportunity. It was vital that the country's public institutions should embody the diversity of the population and be equipped to operate in a multicultural society. By way of example, the Victoria Police employed 5,825 staff who had been born overseas and was actively recruiting more officers from African and South-East Asian backgrounds. The Victoria Police also had a range of training programmes to address and help eliminate stereotyping and bias in policing. The Federal Government engaged community leaders and other stakeholders through Multicultural Community Liaison Officers and provided funding to the Federation of Ethnic Communities' Councils of Australia.

10. The socioeconomic conditions of indigenous Australians, who were often the victims of blatant racism, continued to lag behind those of other Australians. In addition to serious discrepancies, which revealed intergenerational disadvantage, the suicide rate of indigenous Australians was twice as high as that of non-indigenous Australians. Indigenous Australians also accounted for 27 per cent of the country's prisoners, despite making up only 3 per cent of the population. The federal, state and territory governments were committed to working with that population group to address the discrimination, inequality and disadvantage that they faced and to achieve lasting change. The Closing the Gap Strategy constituted an unprecedented effort to improve the outcomes of indigenous Australians in relation to education, health and employment. The Closing the Gap Prime Minister's Report 2017 showed that progress had been made in some areas, such as school retention, but had stalled in others. The strategy was being revised with the aim of renewing the cooperation between federal, state and territory governments and indigenous Australians. The Federal Government was already investing in local initiatives to address the drivers of criminality, victimization and incarceration among indigenous Australians, such as drug and alcohol rehabilitation services, support services for parents and increased educational and employment opportunities.

11. The Federal Government would give due consideration to the recommendations contained in the recently published report of the Royal Commission into the Protection and Detention of Children in the Northern Territory. It was in the process of ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment and recognized the pressing need to put in place a robust and independent mechanism to monitor the situation in detention centres. Just over half of all the funding available under the Indigenous Advancement Strategy was allocated to indigenous organizations, whereas previously they had received only 30 per cent of the total.

12. The Federal Government was committed to amending the Constitution to recognize Aboriginal and Torres Strait Islander peoples. Granting indigenous Australians constitutional recognition would reaffirm the value placed on the country's indigenous heritage and address the historical exclusion, prejudice and violence to which they had been subjected. The Referendum Council, which had been established to expedite the process of amending the Constitution, had conducted comprehensive consultations to ensure that its Final Report reflected the views of all Australians. Furthermore, the extensive dialogue that it had undertaken with indigenous Australians had led to the adoption of the Uluru Statement from the Heart, which outlined their aspirations for reform. The Referendum Council's Final Report recommended that a referendum should be held to determine whether the Constitution should be amended to provide for a representative body that gave Aboriginal and Torres Strait Islander First Nations a voice in the Commonwealth Parliament and that an extra-constitutional Declaration of Recognition should be adopted by all Australian parliaments as a symbolic statement of recognition in order to unify Australians. The Constitution could not, however, be amended unilaterally by Parliament; it could only be amended through a referendum supported by a majority of people in a majority of states.

13. The Federal Government had given due consideration to the aforementioned recommendations of the Referendum Council and, while it remained committed to constitutional change and to ensuring the involvement of indigenous peoples in decision-making processes concerning them, it did not support amending the Constitution to provide for a representative body. That proposal would be unlikely to garner the necessary support in a referendum and, if rejected, could set back the country's journey of reconciliation. The Federal Government had instead decided to set up a cross-party parliamentary committee to develop a proposal that recognized indigenous Australians and that would win the necessary support. The terms of reference of the committee had not yet been finalized and had to be approved by both sides of Parliament. The committee had been asked to take into account the recommendations of the Referendum Council. The Federal Government was confident that the committee would be able to move the process of amending the Constitution forward.

14. The Federal Government recognized that racial discrimination could affect the physical and mental health of victims and was determined to address the pernicious effects of that phenomenon by ensuring that programmes and services were accessible to all eligible Australians, regardless of cultural or linguistic background. The Closing the Gap Strategy contained two health-related targets: to close the gap in life expectancy within a generation and to reduce the gap in child mortality by half by 2018. While the Federal Government was not currently on track to achieve those targets, it had made significant inroads in partnership with the Aboriginal community controlled health sector. The next iteration of the implementation strategy for the National Aboriginal and Torres Strait Islander Health Plan 2013-2023 would be rolled out in 2018. The National Cultural Respect Framework for Aboriginal and Torres Strait Islander Health 2016-2026 required governments at all levels to embed respect for cultural diversity in the health system and in the delivery of health-care services in an effort to remove the barriers impeding the achievement of positive health outcomes for indigenous Australians.

15. The Department of Health was working with other interested parties to devise an Aged Care Diversity Framework to ensure that health-care services met the needs of older Australians from diverse cultural backgrounds. Specific action plans would address the challenges faced by indigenous Australians, members of culturally and linguistically diverse communities and lesbian, gay, bisexual, transgender and intersex persons.

16. The national curriculum set out national standards intended to improve the learning outcomes of all young Australians. The Melbourne Declaration on Educational Goals for Young Australians, which had informed the design of the national curriculum, recognized

that education helped to build a cohesive and culturally diverse society and outlined the Federal Government's commitment to ensuring that all young Australians appreciated, understood and acknowledged the country's social, cultural, linguistic and religious diversity, the value of indigenous culture and the need for reconciliation between indigenous and non-indigenous Australians. In May 2017, the Federal Government had earmarked an additional \$138 million for an indigenous education package comprising scholarships and mentoring and support services for secondary school students. Understanding the history and culture of Aboriginal and Torres Strait Islander peoples was also embedded in the national curriculum; the Federal Government had enlisted the services of a prominent indigenous historian to explore means of reinforcing that priority.

17. Australian law prohibited racial discrimination in employment. The Federal Government had taken measures to facilitate the integration of indigenous and culturally and linguistically diverse Australians into the labour market and to combat racial discrimination during the recruitment phase and in the workplace itself. As part of the Closing the Gap Strategy, it was investing \$55.7 million to accelerate progress towards achieving parity in employment outcomes between indigenous and non-indigenous Australians.

18. Australia had a long history of welcoming people fleeing persecution and had been consistently ranked among the top three providers of permanent resettlement for refugees. In addition to having accepted an additional 12,000 refugees from Syria and Iraq, the country would resettle nearly 19,000 people under its humanitarian programme in 2018-2019. While the Federal Government acknowledged that not all commentators supported its approach to border security, it had learned from experience that taking a softer approach could lead to the exploitation of vulnerable people and deaths at sea. On the subject of the closure of the Manus Island Regional Processing Centre, Papua New Guinea had finished processing former residents and had provided accommodation to both refugees and failed asylum seekers where they could access support services, including medical care. Australian border protection policy, which included not resettling people who came to Australia illegally by boat, had secured the country's borders and had subverted the people smuggling business model. Addressing irregular migration was essential to maintain the public confidence needed to administer one of the world's most generous humanitarian programmes.

19. Indeed, the country's high-quality settlement services demonstrated its commitment to facilitating the integration of new arrivals. Between 2017 and 2021, the Federal Government would invest \$1 billion in settlement services, not including health and welfare. It had also earmarked \$5.2 million to fund a new career pathways pilot project to help refugees find suitable employment. The recently passed Fair Work Amendment (Protecting Vulnerable Workers) Bill prescribed harsher penalties for serious contraventions of labour laws and increased the evidence-gathering powers of the Fair Work Ombudsman to ensure that cases of exploitation were properly investigated. The allocation of \$20 million of additional funding would increase the Ombudsman's capacity to engage with vulnerable communities and to help migrant workers better understand and assert their employment rights. The Migrant Workers' Task Force would lead government efforts to address exploitation. Aware that migrant women faced unique challenges, the Federal Government supported six national women's alliances, which allowed the voices of marginalized women to be heard and facilitated their engagement in advocacy and decision-making processes.

20. The high prevalence of domestic violence in indigenous and culturally and linguistically diverse communities remained a serious cause for concern. The National Plan to Reduce Violence against Women and their Children 2010-2022 set out an ambitious framework to provide more effective support to women and children who had experienced or were at risk of experiencing violence, to hold perpetrators of violence to account and to prevent violence from occurring. The Plan included specific targets for indigenous women, women with disabilities and women from culturally and linguistically diverse backgrounds. The Federal Government had earmarked a further \$100 million for initiatives associated with the Plan in 2016/17.

21. Australia remained committed to fighting racism and to safeguarding equality of opportunity. He looked forward to sharing experiences with the Committee and to drawing on its expertise.

22. **Mr. Soutphommasane** (Australia), speaking in his capacity as the country's Race Discrimination Commissioner and also as a representative of the Australian Human Rights Commission, said that while most Australians regarded the country's multiculturalism as a strength, racism continued to be present in society. A recent study had found an alarming increase in the number of people reporting that they had experienced discrimination based on race, ethnicity or religion, with particularly high levels of responses by Aboriginal and Torres Strait Islander people, migrants from African countries and people from non-English speaking backgrounds. Research had also indicated a rise in negative public sentiment towards Muslims. In addition, extremist nationalist organizations had become more prominent in public debates on race and immigration.

23. The main legislative tool for implementing the Convention and combating racial discrimination and hatred, the Racial Discrimination Act 1975, had certain shortcomings. Its provisions could be overridden or suspended by other legislation. That had already occurred, in 2007, when the Government had introduced the Northern Territory National Emergency Response. The Act's provisions in respect of special measures were not fully in compliance with the Committee's general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, as there was no requirement for consultation and participation in the design and implementation of such measures. The Act did not criminalize racial hatred, and the country's constitutional arrangements still allowed for racially discriminatory laws to be passed, including disqualification of a group of people from voting on the basis of race. The Australian Human Rights Commission had advocated for the removal from the Constitution of such provisions and had opposed the passage of federal laws undermining the Racial Discrimination Act 1975.

24. The Commission had presented in its submission to the Committee 44 recommendations to improve the country's compliance with the Convention, including recommendations addressing the plight of the persons most vulnerable to racial discrimination: Aboriginal and Torres Strait Islander peoples, migrants and members of culturally and linguistically diverse communities. It had also highlighted issues such as discriminatory police practices, counter-terrorism, detention of immigrants and multicultural policy.

25. Australia still lacked a unified system to collect data on racism, racially motivated crimes, racial diversity and multiculturalism. Better data collection would make it easier to address disparities in employment, health, education and the criminal justice system. The Royal Commission into the Protection and Detention of Children in the Northern Territory had recently released its findings and had established that youth detention centres in the Northern Territory were not fit for accommodating or rehabilitating children and young people. It had found that children had been subjected to physical control, abuse and humiliation there. The Commission had urged the Government to implement its recommendations. The Federal Court of Australia had held that the police service of the State of Queensland had breached the Racial Discrimination Act 1975 after it had heard the case of an Aboriginal man who had died in custody on Palm Island. It had found that a number of police officers had not acted impartially and independently in their investigations, had failed to communicate with the community to defuse tensions and had carried out unnecessary and disproportionate arrests. In the opinion of the Court, such acts would not have occurred in an isolated community in Queensland if the place in question had not been an Aboriginal community. The Commission called upon the Committee to follow up on that case and to monitor the response. It recommended that police be given training in anti-racist behaviour and in cultural competencies. All administrations in Australia should implement independent review mechanisms to monitor compliance of police practices with the Convention and with the Racial Discrimination Act 1975.

26. The First Nations National Constitutional Convention had been held in May 2017 to discuss the possibility of constitutional recognition of the country's indigenous peoples. It had proposed the establishment of a constitutionally enshrined "first nations' voice" in Parliament and the creation of a Makarrata commission to supervise a process to conclude

agreements between governments at the various levels and the first nations. His Commission was deeply disturbed by the Australian Government's rejection of the proposal for a first nations' voice in Parliament. Arab and Muslim Australians had expressed concern that a heightened level of public anxiety about terrorism had worsened prejudice and discrimination against their groups. Counter-terrorism laws must be subject to ongoing reviews to ensure compliance with the rights guaranteed by the Convention. It was essential for all administrations in the country to show vigilance against the effects of racial profiling. The success of the country's multicultural society was worthy of celebration, but that success must not induce complacency. The Racial Discrimination Act 1975 must continue to set a standard for equality and tolerance, and governments at all levels must continue to respond to racial discrimination.

27. **Ms. Shepherd** (Country Rapporteur) said that the State party had implemented several successful policies addressing racism and racial discrimination, including the National Anti-Racism Strategy 2012-2018. It had appointed a national Race Discrimination Commissioner and had adopted a broad multicultural policy. States such as Queensland had adopted their own cultural diversity policies. The federal Government had also adopted the National Indigenous Law and Justice Framework and the National Aboriginal and Torres Strait Islander Health Plan, as well as the National Anti-Racism Strategy. It was heartening to see that both the State party's report and the opening statement of the head of delegation included the affirmation that there was "no place for racism" in Australia. That notwithstanding, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance had noted during a recent visit to the country that hate speech and counter-terrorism measures were fuelling racism, xenophobia, Islamophobia and ethnic discrimination. Research indicated that the situation was becoming worse. She therefore urged the State party to maintain the protections against discrimination under sections 18A and 18D of the Racial Discrimination Act 1975. In particular, the wording of those provisions should not be changed so as to remove the words "offend" and "insult". Additionally, the Committee believed the State party should withdraw its reservation to article 4 (a) of the Convention.

28. She commended the adoption of the Multicultural Policy Statement and the Multicultural Servicing Strategy, which were aimed at maximizing the benefits of diversity and promoting values that were cornerstones of democracy. The State party report described a range of programmes to support such actions at all levels. However, unless all people felt that they were included as constituents of the Commonwealth, such aspirational multiculturalism would remain an unattainable ideal and ran the risk of being equated with the assimilationist ideologies of old.

29. The Government had adopted various strategies and had concluded agreements with a view to ensuring universal access to basic education, but among indigenous youths, a high dropout rate from school, low academic attainment, frequent incarceration and the use of out-of-family placement were issues of concern. It was to be hoped that the establishment of the Royal Commission into the Protection and Detention of Children in the Northern Territory would produce some positive results. The Government had commendably undertaken to provide educational resources for instruction in human rights, in particular under the RightsEd label, so as to develop behaviours and skills to apply human rights in everyday life. It would be of interest to the Committee to know whether all students felt that their human rights were respected in practice.

30. The country's domestic legislation still had a number of provisions that were inconsistent with the Convention, and the Constitution lacked any entrenched protection against racial discrimination. The Committee's previous concluding observations and those of other treaty bodies, including the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights, had called for the Government to ensure that the rights enshrined in the Convention were fully incorporated into the country's federal legislation and the Constitution. The Committee was also concerned about inconsistencies between federal and state laws. It therefore encouraged the Government to resume talks to consolidate legal provisions prohibiting racial vilification.

31. The State party report had highlighted the establishment of the Parliamentary Joint Committee on Human Rights as a step forward ensuring that new legislation would be

consistent with obligations under United Nations human rights treaties. However, the Committee had received reports that the Joint Committee's views were not always taken into consideration during the legislative process. Furthermore, the Racial Discrimination Act 1975 did not offer comprehensive protection against some racially discriminatory laws passed by the federal Parliament. While commending the appointment of the Race Discrimination Commissioner and the increase in resourcing of the Australian Human Rights Commission, she expressed concern about a statement by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the effect that the Commission and its President had been vilified by senior officials and had been undermined financially. It would be of interest to the Committee to receive information about the recruitment or selection process for the Commission's President.

32. The Committee, in its previous concluding observations, had called for the State party to produce data on the perpetrators and victims of hate crimes, disaggregated by age, gender and national or ethnic origin, to allow for the proper application of legal provisions against such crimes, but the State party still did not require law enforcement authorities to collect and report such data. The Committee was also concerned about the increase in the threshold for lodging complaints about crimes of racial discrimination, which made it easier to terminate cases, and the reduction of the time frame, from one year to six months, for the submission of such complaints under the Australian Human Rights Commission Act 1986. It would welcome an explanation of the reasons for such changes. The delegation was also requested to provide the Committee with information on complaints of racial discrimination, if possible with details of court cases.

33. Noting that persons of indigenous descent accounted for 27 per cent of the prison population but only 3 per cent of the overall population and that the disparity was even higher among female prisoners, many of whom were mothers, she asked for a description of the conditions encountered by Aboriginal and Torres Strait Islander women when in prison and the impact of their incarceration on their families. She had heard that such women had often been subjected to domestic abuse prior to incarceration and that they were also subjected to racially motivated abuse in the prison system. What measures were being taken to curb abuse by law enforcement officials both inside and outside the prison system? Aboriginal children were reportedly imprisoned at 25 times the rate of non-indigenous youths. The Government should consider raising the age of criminal responsibility from 10 years and should ensure that the rights of children in custody were respected, in accordance with the Convention on the Rights of the Child. The Royal Commission into the Protection and Detention of Children in the Northern Territory had called for the age of criminal responsibility to be raised and for the prohibition of detention of children under 14 except in cases involving particularly serious crimes.

34. It was regrettable that the Government had rejected a proposal put forward in 2017 as the Uluru Statement from the Heart, which called for the constitutional recognition of persons of indigenous descent. The Government had provided the Committee with information on corporate guidelines and voluntary frameworks for the use of indigenous lands. The Committee was, however, most concerned about reports of unlawful indigenous land usage agreements (ILUAs) that did not take into consideration the opinions of indigenous peoples. Only about half of the title claims in respect of ILUAs had been resolved at the time of the drafting of the periodic report. The Committee would welcome information on the status of such claims and on possible measures to amend the Native Title Act, which continued to demand high standards of proof of ownership on the part of indigenous peoples. Some native peoples assumed ownership on the basis of historical attachment to the land, and onerous requirements under the Act were incompatible with the United Nations Declaration on the Rights of Indigenous Peoples. As a signatory of the Declaration, Australia should have some plans to compensate or offer reparations to indigenous peoples. The Committee would welcome any information on such plans.

35. In the light of the rapid rate of attrition of indigenous languages, it would be advisable for the Government to step up its efforts to ensure their preservation. The Closing the Gap Strategy, which aimed to increase health, education and employment indicators for indigenous people, was on track to meet only one of its six targets. It would be of interest to

the Committee to hear more about the challenges impeding the realization of the strategy's objectives and whether there was a lack of political will in that regard.

36. The decision to close the Manus Island detention centre for refugees and asylum seekers and provide them with compensation was a welcome development, but the Committee would like to receive information on redress and compensation and other measures for victims at other offshore centres, such as the one on Nauru. Did the Government plan to relocate and accommodate persons who were detained or who feared for their safety and who chose not to relocate to Papua New Guinea? The mandatory detention outside of Australia of persons arriving by boat without a valid visa was a breach of fundamental human rights and the principle of free movement of persons. Restrictions imposed on the family reunification of asylum seekers were also a subject of concern. The State party should amend the Maritime Powers Act to remove the authority to detain people on the high seas, transfer them to other countries or their vessels, or to turn them back. The Committee was also concerned about the plight of the children of detainees placed in camps, as it had received information that they often suffered from depression and anxiety, did not attend school and were not integrating well.

37. In the light of recent reports of abuse of migrants and mistreatment of workers, the Government should consider becoming a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It should provide adequate resources for the Fair Work Ombudsman so that vulnerable migrant workers could receive assistance, and it should assess whether blind recruitment policies could improve diversity in workplaces and reduce discrimination in employment.

38. Clearly, addressing issues of racial discrimination in Australia would require an energetic effort on the part of the Government. She congratulated the State party on its election to the Human Rights Council. Hopefully, its position on the Council would contribute to a renewed energy on the part of the Government in favour of human rights.

The meeting was suspended at 4.15 p.m. and resumed at 4.35 p.m.

39. **Mr. Kut** (Special Rapporteur for follow-up on concluding observations) said that the Committee had in its previous concluding observations requested the State party to provide information on its follow-up to the recommendations in respect of the Australian anti-discrimination law, the legislation adopted in connection with the Northern Territory National Emergency Response and the application of legal provisions addressing the motive of ethnic or religious hatred as an aggravating circumstance in criminal offences and related matters. The State party had submitted an interim report on time, and the Committee was grateful for its punctuality.

40. The Committee had reviewed the content of the report and had issued three further suggestions. It had requested more information on efforts to consolidate anti-discrimination laws, including a review of the complaints handling process. According to the periodic report, the former Government had reviewed and considered undertaking a reform of the anti-discrimination legislation, but a proposal to consolidate anti-discrimination laws had not been processed and the current Government did not consider such a proposal to be part of its policy. The report further informed the Committee that the current Government had no plans to review the burden of proof requirements in anti-discrimination laws. The Committee, in reviewing the interim report, had requested further information on how the Northern Territory National Emergency Response legislation had been enforced and how the income management scheme had been implemented in practice. That issue had been addressed in the periodic report currently before the Committee, and it could be taken up by the country rapporteurs.

41. The third issue related to the failure by the State party to submit updated information on the application of legal provisions that considered the motive of ethnic, racial or religious hatred as an aggravating circumstance in criminal offences. The Committee had also asked for further clarification on how police search powers were implemented in practice and how the State party ensured that such powers would not be used disproportionately against ethnic minorities. As that issue had not been addressed by the periodic report, the Committee would welcome relevant information from the delegation.

42. **Mr. Yeung Sik Yuen** (Country Rapporteur) said that Australia had signed the Convention 51 years earlier and that it had, upon ratification, filed a reservation in respect of article 4 (a) of the Convention. At the time, it had stated that it was its intention to seek from Parliament legislation implementing the terms of that article at the “first suitable moment”. Article 4 (a) was a core provision of the Convention, addressing violence, incitement and assistance to racist activities.

43. While some time could be sought by a State to bring its legislation into line with the Convention, article 4 (a) could not reasonably be construed as an insignificant provision whose implementation could be left to the discretion of a reserving State *ad infinitum*. Under the Convention, reservations incompatible with the object and purpose of the Convention were not permitted. The Committee had in its previous concluding observations expressed concern about the Government’s maintenance of the reservation. The reservation had been filed as a temporary measure by Australia and had been accepted by the Committee on that basis. It was thus a source of disappointment and dismay for the Committee to read in the periodic report that the Government did not intend to withdraw the reservation or amend its legislation to bring it into line with the Convention. The State party was apparently renegeing on its own commitment, undertaken upon the filing of the original reservation.

44. The Committee understood that the State party’s reservation to article 4 (a) was grounded in its strong tradition of freedom of expression and the belief that its existing laws on racial hatred and vilification were appropriate; moreover, it noted that the Racial Discrimination Act 1975 had been interpreted as providing a civil prohibition on racial hatred and that individuals could file complaints about unlawful acts to the Australian Human Rights Commission and, if the conciliation undertaken by that body was unsuccessful, turn to the federal courts. However, the Committee also noted that section 18D of the Act included exemptions for acts done “in the performance, exhibition or distribution of an artistic work” or “in making or publishing a fair comment on any event or matter of public interest if the comment is an expression of a genuine belief” and it was troubled that an amendment had been proposed to make the Act even more lenient towards racism. In the light of those concerns, the Committee would be grateful if the delegation could confirm that less than 5 per cent of complaints lodged under the Act reached the courts and that the majority of cases were dismissed. He urged the State party to reconsider its position so as to fulfil, at the earliest opportunity, its long-standing engagement to implement article 4 (a) of the Convention.

45. **Mr. Marugán** said that in its previous concluding observations ([CERD/C/AUS/CO/15-17](#)), the Committee had welcomed the Government’s commitment to address indigenous disadvantage, as set out in the Closing the Gap targets designed to eliminate the disparity between indigenous and non-indigenous people. Regrettably, however, the Government was on track to achieve only one of the seven targets established, while civil society organizations and the Special Rapporteur on the rights of indigenous peoples had highlighted the inadequacy of efforts to address indigenous disadvantage in terms of access to housing, education, health care, sanitation, clean water, social security, work and culture. Those failures had been compounded by the decision to strip funding from programmes and services for Aboriginal and Torres Strait Islander peoples, notably the Indigenous Advancement Strategy established in 2014 as the main funding mechanism for a range of programmes aimed at those communities. Given that the Special Rapporteur considered that the Strategy had “effectively undermined the key role played by indigenous organizations in providing services for their communities”, he invited the State party to outline its plans to improve funding and to shed light on the reports of funding cuts, which seemed to be contradicted by the delegation’s assertion that funding for indigenous organizations had increased.

46. Although the 2011 follow-up report on the Committee’s previous concluding observations ([CERD/C/AUS/CO/15-17/Add.1](#)) indicated that the Government had committed substantial funds and had undertaken consultations with a view to addressing social disadvantage, with a particular focus on improving education and employment opportunities, the report did not provide statistics demonstrating concrete outcomes; he therefore requested clarification on the impacts the Government expected to achieve,

together with statistical information on social and economic trends and the findings of external assessments. What consultations had been held with Aboriginal communities and organizations on plans to tackle disadvantage, and what opinions had they voiced in that regard?

47. He commended the National Aboriginal and Torres Islander Health Plan 2013-2023, but was concerned that the formerly vibrant Aboriginal community-controlled health sector was now lacking the resources it needed to meet the health needs of communities, especially those located in remote areas. Moreover, indigenous leaders in the Northern Territory had described deteriorating housing conditions and overcrowding as a threat to health, while the homelessness rate in that territory was almost 15 times the national average. He therefore asked whether the Government was working with Aboriginals and Torres Strait Islanders to revise the Closing the Gap targets in the areas of health and housing and planned to increase funding in those areas.

48. Considering that the Committee on Economic, Social and Cultural Rights had recently recommended that the State party should reconsider the financial cuts to the social security system and had voiced concern at reports that the Community Development Programme, which regulated access to social security in remote areas, had a disproportionate impact on indigenous persons' access to social security benefits, he asked what was being done to address those concerns. Furthermore, noting the disturbingly high suicide rate among Aboriginal and Torres Strait Islander peoples — twice that of non-indigenous Australians — and that lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals from indigenous communities were particularly vulnerable, he requested reliable data on suicides among those groups. The State party might also describe its policies to combat intersectional discrimination against indigenous persons with disabilities and provide data on the effectiveness of such policies.

49. **Ms. McDougall** said that it was now several years since the Government had pledged to recognize the rights of First Nation peoples and that a constitutional referendum on the issue, taking into account the recommendations issued by the Referendum Council, was long overdue.

50. In keeping with the Committee's previous recommendation, she would be grateful for updated information on the system whereby the Government recognized land rights under the Native Title Act and on how courts adjudicated ownership disputes between indigenous peoples and the Crown. Since the Committee continued to be concerned about high standards of proof that required indigenous peoples to demonstrate a long-standing relationship with their traditional lands in order to be awarded native title, she asked the State party to indicate whether adequate support was provided to communities that wished to establish a so-called "prescribed body corporate" that would allow them to hold and manage their native title rights and interests.

51. Lastly, in the light of reports that extractive activities had been licensed at the Carmichael coal mine in Queensland without the consent of the local Wangan and Jagalingou indigenous communities, she asked whether the Government recognized indigenous peoples' right to free, prior and informed consent and its own obligation to ensure that such consent was sought. She would also welcome information on the Government's approach to indigenous peoples' self-determination and their effective participation in the policies listed in the report.

52. **Mr. Kemal** said that the situation in terms of the State party's implementation of the Convention had worsened as a result of certain policies; he particularly wished to focus on the offshore processing of asylum seekers. Although he understood that the Government was motivated by the desire to avoid loss of life at sea, he regretted that the Australian asylum policy had serious repercussions for those caught up in it. The Committee had the impression that Australia had a zero tolerance policy for all individuals who arrived by sea without valid visas, who were then subjected to an offshore detention regime consisting in relocation to processing centres either in Australian external territories such as Christmas Island or in other countries such as Nauru and Papua New Guinea. Unauthorized arrivals faced mandatory and prolonged detention periods and might also be sent back to their country of departure. He noted that the Special Rapporteur on the human rights of migrants

had described those measures as a “punitive approach” towards migrants who arrived by boat, with the explicit intention of deterring others. Moreover, the Committee had concerns pertaining to the recent closure of the detention centre on Manus Island, where detainees had resisted relocation owing to fears about their security, and the lack of adequate medical care for women, children and newborn infants, including those who had suffered violence or physical or mental ill-health. He would therefore appreciate statistics on the number of refugees and asylum seekers that were being held in detention centres in Papua New Guinea and Nauru, respectively, and on the number of people who were stateless and in limbo, since they could not be deported.

53. **Mr. Avtonomov** said that although the report was two years late, it took into account the consultations held with governmental bodies and civil society organizations, while responding to the Committee’s past concerns and recommendations. Welcoming the new information it contained on constitutional, legislative and policy changes, he asked which changes specifically sought to address indigenous peoples’ problems and meet their requirements. Recalling that the Torres Strait Islanders had developed a different lifestyle to that of Aboriginal peoples on the Australian mainland, he asked to what extent their particular needs and social economy had been taken into consideration and whether they had been consulted prior to the adoption of policies.

54. Noting that the Workplace Gender Equality Act 2012 had established that non-public sector employers with more than 100 employees must annually report certain indicators to the Workplace Gender Equality Agency, he asked for information on the composition of the working group set up by the Government and the Australian Council of Trade Unions to review reporting requirements under the Act, including the extent to which women belonging to vulnerable groups were represented, and on the outcomes of the group’s work. He was interested to know whether the State party planned to ratify the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189), since most domestic workers were migrant women who might be vulnerable to discrimination. Lastly, he asked that more details be provided about Roma and Sinti people living in Australia, who were known to have originated in the United Kingdom and Greece and were estimated to number in the region of 5,000 to 20,000 individuals.

55. **Mr. Lindgren Alves** said that he had the impression that the delegation used a definition of multiculturalism that was at variance with the commonly accepted definition. Although he could not find fault with the statement in the report that Australia had one of the most culturally and linguistically diverse and socially cohesive populations in the world, he considered that the positive descriptions of cultural mixing and population inflows, leading to all groups developing a sense of belonging as Australians, were not typical of how multiculturalism had developed in other countries in recent years. He therefore encouraged the delegation to further explain how it envisaged multiculturalism in Australian society and what it meant by the reference to social cohesion.

56. Noting that the non-recognition of Aboriginals and Torres Strait Islanders as Australians was anachronistic, he asked what exactly was being proposed in relation to the referendum on a constitutional amendment. In that regard, he considered that failing to secure popular approval for the amendment would be a terrible defeat for Australia and for the hopes of the Committee.

57. **Mr. Bossuyt** said that, in the absence of any regional human rights instruments or a national charter on human rights, he wondered what the status of international human rights instruments was in the State party. Could they be invoked in the domestic courts? Did the State party not believe there was a need for a human rights charter?

58. With regard to migration and asylum, he would be interested to know what the State party’s criteria for legal admission to the country were. Noting that the intention behind the State party’s migration policy was to discourage refugees from attempting to reach Australia by boat and thereby to prevent drowning at sea, he said that he would appreciate receiving data that would show what difference the introduction of the policy had made in that regard.

59. With regard to the constitutional amendment to recognize Aboriginal peoples, the State party was probably better placed than the Committee to judge whether the time was

right for a referendum, but in the meantime he would like to know what it was doing to improve relations with the indigenous communities.

60. **Mr. Murillo Martínez** said that he had been impressed by the spirit of self-criticism demonstrated by the delegation's introductory statement.

61. He would be interested to hear the delegation's views on the quality of the intercultural dialogue with the Aboriginal communities, and he wondered whether the State party's delegations to conferences on climate change included representatives of its indigenous peoples.

62. Noting the reference in the State party's report to the United Nations Declaration on the Rights of Indigenous Peoples, he asked what moral weight that instrument carried; though not binding, it could provide a basis for institutionalizing mechanisms such as free, prior and informed consent. He was puzzled as to why the State party should be prepared to invoke the Declaration yet was reluctant to ratify the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), an instrument of far narrower scope.

63. **Mr. Calí Tzay** said that the State party was recognized as a defender of human rights but that its legislation did not afford protection within its own territory. It was the only Western democracy that was not extending its human rights provisions and local NGOs were reluctant to speak out on human rights affecting Australian citizens for fear of losing their government subsidies.

64. He welcomed the update of the State party's multicultural policy, referred to in paragraph 75 of the report (CERD/C/AUS/18-20), which emphasized the inclusion of migrants in Australian culture, and their rights and responsibilities in a society whose values they shared. He was concerned, however, that the emphasis laid on counter-terrorism measures risked undermining the professions of multiculturalism. He wondered whether the State party would be prepared to readjust that emphasis by paying more attention to social issues such as housing, health and care provision and by providing funding to ensure that minority populations obtained the services they needed.

65. With regard to the Stolen Generations referred to in paragraphs 90 to 94 of the report, he said that, given that 30 per cent of indigenous children had been removed from their culture, language and identity, he would like to know whether the State party was prepared to switch the funds currently allocated to non-indigenous families hosting indigenous children from those families to indigenous communities.

66. **Mr. Amir** said that he had recently watched two extremely moving videos depicting the precarious existence of Aboriginal women and children in the State party. The First Nations in countries such as Australia used to be great peoples but were now mere survivors waiting to get back on board the train of history. He wondered how they could be helped to do so and what the future held for them.

67. The Committee was fighting injustice and it needed the State party's help in its efforts. He relied on the delegation to pass that message on when it returned home.

68. **Ms. Li Yanduan** said that, as a State party to the Vienna Convention on the Law of Treaties, Australia was bound by article 19 (c) of that instrument, whereby reservations to an international treaty were permitted only where they were not incompatible with the object and purpose of the treaty. Article 4 (a) was a core provision of the International Convention on the Elimination of All Forms of Racial Discrimination and she therefore suspected that the State party's reservation to that article was not compatible with the provisions of the Vienna Convention. She would appreciate the delegation's comments on the matter.

69. **Mr. Khalaf** said that, despite the extensive legal arsenal the State party had put in place, the deplorable situation with regard to racial discrimination had not improved since 2010. He could not help but wonder how it was that such a panoply of instruments had not sufficed to ensure the fulfilment of the State party's obligations under the Convention. Was there some structural or institutional obstacle to implementation of the Convention?

70. **Mr. Kut** said that, according to reports, racist and discriminatory rhetoric in the media and among politicians and influential opinion leaders had become commonplace in

the past few years, mirroring a trend in Europe, where xenophobia and discrimination were on the rise. What policies and new approaches did the State party intend to adopt in order to counter that trend?

71. **Mr. Yeung Sik Yuen** said that he noted that persons in the Northern Territory suffering discrimination were at a double disadvantage insofar as there was no criminal or civil legislation on that matter at the state level and the federal legislation was inadequate.

72. **Ms. McDougall** said that, given the alarming statistics regarding the rate of incarceration of Aboriginals, including children aged as young as 10, she would like to know whether the State party intended to implement the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory and the conclusions of the Free to Be Kids report.

73. **Ms. Shepherd** said that she would appreciate clarification of the State party's position with regard to the United Nations Declaration on the Rights of Indigenous Peoples: she had been under the impression that it intended to draw up a plan of action under the Declaration.

74. She would be interested to know whether training provided to the police had had any impact on police work, for example in the use of racial profiling.

75. In its report, the State party referred a number of times to funds allocated to improve education and other areas of life for indigenous people. She would like to know what procedure had been used to determine the amounts to be made available: had needs assessments been carried out and had the potential beneficiaries been consulted?

76. Noting that a large proportion of complaints of discrimination on grounds of sex, age, disability or race arose out of workplace or employment situations, she asked how the State party planned to reduce the incidence of such discrimination.

The meeting rose at 6.05 p.m.