

CCPR/C/AUS/CO/5

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HUMAN RIGHTS COMMITTEE

Ninety-fifth session

Geneva, 16 March- 3 April 2009

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

AUSTRALIA

1. The Committee considered the fifth periodic report of Australia (CCPR/C/AUS/5) at its 2609th, 2610th and 2611th meetings (CCPR/C/SR.2609-2611), held on 23 and 24 March 2009, and adopted the following concluding observations at its 2624 meeting (CCPR/C/SR.2624), held on 2 April 2009.

A. Introduction

2. While appreciating the willingness of the State party to test new approaches for the preparation of its periodic reports, and acknowledging that it does not intend to use the same approach in the future, the Committee considers that the fifth periodic report of Australia does not meet the requirements of article 40 of the Covenant regarding the provision of sufficient and adequate information on the measures adopted to give effect to the Covenant rights, as well as on the progress made in the enjoyment of those rights.

3. The Committee welcomes the constructive dialogue with the delegation of the State party and concise answers provided to its oral and written questions. It also appreciates that the written responses to its list of issues (CCPR/C/AUS/Q/5) were submitted well in advance, thus allowing for their timely translation into the Committee's working languages.

4. The Committee welcomes the contribution of the Australian Human Rights Commission and non-governmental organizations to its work.

B. Positive aspects

5. The Committee welcomes the current National Human Rights Consultation regarding the legal recognition and protection of human rights in Australia, involving various human rights stake-holders, including experts and persons belonging to vulnerable groups.

6. The Committee welcomes the parliamentary apology to indigenous peoples' victims of the Stolen Generations policies, issued on 13 February 2008.

7. The Committee welcomes the establishment of the National Council to Reduce Violence against Women and their Children in 2008.

C. Principal subjects of concern and recommendations

8. The Committee notes that the Covenant has not been incorporated into domestic law and that the State party has not yet adopted a comprehensive legal framework for the protection of the Covenant rights at the Federal level, despite the recommendations adopted by the Committee in 2000. Furthermore, the Committee regrets that judicial decisions make little reference to international human rights law, including the Covenant. (art.2)

The State party should: a) enact comprehensive legislation giving de-facto effect to all the Covenant provisions uniformly across all jurisdictions in the Federation; b) establish a mechanism to consistently ensure the compatibility of domestic law with the Covenant; c) provide effective judicial remedies for the protection of rights under the Covenant; and d) organize training programmes for the Judiciary on the Covenant and the jurisprudence of the Committee.

9. While taking note of the State party's explanations, the Committee regrets that it has not withdrawn any of its reservations entered upon ratification of the Covenant.

The State party should consider withdrawing its reservations to article 10, para. (2) (a) and (b) and 3; article 14 para.6; and article 20 of the Covenant.

10. While acknowledging the measures taken by the State party to reduce the likelihood of future communications regarding issues raised in certain of its Views, the Committee expresses once again its concern at the State party's restrictive interpretation of, and failure to fulfill its obligations under the First Optional Protocol and the Covenant, and at the fact that victims have not received reparation. The Committee further recalls that, by acceding to the First Optional Protocol the State party has recognized its competence to receive and examine complaints from individuals under the State party's jurisdiction, and that a failure to give effect to its Views would call into question the State party's commitment to the First Optional Protocol. (Article 2)

The State party should review its position in relation to Views adopted by the Committee under the First Optional Protocol and establish appropriate procedures to implement them, in order to comply with article 2, paragraph 3 of the Covenant which guarantees a right to an effective remedy and reparation when there has been a violation of the Covenant.

11. While acknowledging the State party's intention to review the Terrorist Act in the near future, the Committee is concerned that some provisions of the Anti-Terrorism Act (No. 2) 2005 and other counter-terrorism measures adopted by the State party appear to be incompatible with the Covenant rights, including with non-derogable provisions. The Committee is particularly concerned at: a) the vagueness of the definition of terrorist act; b) the reversal of the burden of proof contrary to the right to be presumed innocent; c) the fact that "exceptional circumstances", to rebut the presumption of bail relating to terrorism offences, are not defined in the Crimes Act, and; d) the expanded powers of the Australian Security Intelligence Organization (ASIO), including so far unused powers to detain persons without access to a lawyer and in conditions of secrecy for up to seven-day renewable periods. (art. 2, 9 and 14)

The State party should ensure that its counter-terrorism legislation and practices are in full conformity with the Covenant. In particular, it should address the vagueness of the definition of terrorist act in the Criminal Code Act 1995, in order to ensure that its application is limited to offences that are indisputably terrorist offences. The State party should in particular: a) guarantee the right to be presumed innocent by avoiding reversing the burden of proof; b) ensure that the notion of "exceptional circumstances" does not create an automatic obstacle to release a bail; and c) envisage to abrogate provisions providing Australian Security

Intelligence Organization (ASIO) the power to detain people without access to a lawyer and in conditions of secrecy for up to seven-day renewable periods

12. The Committee remains concerned that the rights to equality and non-discrimination are not comprehensively protected in Australia in federal law. (art. 2, and 26)

The State party should adopt Federal legislation, covering all grounds and areas of discrimination to provide comprehensive protection to the rights to equality and non-discrimination.

13. While acknowledging the consultation process initiated by the State party to establish a national indigenous representative body to replace the Aboriginal and Torres Islander Commission abolished in 2004, the Committee remains concerned that indigenous peoples are not sufficiently consulted in the decision-making process with respect to issues affecting their rights. (art.2, 25, 26 and 27)

The State party should increase its efforts for an effective consultation with indigenous peoples in decision-making in all areas having an impact on their rights and establish an adequately resourced national indigenous representative body.

14. The Committee notes with concern that certain of the Northern Territory Emergency Response (NTER) measures adopted by the State party to respond to the findings of the report of the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse in the Northern Territory (“Little Children are Sacred” of 2007) are inconsistent with the State party’s obligations under the Covenant. It is particularly concerned at the negative impact of the NTER measures on the enjoyment of the rights of indigenous peoples and at the fact that they suspend the operation of the Racial Discrimination Act 1975 and were adopted without adequate consultation with the indigenous peoples. (art. 2, 24, 26 and 27)

The State party should redesign NTER measures in direct consultation with the indigenous peoples concerned, in order to ensure that they are consistent with the Racial Discrimination Act 1995 and the Covenant.

15. While taking note with satisfaction that the State party has implemented some of the recommendations of the Human Rights and Equal Opportunity Commission’s “Bringing Them

Home” report, the Committee regrets that it has not granted reparation, including compensation, to the victims of the Stolen Generation policies. (art.2, 24, 26 and 27)

The State party should adopt a comprehensive national mechanism to ensure that adequate reparation, including compensation, is provided to the victims of the Stolen Generations policies.

16. The Committee, while welcoming recent reforms, notes with concern the high cost, complexity and strict rules of evidence applying to claims under the Native Title Act. It regrets the lack of sufficient steps taken by the State party to implement the Committee’s recommendations adopted in 2000. (Art.2 and 27)

The State party should continue its efforts to improve the operation of the Native Title system, in consultation with Aboriginal and Torres Strait Islander Peoples.

17. The Committee notes with concern that, despite the efforts recently undertaken by the State party to address violence against women, including its zero tolerance approach and its intention to conduct a National Survey on Community Attitudes to Violence against Women in 2009, disturbing levels of domestic violence persist in Australia. The Committee is particularly concerned at the higher number of reports of violence against indigenous women in proportion to reports of violence against non-indigenous women. (Articles 2, 3, 7 and 26)

The State party should strengthen its efforts towards the elimination of violence against women, especially perpetrated against indigenous women. The State party is encouraged to promptly implement its National Plan of Action to Reduce Violence against Women and their Children, as well as the recommendations of the 2008 Family Violence and Homeless report.

18. The Committee is concerned at the situation of homeless persons, in particular indigenous people, who as a result of that condition are not able to fully exercise the rights enshrined in the Covenant. (art. 2, 26 and 27)

The State party should increase its efforts in order to ensure that social, economic and other conditions do not deprive homeless persons of the full enjoyment of the rights enshrined in the Covenant.

19. The Committee is concerned at reports of cases in which the State party has not fully ensured respect for the principle of non-refoulement. (art.2, 6 and 7)

The State party should take urgent and adequate measures, including legislative measures, to ensure that nobody is returned to a country where there are substantial grounds to believe that they are at risk of being arbitrarily deprived of their life or being tortured or subjected to other cruel, inhuman or degrading treatment or punishment.

20. The Committee notes with concern the residual power of the Attorney-General, in ill-defined circumstances, to allow the extradition of a person to a state where he or she may face the death penalty, as well as the lack of a comprehensive prohibition on the providing of international police assistance for the investigation of crimes that may lead to the imposition of the death penalty in another state, in violation of the State party's obligation under the Second Optional Protocol.

The State party should take the necessary legislative and other steps to ensure that no person is extradited to a state where he or she may face the death penalty, as well as whereby it does not provide assistance in the investigation of crimes that may result in the imposition of the death penalty in another state, and revoke the residual power of the Attorney-General in this regard.

21. The Committee expresses concern at reports of excessive use of force by law enforcement officials against groups, such as indigenous people, racial minorities, persons with disabilities, as well as young people; and regrets that the investigations of allegations of police misconduct are carried out by the police itself. The Committee is concerned by reports of the excessive use of the electro-muscular disruption devices (EMDs) "TASERS" by police forces in certain Australian states and territories. (articles 6 and 7)

The State party should take firm measures to eradicate all forms of excessive use of force by law enforcement officials. It should in particular: a) establish a mechanism to carry out independent investigations of complaints concerning excessive use of force

by law enforcement officials; b) initiate proceedings against alleged perpetrators; c) increase its efforts to provide training to law enforcement officers with regard to excessive use of force, as well as on the principle of proportionality when using force; d) ensure that restraint devices, including TASERS, are only used in situations where greater or lethal force would otherwise have been justified; e) bring its legislative provisions and policies for the use of force into line with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and e) provide adequate reparation to the victims.

22. The Committee notes with concern that, despite the positive measures adopted by the State party, trafficking in human beings, especially women, persists on the territory of Australia. (art. 8)

The State party should strengthen its measures to prevent and eradicate trafficking in human beings, including by adopting a comprehensive strategy, and provide equal assistance and protection to all victims identified regardless of their participation or otherwise in criminal proceedings against perpetrators.

23. While noting with satisfaction the State party's commitment to use detention in immigration detention centres only in limited circumstances and for the shortest practicable period, the Committee remains concerned at its mandatory use in all cases of illegal entry, the retention of the excise zone, as well as at the non-statutory decision-making process for people who arrive by boat to the Australian territory and are taken in Christmas Island. The Committee is also concerned at the lack of effective review process available with respect to detention decisions. (art. 9 and 14)

The State party should: a) consider abolishing the remaining elements of its mandatory immigration detention policy; b) implement the recommendations of the Human Rights Commission made in its Immigration Detention Report of 2008; c) consider closing down the Christmas Island detention centre; and d) enact in legislation a comprehensive immigration framework in compliance with the Covenant.

24. The Committee express concern at the notable gaps in the protection of children and juveniles in the criminal justice system, and that children and juvenile can be detained in adult facilities or held in immigration detention facilities, where they are sometimes subject to abuse. (art. 9, 14 and 24)

The State party should ensure that children in conflict with the law, including those in detention, are treated in consistence with the Covenant and the UN Rules for the Protection of Juveniles Deprived of their Liberty. The State party should implement the recommendations of the Human Rights and Equal Opportunity Commission in this regard. The situation of children in detention should be addressed within the State party's proposed new child protection framework.

25. The Committee notes with concern the lack of adequate access to justice for marginalized and disadvantaged groups, including indigenous peoples and aliens. (art.2 and 14)

The State party should take effective measures to ensure equality in access to justice, by providing adequate services to assist marginalized and disadvantaged people, including indigenous people and aliens. The State party should provide adequate funding for Aboriginal and Torres Strait Islander legal aid, including interpreter services.

26. While acknowledging the measures taken by the State party to combat islamophobia, the Committee remains concerned at reports of an increased number of cases of discrimination of persons of Muslim background. The Committee regrets the lack of hate speech prohibitions of the form envisaged by article 20 of the Covenant. (art. 20 and 26)

The State party should implement its Freedom of Religion and Belief in the 21st Century project, fully in line with the Covenant and adopt federal-level hate speech laws of the form envisaged by article 20 of the Covenant.

27. The Committee notes that the State party lacks a framework and programme to promote knowledge of the Covenant and the Optional Protocol among its population. (art.2)

The State party should consider adopting a comprehensive plan of action for human rights education including training programmes for public officials, teachers,

judges, lawyers and police officers on the rights protected under the Covenant and the First Optional Protocol. Human rights education should also be incorporated at every level of general education.

28. The State party should widely disseminate the text of its fifth periodic report, the written answers it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations among the general public as well as the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country. Hard copies of those documents should be distributed to universities, public libraries, the Parliamentary library, and all other relevant places.

29. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations in paragraphs 11, 14, 17 and 23.

30. The Committee requests the State party to provide in its sixth periodic report, due to be submitted by 1 April 2013, updated information on all the Committee's recommendations and on the Covenant as a whole, including detailed information on the implementation of the Covenant in Australia and invites the State party to involve civil society and non-governmental organizations operating in the State party in the sixth periodic reporting process.
