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the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-sixth session

SUMMARY RECORD OF THE 1685TH MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 1 March 2005, at 3 p.m.

Chairman: Mr. YUTZIS

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Thirteenth and fourteenth periodic reports of Australia (CERD/C/428/Add.2; HRI/CORE/1/Add.44)

1. At the invitation of the Chairman, the members of the delegation of Australia took places at the Committee table.

2. Mr. SMITH (Australia), introducing the combined thirteenth and fourteenth periodic reports submitted by his Government (CERD/C/428/Add.2), said that Australia was committed to maintaining its tradition of tolerance and respect for diversity. His country had a unique constitutional structure, under which legislative, executive and judicial powers were distributed between the Federal Government and the state and territory governments. The Federal Government worked closely with the Human Rights and Equal Opportunity Commission to foster greater understanding and protection of human rights. The Government's Community Liaison Officer network operated in each state and territory in cooperation with key organizations and individuals to identify and respond to community-relations problems. The network provided migrant communities with a direct means of communicating with the Federal Government and receiving information, support and advice.

3. A range of human rights legislation had been enacted, at both the national and regional levels, which prohibited racial discrimination and offensive behaviour based on racial hatred. Measures were being taken to prevent racial discrimination, and particular attention was being paid to providing human rights education. His Government had recently published a new National Framework for Human Rights, which was a revised version of the country's National Action Plan on Human Rights. It outlined the Government's five priorities for enhancing the enjoyment of human rights and included a wide range of programmes, services and support for indigenous Australians.

4. Australian society had been influenced by indigenous peoples and migrants, and was therefore characterized by cultural and religious diversity. The Government had established a national multicultural policy, which provided a framework for strengthening community harmony and promoting the economic, cultural and social benefits of cultural diversity. An "access and equity strategy" had been adopted to ensure that all government services and programmes were attuned to the diversity of Australian society. The Charter of Public Service in a Culturally Diverse Society embodied the goals of the strategy, required government services to respond to the needs of people from different ethnic and linguistic backgrounds, and emphasized the importance of including cultural diversity considerations in all spheres of government work.

5. A government programme entitled "Diversity works!" had been implemented: it promoted the effective use of cultural knowledge in the workplace and aimed to eliminate prejudice and discrimination in employment. A variety of education and awareness-raising initiatives had also been taken to promote equality in all spheres of life, with particular emphasis on education, leisure, the legal system and the media.

6. Despite the Government's efforts, indigenous inequality and disadvantage persisted, owing to the enduring effects of an historical legacy of dispossession and marginalization, and the clash between traditional values and the inescapable demands of the modern world. The Government had recently revised its policy and administrative arrangements for indigenous affairs so as to promote partnership with indigenous communities, improve government responses to local needs, and judge programmes on their results rather than their intentions. A National Indigenous Council had been established to work in close collaboration with the Government for the effective implementation of all indigenous programmes, for which government funding had increased considerably over the past decade. Although past measures had not had the impact expected, positive results had been achieved: the number of indigenous children attending schools had increased to 40 per cent, indigenous unemployment had decreased, home ownership figures had risen, household overcrowding had decreased, and indigenous infant mortality had dropped by 25 per cent.
7. There was widespread evidence that the amended legislation on native title to land had achieved positive results and a considerable number of Indigenous Land Use Agreements had been concluded since 1998. The issue of native title had become a settled, accepted and effective dimension of Australian society and economic life. Despite the improvements in indigenous affairs, the Government would not relax its efforts or allow itself to become complacent, and acknowledged that much still remained to be done.
8. Turning to the issue of double discrimination against indigenous women, he said that progress had been made, including an increase in time spent in education, an increase in higher education enrolments and a decrease in unemployment. Significant problems still remained however, such as an increase in imprisonment of indigenous women, and their exposure to sexual abuse and violence. The Government had taken a number of initiatives to address such issues, including doubling the number of family violence legal aid services for indigenous women and establishing an Indigenous Women's Leadership Programme to strengthen the role of indigenous women in their own communities and in society as a whole. Measures had also been taken to promote the integration of women from other minority groups, such as the recent national women's forum, which had been held to explore issues affecting Muslim women in Australian society. As a result of that forum, the Muslim Women's National Network of Australia had been accorded membership of the Australian Women's Coalition, and a number of government and other organizations were using information from the forum in shaping their policies and programmes.
9. His Government had been particularly disappointed with the Committee's observations following the submission of its previous periodic report, which had given cursory treatment to complex issues and failed to acknowledge the extensive information that it had openly provided. The observations had largely ignored the significant progress made in Australia across the spectrum of indigenous issues, and had reflected an unquestioning acceptance of arguments adduced in NGO submissions. The Government considered it unreasonable for the Committee to make recommendations on the reconciliation process, to suggest that Australia used external affairs powers to override Australian State laws in certain instances or to propose how resources should be allocated to address indigenous issues. The Government had also been disappointed by the report of the Special Rapporteur on racism following his visit; it had contained factual inaccuracies and perpetuated misinformation harmful to Australia's reputation, and to the special procedures of the United Nations, and did nothing to advance the cause of human rights.

10. Mr. PILLAI (Country Rapporteur) said that there had been a number of significant developments since the consideration of Australia's twelfth periodic report (CERD/C/335/Add.2), starting with the Government's responses to the Committee's concluding observations (CERD/C/304/Add.101) and the public debate on Australia's implementation of the Convention, the report of the Parliamentary Joint Committee (PJC) on amendments to the Native Title Act, the more strident claims of the indigenous people on issues concerning them and government measures relating to institutions dealing with discrimination.

11. He welcomed the fact that the current periodic report (CERD/C/428/Add.2) adopted a thematic approach, largely in response to the Committee's concluding observations and recommendations. Other positive factors included the consultations held with the state and territory governments for the purpose of the preparation of the report (para. 5), and the emphasis laid on the promotion of anti-racism and human rights education by the Human Rights and Equal Opportunity Commission (HREOC) and the state and territory governments (paras. 26-28 and 38 et seq.). The introduction of the Racial and Religious Tolerance Act 2001 (Vic) (paras. 52 et seq.), the efforts of the governments of New South Wales, Queensland, Tasmania and South Australia to enforce anti-discrimination legislation and to promote multiculturalism, the independent review and evaluation of government and non-government responses to the Bringing Them Home report (para. 89) and the establishment of a reconciliation framework based on partnerships and shared responsibilities with indigenous communities (para. 92) were also worthy of praise.

12. The sources he had used as the basis for his comments were: the concluding observations and recommendations of other United Nations human rights treaty bodies; the reports of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on human rights and indigenous issues, the Special Rapporteur on the human rights of migrants and the Working Group on Arbitrary Detention; information provided by the HREOC relating to the current periodic report; the Aboriginal and Torres Strait Islander Social Justice Commissioner, including his submission to the Senate Select Committee on Administration of Indigenous Affairs; the PJC report on the amended Native Title Act; a comprehensive report by more than 30 NGOs; and information from other NGOs and academics in Australia. The wide range of sources available was indicative of the interest shown in racial discrimination issues both in Australia and abroad.

13. As to the perception in Australia of the Committee's integrity and impartiality vis-à-vis the twelfth periodic report, he referred to a government press release of April 2000 which maintained that the Committee had failed to grapple with the unique and complex history of race relations in Australia and had paid scant regard to the Government's input by relying almost exclusively on information provided by NGOs. Fortunately, those views were not shared by everyone in Australia, including a former Human Rights Commissioner, who had stated to the Joint Committee on Foreign Affairs, Defence and Trade that the issues for which Australia had been criticized by a treaty body had also been the subject of criticism by Australian human rights bodies, including the Australian Human Rights Commission. The whole point of drawing on information from non-governmental sources in addition to the United Nations mechanisms was to enable the Committee to gain a fuller and more balanced view of the situation in the State party.

14. He was somewhat concerned at the comments in the delegation's introductory statement to the effect that the Committee's concluding observations on the twelfth periodic report had ignored significant progress made. It was generally accepted that the racial situation in Australia was very complex and could not be given cursory treatment. The Committee had endeavoured to deal with the issues as well as possible within the limited time available. He drew attention to paragraph 5 of the concluding observations, which noted with appreciation the many measures adopted by the State party during the period under review, and welcomed the numerous legislative measures, institutional arrangements, programmes and policies that focused on racial discrimination. The purpose of the Committee's observations was to enable the State party to implement the provisions of the Convention more fully. In response to the State party's remark that the Committee had accepted information from NGOs without proper analysis, he stressed the increasingly important role of NGOs in the work of the treaty bodies. Unlike other treaty bodies, CERD had no formal arrangement for cooperation with NGOs. A number of States parties had mechanisms for consultations with NGOs in connection with the preparation of periodic reports. It was likely that, following the proposed reform of treaty body reporting procedures, the contribution of NGOs would remain significant. It was up to the treaty bodies to take a balanced view of NGO submissions.

15. More importantly, national human rights institutions now occupied a significant place in the consideration of State party reports, through their submission of alternate reports. He would therefore have appreciated some information on whether they had been involved in the preparation of the current periodic report.

16. According to paragraph 6 of the report, the principal means by which Australia implemented the Convention was through the Racial Discrimination Act 1975, yet the HREOC reported that under the Act it was difficult for complainants to establish racial discrimination in the absence of direct evidence, and furthermore that no cases of racial discrimination (as opposed to racial hatred) had been successfully litigated in the federal court system since 2001. He wondered how that could be reconciled with the situation of growing ethnic and cultural diversity in Australia, as borne out by the delegation's introductory statement, and the reports by the Special Rapporteur on racism of racist and xenophobic acts against Arabs and Muslims and racist insults directed at Aboriginal players in football matches.

17. He recalled the concerns expressed by the Committee in connection with the twelfth periodic report about the absence of any entrenched guarantee against racial discrimination that would override subsequent law of the commonwealth states and territories. Some members had raised doubts as to the Federal Government's commitment to the development of an appropriate legal mechanism that would be automatically applied throughout the country to combat racial discrimination. While he was aware of the nature of federalism provided for under the Australian Constitution, he drew attention to the conclusions of the Human Rights Committee that federalism could not relieve a State party of its international obligations.

18. According to paragraph 8 of the report, the HREOC was the principal agency responsible for monitoring compliance with the Convention in Australia. The HREOC was already operating on a reduced budget and with limited manpower. However, a bill proposing changes to its structure and functions that would appear to substantially reduce its effectiveness had been submitted to Parliament. The Committee had already expressed concern about the bill on an earlier occasion, and it had not yet been considered by Parliament owing to an interruption to

allow for elections. He therefore requested the State party to take the opportunity to review the proposed reforms so as to ensure that the HREOC could continue to function as the principal agency responsible for monitoring compliance.

19. Since the submission of the fourteenth periodic report, the Federal Government had announced, in May 2004, that it would abolish the Aboriginal and Torres Strait Islander Commission (ATSIC) and the Aboriginal and Torres Strait Islander Services. The HREOC had reported that most of the services provided to indigenous people by ATSIC and ATSIS had been transferred to mainstream government departments, and that the new arrangements had been in place since July 2004. According to the HREOC report, the Prime Minister had been fairly critical of ATSIC, and he wondered if mainstreaming its work would instil greater confidence and optimism among Aboriginal people.

20. In that connection, he said that during a speech delivered in Canberra on 23 February 2005, the Federal Minister for Immigration, Multicultural and Indigenous Affairs had commented that indigenous people could only be said to have a real voice when the Government listened directly to them. Did that mean that the Government considered representative institutions of indigenous peoples as unnecessary in the system of governance? The Minister had criticized ATSIC as not being a representative indigenous body. Was the National Indigenous Council considered to be a representative indigenous body?

21. The Government was to be commended for increasing expenditure to address the social and economic disadvantages of indigenous people, resulting in significant improvements in a number of human development indices. Nevertheless, disparities still remained, as was borne out by the data provided by the Australian Bureau of Statistics and the HREOC. Moreover, according to the Aboriginal and Torres Strait Islander Social Justice Commissioner as reported in the Social Justice Report of 2003, statistics across key areas of indigenous disadvantage in the past five years indicated limited progress in eradicating disparities and the situation might deteriorate further in the coming decade. It was considered in some quarters that the indigenous people were not deriving any real benefits, notwithstanding the level of government spending.

22. He wished to know how the State party was catering for the needs of indigenous people in terms of housing, particularly in urban areas. Were they provided with accommodation in clearly demarcated areas? That might give rise to a sense of segregation.

23. Paragraphs 134-164 dealt with indigenous criminal justice, including diversionary and preventative programmes and mandatory sentencing. He expressed concern about the recommendations of the Senate Legal and Constitutional References Committee not to allow the passage of federal legislation which, if enacted, would override the mandatory sentencing provisions of the Criminal Code. In paragraph 156 it was stated that the provision for mandatory sentencing in the Criminal Code was a sentencing issue rather than a racial one, yet he wondered whether the law might not have a disproportionate impact on a particular ethnic group. According to the Social Justice Commissioner, Aboriginal juveniles made up one third of all offenders appearing before the children's courts; however, they accounted for 81 per cent of all juvenile cases requiring a 12-month sentence.

24. Since 1999, amendments to the Native Title Act had been a subject of concern to the Committee, in particular the four provisions relating to validation, confirmation, primary production and the right to negotiate. According to the findings of the PJC inquiry, the amended Native Title Act was consistent with Australia's obligations under the Convention (para. 121). Furthermore, with regard to the four provisions the Government had acted to balance competing interests and to provide certainty (para. 127). However, in a separate report, non-government members of the PJC had found that under the amendments indigenous rights were extinguished or impaired for the benefit of non-indigenous interests in every case of inconsistency. There was a significant reduction in the capacity of indigenous people to protect their native title pending its recognition. They had therefore recommended the amendment of the substantive and procedural provisions to render them non-discriminatory. Other bodies, including the HREOC, had commented on the adverse impact of the amendments; the Social Justice Commissioner had expressed concern that the PJC conclusions had been drawn on the basis of an incorrect interpretation of the State party's obligations under articles 2 and 5 of the Convention. In the light of those comments, he suggested that the State party should undertake a serious review of the amendments with the participation of representatives of indigenous populations.

25. Concerning migrants and refugees, he said that the 1994 amendments to migration legislation required non-citizens entering Australia unlawfully to be immediately detained. The detention requirement subsisted until such time as the person was found to have a lawful reason to remain in the country or was removed or deported. The total number of such detainees presently stood at around 1,000 and the Working Group against Arbitrary Detention had the impression that detention conditions were similar to prison conditions. The Special Rapporteur on racism reported that there was currently a campaign against refugees and migrants orchestrated by the media and often backed by some members of the Government. Increased discrimination in granting visas for Asian and Muslim refugees had been noted and the Federal Government was increasingly opposed to family reunification. The case of Shahraz Kayani, an Australian citizen of Pakistani origin, who had set fire to himself in front of the Federal Parliament in April 2001, when his family members had been refused visas on the grounds that his daughter would be a financial burden on Australian social security, was a tragic consequence of that policy. He invited the State party to review its policies on migrants.

26. Mr. VALENCIA RODRÍGUEZ said that the State party had important mechanisms to ensure compliance with the Convention, including the Racial Discrimination Act 1975 (Cth), the Aboriginal and Torres Strait Islander Social Justice Commission, the HREOC and the Human Rights Legislation Amendment Act 1999 (Cth). Under the latter, the President of the HREOC was responsible for handling complaints of racial discrimination. He asked for information on the types of complaints handled and related decisions.

27. He welcomed the efforts to promote human rights education and enquired about the results of activities to publicize the Convention and the Racial Discrimination Act.

28. He highlighted the importance of the work of the Social Justice Commissioner, in particular the four topics covered in his annual reports on the Native Title Act 1993, listed in paragraph 51. He would welcome more information on the evaluation of the Committee's decision of March 1999 in that connection.

29. He wished to know the results of the application of the various state and territory anti-discrimination laws referred to in paragraphs 52-71. Had the government of South Australia promulgated racial vilification legislation?

30. He noted the Government's commitment to assisting disadvantaged Aboriginals, and asked about the results of the measures described in paragraph 72 and about the process of reconciliation. The data contained in paragraph 80 showed an improvement in the situation of the Torres Strait Islanders; such efforts should be pursued, particularly in the areas of housing, health, education and employment.

31. The family and community formed the basis of Aboriginal culture and greater efforts must be made to end the practice of separating children from their families. He welcomed the "Motion of Reconciliation" of 1999 in which the Australian Parliament had expressed its deep regret for injustices suffered by indigenous Australians and enquired what their reaction to the Motion had been. Pending the establishment of a viable compensation scheme, he recommended the application of the measures outlined in article 2, paragraph 2, of the Convention.

32. He stressed the importance of continuing initiatives to recognize Aboriginal and Torres Strait Islander land rights and of allowing parties to register agreements relating to government activities which might affect native title, such as permits for mining or other development on land where native title existed.

33. One of the key elements of the report was the State party's response to the Committee's concerns about amendments to the Native Title Act. On the basis of the findings of the PJC, the State party had adhered to its position that the amended Act maintained an appropriate balance between the rights of indigenous people to title and the rights of third parties. The time had come for the State party to reflect further on the Committee's observations concerning the amended Act with a view to reconciling their positions. In the meantime the Committee should examine more carefully the PJC report, in conjunction with Human Rights Committee general comment No. 25 and the Committee's general recommendation XXIII.

34. Mr. BOYD emphasized that the State party should view the reporting procedure as an opportunity for dialogue. He wished to know the Government's exit strategy for resolving the situation of the 187 unsuccessful asylum-seekers who, as they had nowhere to return to, were being detained indefinitely in Australia. He asked whether people in that situation were given the opportunity to appeal or to seek clarification of the conditions of their detention, or were reliant on the discretion of the executive, if indeed the executive was at liberty to exercise discretion in the matter. He suggested that the title "Department of Immigration and Multicultural and Indigenous Affairs" might be significant; it seemed ironic that the same department should have responsibility for people who had always been on the territory and for those who had recently arrived or wished to enter the country.

35. Mr. LINDGREN ALVES said that it was Australia's status as a fully-fledged democracy that explained why it attracted so many immigrants and so much attention from abroad. He found it ironic that the Australian delegation should criticize the Committee's practice of making use of information received from NGOs, given that it had itself expressed condemnation when Governments of Latin American or communist countries had made similar criticisms in the past.

36. Although the report painted a positive picture of Australia, the names given to some of the laws adopted and initiatives undertaken pointed to the existence of problems. He would appreciate more detailed information about the problems alluded to, such as the effects of the historical practice of removing indigenous children from their families (para. 88). He wished to know what the Government understood by the term “multiculturalism”, and whether policies promoting multiculturalism were intended to make Australia a melting pot or a mosaic. He also asked whether Aboriginal people enjoyed full Australian citizenship.

37. Mr. AVTONOMOV requested further information on provision for education and awareness-raising about human rights in general and the Convention in particular. He also requested detailed information about how the \$5.6 million contribution to Reconciliation Australia (para. 76) had been spent, including: what programmes or measures had been introduced and how much had been spent on each of them; the proportion of the budget used to cover administrative costs; how many indigenous persons had participated in the programmes and how their situations had improved as a result; and how and by whom the effectiveness of the measures taken was assessed.

38. He asked what the Government was doing to address the problem of the large numbers of indigenous people in the prison population. He would also like to know how Western Australia’s land reserve scheme (para. 102) compared with the land rights and native title legislation in force elsewhere in the country, and requested further information about the problems experienced by the Yorta Yorta Aboriginal community with respect to their land rights. He also asked about the conditions of detention for illegal immigrants.

39. Mr. de GOUTTES said that it had been a great disappointment to hear the delegation challenge the Committee’s methods of work; such challenges were rare. Since the Committee’s work was viewed positively by other bodies, including the General Assembly, he did not think it necessary for the Committee to respond to such criticisms. He expressed regret that the State party had not seen fit to follow the recommendations made by the Committee in its concluding observations (CERD/C/304/Add.101) or abide by the Committee’s decision 1 (53) of 11 August 1998 (A/53/18, para. II.B.1), decision 2 (54) of 18 March 1999 (A/54/18, para. 21 (2)) or decision 2 (55) of 16 August 1999. He noted that the Australian Government’s response to those decisions had instead been to take the initiative of calling for reform of the Committee’s working methods and of the human rights treaty bodies in general. He also noted the Government’s failure to take appropriate action in response to the Opinion of the Committee with regard to communication No. 26/2002, Hagan v. Australia. Lastly, he noted the lack of action in response to the Committee’s recommendation that the State party should criminalize the dissemination of racist views and propaganda, in conformity with article 4 of the Convention.

40. On a more positive note, he expressed his interest in the diversionary and preventative measures taken in relation to indigenous criminal justice (report, paras. 134-164), and requested further information, in particular, about the National Crime Prevention programme (para. 134), the Juvenile Pre-Court Diversion Scheme (para. 141) and “family conferencing” (para. 143). He asked about the specific nature of family violence among indigenous people and wished to know what the national strategy on indigenous family violence comprised (para. 86). He would

welcome more information about the national profile of Indigenous Night Patrols, referred to in paragraph 138. He asked to be updated on the progress of the Aboriginal Justice Initiative referred to in paragraph 144, and wished to know more about the sentencing options for Aboriginal people (para. 145) and what precisely “circle-sentencing” comprised (para. 148).

41. He asked what measures had been taken to remedy the over-representation of the indigenous peoples in the criminal justice system and in prisons. He wished to know the results of the two Federal Senate inquiries into the issue of mandatory sentencing (para. 155). He requested more information about the policies and mechanisms put in place to identify and deal with ethnic tolerance or inappropriate behaviour by police personnel (para. 161), and in particular about the disciplinary or criminal penalties for such behaviour.

42. He asked to be updated on: the reform of the HREOC (paras. 20-23); the Race for Business information and training package (para. 27); and the reconciliation process. He enquired about the outcome of the HREOC report on the historical practice of taking Aboriginal children from their families. Since financial compensation was not considered to be an answer (para. 91), he asked what other compensatory measures were envisaged in the spirit of reconciliation. He asked about the abolition of the Aboriginal and Torres Strait Islander Commission and about the planned amendment to the 1986 Human Rights and Equal Opportunity Commission Act, which would allow the Commission to intervene before the courts.

43. Mr. THORNBERRY asked whether the Government of Australia accepted that the achievement of equality might require different outcomes for different circumstances, in line with international human rights law. In that connection, he wondered whether the provision for mandatory sentencing in the Criminal Code, which the Government considered to be a sentencing issue rather than a racial issue, had a disparate impact on particular racial groups, behind the formal equality of the legislation. He would be interested to learn whether there were any provisions in Australian law equivalent to the benchmark provisions contained in article 10 of ILO Convention No. 169, under which the economic, social and cultural characteristics of indigenous groups should be taken into account in sentencing. That article also provided that preference should be given to alternatives to imprisonment, and he wondered whether those principles were recognized in Australian law.

44. As to the notion of multiculturalism, it was not clear what that diversity implied in terms of policy. Did it imply differences in treatment for immigrant and indigenous groups, for example? He assumed multiculturalism signified respect for diversity within a common citizenship, moving away from a policy of assimilation.

45. Regarding indigenous disadvantage, he wondered whether any account was taken of the cultural context of welfare dependency. If a group had been subjected to negative processes historically, such as the destruction of family and community, it would experience considerable difficulties. He asked whether there was enough in Australian legislation and policy to incorporate re-evaluation of the cultural foundations of indigenous identity through education and language in order to enhance pride in culture.

46. In connection with article 91 of the report on reconciliation and the difficulties in devising an equitable scheme of financial compensation, he would be interested to hear an account of the reasoning in that article and the practical strategies for reconciliation, and how it might differ from a broader notion of reparation or redress.
47. On the question of native title, he wondered if common law still had the power to recognize Aboriginal native title customary law, or if that matter had been subsumed under interpretation of statute, notably the Native Title Act. He would also be interested to learn whether Aboriginal groups had the possibility of developing and having new customs and practices accepted into law.
48. Mr. KJAERUM commended the Australian delegation for the activities of the HREOC, which stood out among the national human rights institutions. He hoped that any changes made to the Commission would strike a balance between monitoring, advising and receiving individual complaints, on the one hand, and information, education and broader outreach work, on the other. He also praised the work being done in the area of human rights education, which was a source of inspiration for the Committee.
49. He agreed with Mr. Thornberry's observations in relation to the Charter of Public Service in a Culturally Diverse Society, and wondered what progress had been made in that area, for example in public employment. Regarding the issue of multiculturalism, the 2003 report of the HREOC had highlighted an increase in prejudice against the Arab and Muslim communities, ranging from offensive remarks to violent attacks. The Special Rapporteur on racism had reported instances of racism and discriminatory treatment of Arabs and Muslims, and hostile media attention to those communities, which was particularly worrying. The report had also indicated that Arabs and Muslims were reluctant to complain to the police or the government authorities for a number of reasons, including a lack of trust in the authorities. A number of recommendations for future improvements and action had been made, including improving legal protection, promoting positive public awareness, and addressing stereotypes and misinformation. He would be interested to hear how the Government had acted on those recommendations.
50. Concern had also been voiced at the tendency to link Arabs and Muslims with terrorism. It had been alleged that the recent anti-terror legislation adversely affected Muslims, as only Muslims had been detained under the legislation, and all the organizations that had been banned had some link to Islamic organizations. Were there any government initiatives to counterbalance that focus on Muslims?
51. The issue of multiculturalism had raised a number of concerns. For example, the Prime Minister had been quoted in 2002 as saying that Australia had made an error in abandoning its former policy of assimilation in favour of multiculturalism. Such divergent signals could create confusion, and he would be interested to hear what direction was actually being taken.
52. With regard to the refugees and asylum-seekers detained for more than three years, he drew the delegation's attention to the Committee's recently-adopted general recommendation XXX on non-citizens, which raised the issue of detention. Regarding family

reunification, covered under article 5 (d) of the Convention, he understood that there were measures in place to limit the possibility of family reunification for refugees. However, the European Court of Human Rights had ruled that refugees did have the right of family reunification.

53. In relation to article 5 (c) of the Convention on the right to vote and participate in public affairs, the political representation of Aboriginal people remained extremely limited and affirmative action did not appear to have been taken to remedy the situation. In the 2004 elections there had been few indigenous candidates, and the only indigenous senator had not been re-elected. The dialogue between the Government and the Aboriginal people also appeared to be very weak. He would be interested to hear how the Government viewed those problems and whether any measures had been taken to strengthen dialogue.

54. Regarding article 5 (e) on the right to health, according to NGO sources, health services for indigenous people were severely underfunded and there was a major shortage of health personnel. How was the Government responding to those challenges?

55. Mr. TANG Chengyuan said that, according to the report, considerable progress appeared to have been made in terms of the rights of Aboriginals, notably in the settlement of native title claims. However, according to NGO sources, many Aboriginals were still dissatisfied with the situation, and he would be interested to hear the delegation's comments on why that might be. He appreciated that certain problems must be addressed on a gradual basis, but wondered whether the law was being fully implemented. He would be interested to hear whether there had been any cases of corruption in the implementation process which had resulted in Aboriginals being deprived of their rights.

56. Mr. ABOUL-NASR said that the Secretary-General fully endorsed the frank exchange of views during dialogue between treaty bodies and States parties. The Committee was not sensitive to criticism, and he hoped that the delegation would react similarly to the Committee's comments.

57. He would be interested to learn more about the situation and treatment of Muslims and Arabs in Australia, and any measures taken by the Government in that regard. On immigration policy, he wondered if there were quotas based on nationality, race or religion, which would be contrary to the Convention.

58. Mr. CALI TZAY, endorsing Mr. Boyd's observations, said he would be interested to hear more about the title "Department of Immigration and Multicultural and Indigenous Affairs".

59. Referring to paragraph 30 of the report, he wondered whether it implied that discriminatory practices were more prevalent among indigenous groups in remote areas. Regarding the Bringing them Home programme, he would be interested to hear what its results had been. Were there any statistics on the numbers of children removed from, and returned to, their families?

60. As to the land rights of Aboriginals in accordance with their traditional laws and customs and their compatibility with Australian common law, he would be interested to hear how the traditional laws contradicted Australian common law. He would welcome more information on the effects of the conflict between traditional cultures and the challenges of the modern world.

61. Mr. SMITH (Australia) said he appreciated that, as part of the frank two-way dialogue, both the Committee and the delegation could raise issues, which was why he had voiced his country's concerns about the Committee's previous concluding observations. There appeared to be a view that his Government had been critical of NGOs; that was certainly not the case. The Government recognized the importance of their role and was fully supportive of their work. However, NGOs did not necessarily present all aspects of a situation, and his delegation had had the impression that the Committee gave more weight to NGO reports than to the dilemmas faced by the Government.

The meeting rose at 6 p.m.