



***Concluding observations of the Human Rights  
Committee :Australia. 24/07/2000.  
A/55/40,paras.498-528. (Concluding Observations/Comments)***

**Convention Abbreviation:** CCPR  
HUMAN RIGHTS COMMITTEE  
Sixty-ninth session

CONSIDERATION OF REPORTS SUBMITTED UNDER ARTICLE 40  
CONCLUDING OBSERVATIONS OF THE HUMAN RIGHTS COMMITTEE

Concluding observations of the Human Rights Committee

AUSTRALIA

The Committee examined the third and fourth periodic reports of Australia (CCPR/C/AUS/99/3 and 4) at its 1955th, 1957th and 1958th meetings (CCPR/C/SR.1955, 1957 and 1958), held on 20 and 21 July 2000. At its 1967th meeting, on 28 July 2000, the Committee adopted the following concluding observations.

1. Introduction

The Committee appreciates the quality of the reports of Australia, which conformed to the Committee's guidelines for the preparation of States parties' reports and provided a comprehensive view of such measures as have been adopted by Australia to implement the Covenant in all parts of the country. The Committee also appreciated the extensive additional oral and written information provided by the State party delegation during the examination of the report. Furthermore, the Committee expresses appreciation for the answers to its oral and written questions and for the publication and wide dissemination of the report by the State party.

The Committee regrets the long delay in the submission of the third report, which was received by the Committee 10 years after the examination of the second periodic report of the State party.

The Committee expresses its appreciation for the contribution of non-governmental organizations and statutory agencies to its work.

2. Positive aspects

The Committee welcomes the accession of the State party to the Optional Protocol to the Covenant in 1991, thereby recognizing the competence of the Committee to consider communications from individuals within its territory and subject to its jurisdiction. It welcomes the action taken by the State party to implement the Views of the Committee in the case of communication No. 488/1992 (Toonen v. Australia) by enacting the necessary legislation at the federal level.

The Committee welcomes the enactment of anti-discrimination legislation in all jurisdictions of the State party, including legislation to assist disabled persons.

The Committee welcomes the establishment of the Aboriginal and Torres Strait Islander Social Justice Commissioner in 1993.

The Committee notes with satisfaction that the status of women in Australian society has improved considerably during the reporting period, particularly in public service, in the general workforce and in academic enrolment, although equality has yet to be achieved in many sectors. The Committee welcomes the initiatives to make available to women facilities to ensure their equal access to legal services, including in rural areas, and the strengthening of the Sex Discrimination Act, 1984.

### 3. Principal subjects of concern and recommendations

With respect to article 1 of the Covenant, the Committee takes note of the explanation given by the delegation that rather than the term "self-determination", the Government of the State party prefers terms such as "self-management" and "self-empowerment" to express domestically the principle of indigenous peoples' exercising meaningful control over their affairs. The Committee is concerned that sufficient action has not been taken in that regard.

The State party should take the necessary steps in order to secure for the indigenous inhabitants a stronger role in decision-making over their traditional lands and natural resources (art. 1, para. 2).

The Committee is concerned, despite positive developments towards recognizing the land rights of the Aboriginals and Torres Strait Islanders through judicial decisions (*Mabo*, 1992; *Wik*, 1996) and enactment of the Native Title Act of 1993, as well as actual demarcation of considerable areas of land, that in many areas native title rights and interests remain unresolved and that the Native Title Amendments of 1998 in some respects limit the rights of indigenous persons and communities, in particular in the field of effective participation in all matters affecting land ownership and use, and affects their interests in native title lands, particularly pastoral lands.

The Committee recommends that the State party take further steps in order to secure the rights of its indigenous population under article 27 of the Covenant. The high level of exclusion and poverty facing indigenous persons is indicative of the urgent nature of these concerns. In particular, the Committee recommends that the necessary steps be taken to restore and protect the titles and interests of indigenous persons in their native lands, including by considering amending anew the Native Title Act, taking into account these concerns.

The Committee expresses its concern that securing continuation and sustainability of traditional forms of economy of indigenous minorities (hunting, fishing and gathering), and protection of sites of religious or cultural significance for such minorities, which must be protected under article 27, are not always a major factor in determining land use.

The Committee recommends that in the finalization of the pending bill intended to replace the Aboriginal and Torres Strait Islander Heritage Protection Act (1984), the State party should give sufficient weight to the values described above.

While noting the efforts by the State party to address the tragedies resulting from the previous policy of removing indigenous children from their families, the Committee remains concerned about the continuing effects of this policy.

The Committee recommends that the State party intensify these efforts so that the victims themselves and their families will consider that they have been afforded a proper remedy (arts 2, 17 and 24).

The Committee is concerned that in the absence of a constitutional Bill of Rights, or a constitutional provision giving effect to the Covenant, there remain lacunae in the protection of Covenant rights in the Australian legal system. There are still areas in which the domestic legal system does not provide an effective remedy to persons whose rights under the Covenant have been violated.

The State party should take measures to give effect to all Covenant rights and freedoms and to ensure that all persons whose Covenant rights and freedoms have been violated have an effective remedy (art. 2).

While noting the explanation by the delegation that political negotiations between the Commonwealth Government and the governments of states and territories take place in cases in which the latter have adopted legislation or policies that may involve a violation of Covenant rights, the Committee stresses that such negotiations cannot relieve the State party of its obligation to respect and ensure Covenant rights in all parts of its territory without any limitations or exceptions (art. 50).

The Committee considers that political arrangements between the Commonwealth Government and the governments of states or territories may not condone restrictions on Covenant rights that are not permitted under the Covenant.

The Committee is concerned by the government bill in which it would be stated, contrary to a judicial decision, that ratification of human rights treaties does not create legitimate expectations that government officials will use their discretion in a manner that is consistent with those treaties.

The Committee considers that enactment of such a bill would be incompatible with the State party's obligations under article 2 of the Covenant and it urges the Government to withdraw the bill.

The Committee is concerned over the approach of the State party to the Committee's Views in Communication No. 560/1993 (*A. v. Australia*). Rejecting the Committee's interpretation of the Covenant when it does not correspond with the interpretation presented by the State party in its submissions to the Committee undermines the State party's recognition of the Committee's competence under the Optional Protocol to consider communications.

The Committee recommends that the State party reconsider its interpretation with a view to achieving full implementation of the Committee's Views.

Legislation regarding mandatory imprisonment in Western Australia and the Northern Territory, which leads in many cases to imposition of punishments that are disproportionate to the seriousness of the crimes committed and would seem to be inconsistent with the strategies adopted by the State party to reduce the over-representation of indigenous persons in the criminal justice system, raises serious issues of compliance with various articles of the Covenant.

The State party is urged to reassess the legislation regarding mandatory imprisonment so as to ensure that all Covenant rights are respected.

The Committee notes the recent review within Parliament of the State party's refugee and humanitarian immigration policies and that the Minister for Immigration and Multicultural Affairs has issued guidelines for referral to him of cases in which questions regarding the State party's compliance with the Covenant may arise.

The Committee is of the opinion that the duty to comply with Covenant obligations should be secured in domestic law. It recommends that persons who claim that their rights have been violated should have an effective remedy under that law.

The Committee considers that the mandatory detention under the Migration Act of "unlawful non-citizens", including asylum-seekers, raises questions of compliance with article 9, paragraph 1, of the Covenant, which provides that no person shall be subjected to arbitrary detention. The Committee is concerned at the State party's policy, in this context of mandatory detention, of not informing the detainees of their right to seek legal advice and of not allowing access of non-governmental human rights organizations to the detainees in order to inform them of this right.

The Committee urges the State party to reconsider its policy of mandatory detention of "unlawful non-citizens" with a view to instituting alternative mechanisms of maintaining an orderly immigration process. The Committee recommends that the State party inform all detainees of their legal rights, including their right to seek legal counsel.

#### 4. Dissemination of information about the Covenant (art. 2)

The Committee requests the fifth periodic report to be submitted by 31 July 2005. It requests that the present concluding observations and the next periodic report be widely disseminated among the public, including civil society and non-governmental organizations operating in the State party.