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Committee on the Elimination of Racial Discrimination (CERD)
Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva (Switzerland)

Dear CERD Committee members

I am writing this letter in my capacity as the recently appointed, full time Australian Race Discrimination Commissioner.

The Australian Government has recently provided the CERD Committee with a follow up report from the 2010 reporting session, in accordance with rule 65 (article 9, paragraph 1), in reference to recommendations contained in paragraphs 11, 16 and 23 of the CERD Committee's concluding observations.

This correspondence will provide you with a parallel statement from the Australian Human Rights Commission in relation to concluding observations 11, 16 and 23.

I note that the Australian Government has received copies of this correspondence.

Positive developments

The Australian Human Rights Commission welcomes the following important developments:

- the Constitutional recognition process,¹ announced in December 2010, which is a national conversation about:
 - acknowledging the special place of Aboriginal and Torres Strait Islander people in Australia's Constitution
 - removing provisions in the Australian Constitution that anticipate and permit discrimination on the basis of race
(*CERD Committee concluding observation 15*)
- the release of a national multicultural policy, *The People of Australia*² which commits to an access and equity framework to ensure that the onus is on government to provide equitable services to Australians from all backgrounds
(*CERD Committee concluding observation 14*)

- the establishment of the Australian Multicultural Council, a body that will provide independent advice to government on cultural diversity and have a formal role in a strengthened access and equity strategy (*CERD Committee concluding observation 14*)
- the announcement of and funding for a National Anti-Racism Partnership and Strategy, to be led by the Australian Human Rights Commission (*CERD Committee concluding observation 27*).

CERD Concluding observation 11 – Appointment of a full-time Race Discrimination Commissioner (ICERD Article 2)

The Australian Government has provided funding for a stand-alone Race Discrimination Commissioner. I commenced in this position in September 2011 for a five year term. This announcement was welcomed widely by civil society organisations. I look forward to working in close collaboration with the community sector in coming months to identify key priorities for my term.

CERD Concluding observation 16 - Northern Territory Emergency Response (NTER) (ICERD Articles 1, 2, and 5 and Declaration Articles 2, 3, 21, 23)

(a) Reinstatement of the Racial Discrimination Act 1975 (Cth) (RDA)

In its response to concluding observation 16, the Australian Government states in its follow up report that it has ‘fully reinstated people’s rights and protections under the *Racial Discrimination Act 1975* (RDA) in relation to the Northern Territory Emergency Response (NTER)’. As outlined in the Commission submission to CERD in July 2010, the Commission is of the view that some practical limitations on the reinstatement of the RDA remain. For example, the continuation of compulsorily acquired leases over communities may raise some issues of compliance with the RDA.

(b) Income management

The Commission’s concerns with the initial implementation of the income management scheme were outlined in its submission to CERD in July 2010.³ While income management was extended to other disadvantaged areas across the Northern Territory in July 2010, and changes have been made to the income management scheme in attempts to make it ‘non-discriminatory’, the scheme still has a disproportionate impact on Indigenous peoples. The Australian Government reported in February 2011 that 94.2% of people on income management in the Northern Territory are Indigenous,⁴ as compared with Indigenous peoples making up 30% of the Northern Territory population.⁵ In the Commission’s view this issue requires ongoing monitoring.

(c) Compulsory acquisition of five-year leases

The Australian Government has said that it will retain the existing five-year leases until they expire in August 2012 but has committed to progressively transition to voluntary longer-term leases during this period.⁶ In addition, the Government announced on 25 May 2010 that it had started to pay rent to Aboriginal land owners

in 45 of the 64 communities subject to five-year leases and that rent will be backdated to the commencement of the leases in 2007.⁷

The Commission welcomes the Government's commitment to progressively transition to voluntary leases in these communities, and to pay rent. However, the Commission is concerned by recent reports that the Government has not paid 'fair rent' to the communities affected by the compulsory five-year leases.⁸ In *Wurridjal v Commonwealth*,⁹ the High Court of Australia found that the Australian Government is required to pay just terms compensation for the five-year leases.¹⁰ The Commission therefore encourages the Government to work with the Northern and Central Land Councils to ensure there is agreement on valuation of land and a fair amount of rent is paid to the communities affected by the five-year leases.

(d) *Consultation and special measures*

The Commission remains concerned that Aboriginal voices were not heeded during the 2009 'redesign' consultation process. As the Social Justice Commissioner identified in the *Native Title Report 2010*:

- the people affected by the NTER measures were not always able to participate in the consultations in a fully informed manner
- the Australian Government did not appear to approach the consultations with the objective of obtaining free, prior and informed consent
- the consultations did not appear to create a space for Aboriginal peoples to be genuinely involved in the decision-making processes as to whether the five-year leases should be retained, removed or redesigned.¹¹

On 22 June 2011, the Australian Government released the discussion paper *Stronger Futures in the Northern Territory* and outlined its intended consultation process to discuss the future of the NTER.¹²

The Commission notes with concern that there was only a six-week timeframe allocated to the consultation process, which commenced only a few days after the discussion paper was released. This timeframe was inadequate given the scope of the issues raised in the discussion paper. Also, despite the Australian Government's efforts to work with the Aboriginal Interpreter Service (AIS), there was not sufficient time to translate the paper into the languages of Northern Territory communities or provide the discussion paper to the interpreters sufficiently in advance.

The Commission encourages the Government to ensure that Aboriginal and Torres Strait Islander peoples can meaningfully participate in all stages of law and policy development by providing complete and accurate information to communities in an accessible, culturally appropriate and timely manner.

The Commission has broadly welcomed the Government's approach in the *Stronger Futures in the Northern Territory* legislative package, introduced into Parliament on 23 November 2011.¹³ Nonetheless the Commission encourages the Government to create opportunities for further negotiations with affected peoples and their representative organisations throughout the forthcoming legislative and budget development processes.

The Commission broadly outlined its concerns regarding special measures under the NTER in its submission to CERD in 2010.¹⁴

CERD Concluding observation 23 – International Student Safety (ICERD Article 5)

(a) International Student Welfare

The Australian Human Rights Commission welcomes the development of the International Student Strategy for Australia 2010-2014¹⁵ (the Strategy) by the Council of Australian Governments (COAG). There are a number of positive measures in the strategy, including the commitment to strengthening the Australian Quality Training Framework and the development of a community engagement strategy.

The Commission notes however that a number of key areas were not addressed as part of the Strategy – including responsibilities which respectively fall to the Australian and State and Territory Governments. For example:

- transport concessions in Victoria and New South Wales (noting that during Commission consultations, international students identified this as a major factor impacting negatively on their safety)
- solutions for safe and affordable housing options
- dedicated police with specialised knowledge around international student safety – an approach that has been applied successfully in the United Kingdom
- specific strategies for female international students that might address areas such as sexual violence and sexual harassment (some of which are associated with study related work placements)
- a commitment to gathering ongoing data about international student safety or people from culturally and linguistically diverse backgrounds as victims of crime.

The Commission encourages COAG to identify the total cost of the Strategy (including the community engagement strategy) over the 2010-2014 period. The level of investment in the strategy provides an important indication of COAG's commitment to its implementation and to the overall safety and wellbeing of international students in Australia.

(b) *Deaths of international students*

The Commission considers that the Australian Government has a duty of care for international students in their capacity as temporary residents and as temporary migrant workers.

Currently, the Department of Immigration and Citizenship collects but does not release data on the numbers or causes of international student deaths in Australia. Information about the deaths of international students should be made publicly available so that civil society organisations and student representative bodies can properly monitor international student safety and wellbeing.

(c) *Lack of relevant national data relating to international student safety*

The Commission acknowledges that in many cases it can be difficult to clearly establish that crimes are racially motivated.

The Commission notes the Australian Government's statements in its follow up report to the CERD Committee regarding the Australian Institute of Criminology's report, *Crimes Against International Students in Australia: 2005-2009*.¹⁶ The study compared the crime victimisation rates of international student visa holders from five countries (India, the People's Republic of China, the Republic of Korea, the United States and Malaysia) with that of the general Australian population.

While the Commission welcomed the research, it has identified two major concerns regarding the methodology of this research project,¹⁷ which are:

1. that the sample of international students and the comparative sample are not reasonably comparable. Students face specific set of risks and vulnerabilities, because of their temporary status and unfamiliarity with Australian civic systems. This suggests that there may be problems with the reliability of the data; and
2. that student representative bodies recognise that there are considerable issues with international students underreporting crime and acts of violence, which will have a considerable impact on the reliability of the data.

Currently, the Australian Government does not collect data on temporary migrants or people from culturally and linguistically diverse backgrounds as victims of crime, making it difficult to ascertain the extent that international students are victims of racially motivated crime and violence. The National Victims of Crime Survey does not report on ethnicity and is unlikely to capture data on international students, given the requirement that respondents to the survey should have lived in the same household for a one- year period.

While the Commission acknowledges that the Australian Government made a commitment to *possible* future research on international students and crime patterns, there is no indication that there will be follow up around the specific data requested by the ICERD Committee. Concluding observation 23 specifically references:

- the collection of data on migrants as victims of crime; and

- the collection of updated statistical data on the number and nature of reported hate crimes, prosecutions, convictions and sentences imposed on perpetrators , disaggregated by age, gender and national or ethnic origin of victims.

There is no indication in the government response that the data requested by the ICERD Committee will be gathered or provided as part of future treaty reporting. Without this data, the prevalence of hate crime and any trends relating to the ethnicity or nationality of victims will remain unidentified.

Conclusion – national survey on racism findings

For your general reference, national data from the Challenging Racism Project¹⁸ was released in 2011 and measures (a) the prevalence of racism and (b) racist attitudes in Australia. The research was based on random phone interviews with 12,500 people, and resulted in the following findings:

- around 85 percent of respondents believe that racism is a current issue in Australia
- around 20 percent of respondents had experienced forms of race-hate talk (verbal abuse, name-calling, racial slurs, offensive gestures etc)
- around 11 percent of respondents identified as having experienced race-based exclusion from their workplaces and/or social activities
- 7 percent of respondents identified as having experienced unfair treatment based on their race
- 6 percent of respondents reported that they had experienced physical attacks based on their race.

I hope that you find the above information useful. If you have any questions or require clarification please contact Allison Henry, Director, Race Discrimination Team by telephone on +612 9284 9709 or at allison.henry@humanrights.gov.au

Yours sincerely



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- ¹ Constitutional recognition of Indigenous Australians process At: http://www.fahcsia.gov.au/sa/indigenous/progserv/engagement/Pages/constitutional_recognition.aspx (viewed 27 November 2011).
- ² *The People of Australia – Australia’s multicultural policy*. Access at: <http://www.immi.gov.au/living-in-australia/a-multicultural-australia/multicultural-policy/> (viewed 27 November 2011).
- ³ Australian Human Rights Commission, *Submission to the ICERD Committee: Information concerning Australia and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)* (8 July 2010), para 64. At: http://www.humanrights.gov.au/legal/submissions/united_nations/ICERD2010.html (viewed 1 August 2011).
- ⁴ Commonwealth, *Official Committee Hansard: Reference: Estimates*, Senate Community Affairs Legislation Committee (25 February 2011), p CA22 (Ms Liz Hefren-Webb, Acting Branch Manager, Welfare Payments Reform, FaHCSIA).
- ⁵ Australian Bureau of Statistics. 1362.7 - Regional Statistics, Northern Territory, March 2011. At <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/1362.7Feature%20Article1Mar%202011?op=endocument&tabname=Summary&prodno=1362.7&issue=Mar%202011&num=&view=#Aboriginal> (viewed 27 November 2011).
- ⁶ Commonwealth, *Parliamentary Debates*, House of Representatives, 25 November 2009, p 12787 (The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs). At <http://www.aph.gov.au/hansard/reps/dailys/dr251109.pdf> (viewed 1 August 2011); Australian Government, *Policy Statement: Landmark Reform to the Welfare System, Reinstatement of the Racial Discrimination Act and Strengthening of the Northern Territory Emergency Response*, Department of Families, Housing, Community Services and Indigenous Affairs (2009), pp 10–11. At http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/policy_statement_nter/Pages/default.aspx (viewed 1 August 2011).
- ⁷ The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, and The Hon W Snowdon MP, Minister for Indigenous Health, Rural and Regional Health and Regional Services Delivery, ‘Rent payments for NTER five-year leases’ (Media Release, 25 May 2010). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/rent_nter_25may10.aspx (viewed 1 August 2011). The amount of rent was determined by the Northern Territory Valuer-General. The Government also stated that it was ‘standing by’ to make payments to the remaining 16 Aboriginal corporations which hold title to community living areas, and that the lease over Northern Territory Crown land at Canteen Creek did not involve a rent payment.
- ⁸ M Schliebs, ‘Community money remains frozen’, *The Australian*, 25 June 2011. At: <http://www.theaustralian.com.au/national-affairs/community-money-remains-frozen/story-fn59niix-1226080880791> (viewed 1 August 2011).
- ⁹ (2009) 237 CLR 309.
- ¹⁰ For discussion of this decision, see T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2009*, Australian Human Rights Commission (2009), pp 26–31, 153. At http://www.humanrights.gov.au/social_justice/nt_report/ntreport09/index.html (viewed 1 August 2011).
- ¹¹ M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2010*, Australian Human Rights Commission (2011), ch 3. At: http://www.humanrights.gov.au/social_justice/nt_report/ntreport10/index.html (viewed 18 July 2011).
- ¹² Prime Minister, Minister for Indigenous Affairs, Minister for Indigenous Health, Senator Crossin, ‘Deliver a better future for Indigenous people in the Northern Territory’, (Media Release, 22 June 2011). At: <http://www.pm.gov.au/press-office/delivering-better-future-indigenous-people-northern-territory> (viewed 1 August 2011).
- ¹³ M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, ‘Stronger Futures – a chance to move beyond the pain of the Intervention’ (Media release, 23 June 2011). At: http://humanrights.gov.au/about/media/media_releases/2011/111_11.html (viewed 27 November 2011).
- ¹⁴ Australian Human Rights Commission, *Submission to the ICERD Committee: Information concerning Australia and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)* (8 July 2010), para 64. At: http://www.humanrights.gov.au/legal/submissions/united_nations/ICERD2010.html (viewed 1 August 2011).

¹⁵ Council of Australian Governments (COAG), *International Student Strategy for Australia 2010-2014*, At: www.coag.gov.au/reports/docs/aus_international_students_strategy.pdf (viewed 27 November 2011).

¹⁶ Jacqueline Joudo Larsen, Jason Payne, Adam Tomison, *Crimes Against International Students in Australia: 2005-2009*, Special Report, Australian Institute of Criminology, Canberra, August 2011. At: <http://www.aic.gov.au/en/publications/current%20series/special/1-20/001.aspx> (viewed 27 November 2011).

¹⁷ G Innes, Race Discrimination Commissioner, 'AIC report doesn't consider racial motivation', (Media release, 11 August 2011). At: http://www.hreoc.gov.au/about/media/media_releases/2011/69_11.html (viewed 27 November 2011).

¹⁸ View Challenging Racism Project at: http://www.uws.edu.au/social_sciences/soss/research/challenging_racism/findings_by_region (viewed 27 November 2011).