

Torres Strait Social Justice Commissioner. The government was requested to submit the information by 15 January 1999 so that the Committee can consider it at its 54th session, 1 to 19 March 1999.

THEMATIC REPORTS

Mechanisms of the Commission on Human Rights

Racism and racial discrimination, Special Rapporteur on: (E/CN.4/1998/79, paras. 15, 53, 72, 128—2; 131)

The report refers to allegations transmitted to the government concerning a rise in racism and xenophobia, particularly towards Aborigines and Australians of Asian origin. The report notes that the government responded to the Special Rapporteur's (SR) request for an invitation to visit and that the mission will take place in 1998. The government also provided the SR with information on an initiative that was announced by the Prime Minister in May 1997 aimed at a reconciliation process with three basic objectives: a shared commitment to raise the living standards and broaden the opportunities available to the most disadvantaged group in society, indigenous Australians, as part of a broader commitment to providing equality of opportunity to all; a realistic acknowledgment of the interrelated histories of the various elements of society; and mutual acceptance of the importance of working together to respect and appreciate differences and ensure that they do not prevent Australians from sharing in the future. The SR welcomed the political commitment of the government and encouraged the authorities to translate it into concrete and effective action by adopting appropriate legislative or other measures, particularly favouring Aborigines.

Religious intolerance, Special Rapporteur on: (E/CN.4/1998/6, para. 23; E/CN.4/1998/6/Add.1)

The Special Rapporteur (SR) visited Australia from 17 February to 1 March 1997. The report of the visit contains information on the Constitution, federal, state and territory laws, the situation of religions and beliefs and the situation of religious minorities and aboriginal peoples. In addition to meetings with government representatives, the SR held consultations with human rights NGOs and representatives of the Aboriginal, Baha'i, Christian, Hindu, Jewish and Muslim communities as well as the Church of Scientology and The Family.

The review of legal provisions noted that there is no general bill of rights and freedoms in the Australian Constitution. Religious freedom is guaranteed, however, by article 116 to the extent that this article prohibits the state (the Commonwealth) from establishing any religion, imposing any religious observance, prohibiting the free exercise of any religion, or requiring a religious test as a qualification for any office or public trust under the Commonwealth. While these provisions preserve the principle of state neutrality with regard to religion and religious freedom, the SR pointed out that: they apply only

to the legislative powers of the Commonwealth and not other powers, such as executive and judicial powers, and activities; and constitutional protection of religious freedom applies only to the Commonwealth and not to the States and Territories, which, by law, have freedom of action with regard to religious freedom, including its restrictions.

The commentary on federal laws included a summary of points related to the Human Rights and Equal Opportunity Commission (HREOC), which was established by law in 1996. The Commission's mandate, based on human rights definitions contained in the International Covenant on Civil and Political Rights (ICCPR) and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, is to: promote understanding, acceptance and public discussion of human rights and equal opportunity in employment; investigate Commonwealth acts and practices which are not consistent with human rights and constitute discrimination; advise Parliament on legislation, and the Commonwealth on activities related to human rights, equality of opportunity and employment; and suggest action to be taken by Australia in accordance with the international instruments to which it is a party.

The report stated that, within this mandate, the HREOC is authorized to assert its jurisdiction in a number of areas, including the settlement of disputes and the education of citizens whenever manifestations of intolerance and of discrimination based on religion or belief are brought to its attention. The act establishing the Commission however, does not guarantee rights, does not prohibit discrimination, and does not provide enforceable remedies.

The Racial Discrimination Act (1975) was also cited as providing protection, albeit limited, against religious discrimination. The protection exists under this law to the extent that the provisions prohibit such discrimination if a religious group can also be classified as an "ethnic" group. The SR stated that even in cases where a religious group may not be classified in that way, it can be argued that the Act covers discrimination on the basis of religion in certain circumstances, as indirect race discrimination, and noted, as an example, the denial of a job to an Australian Muslim woman who wears a head scarf.

The section of the report dealing with state and territorial law noted that Tasmania is the only state in which the Constitution contains a provision on religious freedom. Anti-discrimination laws in Victoria, Queensland and Western Australia and the self-governing Territories make it unlawful to discriminate against anyone on the basis, or in the absence, of lawful religious beliefs and practices. These texts do not, however, guarantee freedom of religion; rather, they prohibit discrimination except in certain cases such as employment in denominational schools.

The section addressing the situation of religions and beliefs includes statistics on the distribution of the major religions in Australia: Catholic, Anglican, Uniting (sic),