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HUMAN RIGHTS COMMITTEE CONTINUES REVIEW OF CIVIL AND POLITICAL RIGHTS IN AUSTRALIA

(Reissued as received.)

GENEVA, 21 July (UN Information Service) -- The Human Rights Committee this morning continued its review of a report by Australia on how that country implements the provisions of the International Covenant on Civil and Political Rights.

Some Committee experts said that mandatory sentencing of minors for crimes was discriminatory and disproportional to the offences committed. They expressed the view that mandatory sentencing was directed against indigenous children. Several experts also commented on the forceful removal of indigenous children from their families and urged the Government to continue its efforts to heal the wounds.

Responding to a number of questions raised by Committee experts, the Australian delegation said, among other things, that the mandatory sentencing was of a general nature and it was applicable to all without distinction. It also said that efforts had continued to heal the suffering of the indigenous people caused by the separation of their children.

The Committee extended its consideration of the report of Australia to this afternoon when it will conclude its review after hearing responses to the questions raised by experts.

As one of the 145 States parties to the Covenant, Australia is duty bound to present periodic reports to the Committee on how it is implementing the provisions of that human rights instrument.

When the Committee reconvenes at 3. p.m., it will first finalize its consideration of the Australian report before adopting its annual report in a public session.

Discussion

At the beginning of the meeting, Committee experts continued to query the Australian delegation on issues pertaining to the absence of legislation to incorporate the provisions of the Covenant into domestic law and on mandatory sentencing.

An expert said that it was a concern that the Covenant rights were not directly enforceable in the Australian courts. Australia had undertaken an obligation under article 2 of the Covenant to give effect to the Covenant rights.

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The expert wanted to know how Australia was discharging those obligations and complying with requirements of article 2 if there was no bill to do so in the legislative system. All the Covenant rights were not guaranteed by law; if a person found that any of his or her Covenant rights were violated, did he or she have recourse to any court?

The expert also said that mandatory sentencing and the removal of children from indigenous families clearly had had an adverse impact on the traditions and culture of the indigenous children. The expert pointed out that many of the offenses for which mandatory sentences were imposed were trivial in nature; it was also arbitrarily operating largely on indigenous people.

Another expert added that the aim of sentencing should be social rehabilitation of minors, but it was a breeding ground for further crimes; mandatory sentencing was disproportional to the offense committed by minors; and it tied the hands of the judge in dealing with exceptional circumstances of the crime. In addition, the expert said that the absence of a law designed to incorporate the provisions of the Covenant could not fully guarantee the rights under the treaty.

In response to the questions raised by Committee members yesterday afternoon and this morning, the members of the delegation said that the Government had been complying with the views expressed by the Committee following its consideration of individual communications.

Reservations entered by Australia on a range of articles of the Covenant would be reduced by the Government if circumstances changed, the delegation said. So far, a number of reservations had been reduced.

The protection of indigenous culture and life styles was among the priorities of the Government of Australia, the delegation said. The right to the use of indigenous languages had been developed through Government subsidies, and specific measures had been adopted to respect indigenous heritage. Indigenous land rights and the right to fishing had also been respected through the adoption of a number of legislative acts.

Indigenous persons who were forcefully removed from their families were more vulnerable to arrest and health deficiencies, the delegation said. In terms of education, grown up separated indigenous children were mainly found to be in conflict with the law.

In order to heal the suffering inflicted by the legacy of forced separation of indigenous children, the Government had been engaged in programmes designed to reverse the situation, the delegation said. Family reunion of persons forcefully removed was the first measure that the Government was undertaking by providing information and research facilities to trace "lost" children. Counselling services had also been put in place.

The delegation said that indigenous families had been destabilized by the process of removal of their children. The process had resulted in painful suffering; the healing process included allocation of money to libraries where

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interviews were conducted with people who told their stories to enable them to trace their loved ones.

In addition, the Government had introduced to parliament a draft bill on indigenous heritage, the delegation said. Steps had also been initiated for the return of indigenous assets and ancestral remains from abroad, including the United Kingdom. A significant number of indigenous cultural properties had been taken away from Australia for a number of reasons.

In order to enhance indigenous participation in public and private employment opportunities, the Federal and state governments had taken appropriate measures, the delegation said. A government organization was also helping educated indigenous people to be integrated in employment according to their professional training.

Mandatory sentencing was not discriminatory against indigenous people, the delegation affirmed, adding that it was a general criminal procedure applicable to all. The fact that it was applied to selected offenses did not mean that it was discriminating against indigenous people. Besides, mandatory sentencing was applied against commonly committed crimes such as house burglary and theft. Persons, whether indigenous or others, were subjected to mandatory sentencing.

With regard to the absence of a provision on genocide, the delegation said that the existing criminal provisions of the country sufficiently satisfied the genocide convention to which Australia was a party.

Responding to a question on the law protecting the right of a person not to be deported to a country in which he or she could be executed or could face torture or other cruel, inhuman or degrading treatment or punishment, the delegation said that the decision makers were duty bound to be sure that the person was not found in that situation in event of his refoulement or deportation. Australia respected the principle of non-refoulement if the person was vulnerable to torture.

Asylum-seekers who entered unlawfully were detained while their claims were investigated, the delegation said. Australia provided asylum to people who were refugees under the Refugee Convention of 1951. However, an illegal non-citizen in immigration detention who had exhausted all avenues of application and review should be removed from Australia. Persons removed were barred from return to Australia for a period of up to five years.

On the practice of corporal punishment, the delegation said that it was prohibited, however, parents or guardians could use corporal punishment to a reasonable degree and with the aim of correcting children's behaviour.

Juveniles detained for offending the law had the right to maintain family ties even if they were detained in far away prisons, the delegation said. The segregation practised in some prisons was for the purpose of facilitating the proper implementation of the law.

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Following the replies of the delegation, a number of Committee experts posed supplementary oral questions on mandatory sentencing; prison conditions of asylum-seekers; practice of flogging; freedom of religion; and the absence of a provision on genocide.

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