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Committee on the Elimination of Racial Discrimination**Concluding observations on the eighteenth to twentieth periodic reports of Australia***

1. The Committee considered the eighteenth to twentieth periodic reports of Australia (CERD/C/AUS/18-20), submitted in a single document, at its 2596th and 2597th meetings (see CERD/C/SR 2596 and 2597), held on 27 and 28 November 2017. At its 2610 and 2611 meetings, held on 6 and 7 December 2017, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the eighteenth to twentieth periodic reports of the State party, which included responses to the concerns raised by the Committee in its previous concluding observations. The Committee wishes to commend the open dialogue with the State party's multi-sectoral delegation

B. Positive aspects

3. The Committee welcomes the adoption by the State party of the following legislative, institutional and policy measures:

- (a) The Multicultural Servicing Strategy (2016–2019);
- (b) The National Anti-Racism Strategy;
- (c) The establishment of a Royal Commission into the Protection and Detention of Children in the Northern Territory in 2016;
- (d) The National Partnership Agreements on Universal Access to Early Childhood Education 2013-2014, 2015 and 2016-2017;
- (e) The Remote School Attendance Strategy (2014);
- (f) The National Indigenous Law and Justice Framework (2009-2015); and
- (g) The National Aboriginal and Torres Strait Islander Health Plan (2013-2023).

4. The Committee also notes with appreciation the appointment of a full-time Race Discrimination Commissioner within the Australian Human Rights Commission in 2013, and

* Adopted by the Committee at its ninety-fourth session (20 November – 8 December 2017).

the establishment of a Standing National Human Rights Mechanism to strengthen the State party's engagement with human rights reporting.

C. Concerns and recommendations

Human rights framework

5. The Committee regrets the State party's decision not to adopt a federal Human Rights Act as recommended during the National Human Rights Consultation of 2009. While noting the role of the Parliamentary Joint Committee on Human Rights in scrutinizing the compatibility of existing legislation and draft bills with international human rights treaties to which Australia is a party, the Committee is however concerned that recommendations of the Joint Committee are often not given due consideration by legislators.

6. The Committee recommends that the State party take appropriate measures, including through the adoption of a human rights act, to strengthen protection of human rights and give full legal effect to the provisions of the Convention. The Committee also recommends that the State party strengthen legislative scrutiny processes to ensure the compatibility of its legislation with international human rights treaties. The Committee further recommends that the State party adopt and implement a human rights action plan.

Implementation of the Convention

7. The Committee is concerned that protection against racial discrimination is still not guaranteed by the Constitution in accordance with article 4 of the Convention, and that sections 25 and 51 (xxvi) of the Constitution in themselves raise issues of racial discrimination. While noting the existence of anti-discrimination legal provisions at State level, the Committee remains concerned that the Convention is not fully incorporated in the State party's domestic legal order and about the inconsistency of anti-discrimination legislation across States. Furthermore, it is concerned that the Racial Discrimination Act 1975 (Cth) does not have primacy over other legislation and includes a provision on special measures that is not in compliance with art. 2(2) of the Convention (art. 2).

8. The Committee recommends that the State party take the necessary measures to ensure full incorporation of the Convention in the State party's legal order. The Committee reiterates its previous recommendation that the State party take measures to ensure that the Racial Discrimination Act 1975 (Cth) prevail over all other legislation which may be discriminatory on the grounds set out in the Convention (CERD/C/AUS/CO/15-17, para 10); and that the definition and scope of special measures are brought in line with art. 2(2) of the Convention and the Committee's general recommendation No 32 (2009) on the meaning and scope of special measures in the ICERD.

Reservation

9. The Committee expresses concern that the State party continues to maintain a reservation on article 4(a) of the Convention, which negatively impacts the sanctioning of racial hatred and redressing victims, within the context of the persistence of racially motivated incidents in the State party against Indigenous Peoples, people of African descent and Africans, South Asians, refugees, asylum seekers and migrants.

10. The Committee urges the State party to reconsider its position and withdraw its reservation to article 4(a) of the Convention, particularly in light of Sections 80.2A and 80.2B of Commonwealth Criminal Code Act (1995) that criminalises hate-related violence.

Disaggregated data

11. The Committee, while noting the information provided by the delegation on some measures taken during the period under review to collect some ethnic-specific statistics, remains concerned that the statistics provided do not allow a comprehensive appraisal of the enjoyment of economic and social rights, such as housing, education, employment and health care, disaggregated by ethnic groups and Indigenous Peoples (art. 1).

12. **Bearing in mind the guidelines for reporting under the Convention (see CERD/C/2007/1, paras. 7) and recalling its general recommendation No. 24 (1999) concerning article 1 of the Convention, the Committee recommends that the State party collect and provide updated statistical data on the ethnic composition of its population, allowing respondents to questionnaires about identity to choose the ethnic group to which they feel they belong. It should also provide statistical data, disaggregated by sex, on the socioeconomic situation and representation in education, employment, health, housing and public and political life of ethnic groups and Indigenous Peoples, in order to provide it with an empirical basis to evaluate the equal enjoyment of rights under the Convention.**

Rise of racism in the State party

13. The Committee notes the State party's definition of multiculturalism and social cohesion and appreciates the implementation of the National Anti-Racism Strategy. The Committee is, however, concerned that expressions of racism, racial discrimination, and xenophobia, including in the public sphere and political debates as well as in the media, are on the rise. The Committee also expresses concern that migrants, notably Arabs and Muslims, asylum seekers and refugees, as well as Africans and people of African descent, South Asians, and Indigenous Peoples are particularly affected by racist hate speech and violence (art. 4).

14. **The Committee urges the State party to ensure that anti-racism related measures are implemented effectively in collaboration with grassroots organizations and community representatives that are active in the fight against racism and racial discrimination. To that end, the State party must ensure that all such measures, including the National Anti-Racism Strategy, are adequately funded. Recalling its general recommendation No. 35 (2013) on combating racist hate speech, the Committee also recommends that the State party:**

(a) **Reconsider the anti-terrorism and national security clauses of the Multicultural policy, 'Multicultural Australia: United, Strong, Successful', as these may lead to practices prohibited under the Convention, such as ethnic and racial profiling by law enforcement officers and agencies, targeting in particular Arabs and Muslims;**

(b) **Increase its measures to combat racist hate speech and xenophobic political discourse, and ensure that public officials not only refrain from such speech but also formally reject and condemn hate speech, in order to promote a culture of tolerance and respect;**

(c) **Ensure that anti-discrimination provisions, notably Sections 18C and 18D of the Racial Discrimination Act 1975 (Cth), are effectively applied by law enforcement officials, thereby conveying a clear message that manifestations of racial discrimination and racism will not be treated with impunity;**

(d) **Put an end to racist hate speech expressed in the print and electronic media, and encourage the media to adopt a code of good conduct containing provisions against racism and racial discrimination;**

(e) **Intensify its efforts to raise awareness of the public, civil servants and law enforcement officials on the importance of cultural diversity and inter-ethnic understanding;**

(f) **Study and implement the recommendations put forward by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance following his mission to Australia (A/HRC/35/41/Add.2, 2017);**

(g) **Provide detailed information in its next report on the impact of measures taken to combat racial discrimination and racism.**

Complaints of racial discrimination

15. The Committee is concerned about the limited number of racial discrimination cases brought before courts, which is reportedly attributed to the costs of court proceedings and burden of proof requirements. Such a situation seems to be further exacerbated by the State party's reservation on art. 4(a) to the Convention (arts. 2 and 6).

16. **Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee calls on the State party to:**

(a) **Remove persistent barriers in access to justice by victims of racial discrimination, including by reversing the burden of proof in civil proceedings involving racial discrimination;**

(b) **Provide updated disaggregated statistics and detailed information on the number and types of complaints on racial discrimination reported to the penal, civil and administrative bodies as well as to the police, and their outcomes, including convictions or disciplinary measures handed down as well as compensation to victims;**

(c) **Reinforce the support, including financial, provided to the Australian Human Rights Commission with a view to enabling it to better discharge its functions effectively, including the investigation of complaints brought under the Racial Discrimination Act 1975 (Cth);**

(d) **Undertake public education campaigns on the rights enshrined in the Convention and domestic legislation under which these rights can be invoked, on the work of the Australian Human Rights Commission, and on the methods for filing complaints of racial discrimination.**

Indigenous Peoples- Closing the Gap Strategy

17. The Committee is highly concerned about the persisting challenges and discrimination faced by Indigenous Peoples in all aspects of their life. It notes the adoption of the Closing the Gap Strategy in 2008, but, however, regrets the under-resourcing and low level of its implementation with only one of the seven targets being on track. Moreover, the Committee, while noting the figures provided during the dialogue on Government's expenditures on Indigenous Peoples issues, regrets the lack of information on the impact of such allocations and in particular on whether such allocations are sufficient to meet the rights and needs of Indigenous Peoples.

18. **Recalling its general recommendation No. 23 on the rights of Indigenous Peoples (1997), the Committee calls upon the State party to urgently introduce a paradigm shift in its dealing with Indigenous Peoples, and to demonstrate the necessary political will to ensure that aspirational plans and programmes become a reality. The Committee recommends that the State party ensure that the process of refreshing Closing the Gap Strategy be carried out in genuine consultation with Indigenous Peoples, their representatives, and NGOs, especially those working on the elimination of racial**

discrimination, through the design, implementation, monitoring and evaluation of the Strategy. The State party must also ensure that the Strategy and other institutional measures with an impact on Indigenous Peoples are adequately funded to meet their objectives. The Committee requests that the State provides detailed update on the impact and results of such measures in its next periodic report.

Constitutional recognition of Indigenous Peoples

19. The Committee, while taking note of the information provided by the delegation on the difficulties associated with carrying out a Constitutional referendum, regrets that despite long standing demands by Indigenous Peoples, their legal status is still not enshrined in the Constitution. Moreover, despite statements by the State party that it rejects the principle of *terra nullius*, grounded in the ‘discovery discourse’, the State party continues to conduct its relations with Indigenous Peoples, in a manner not reconcilable with their right to self-determination and their right to own and control their lands and natural resources. The Committee is also concerned that the National Congress of Australia’s First Peoples as well as Indigenous Peoples’ community controlled programmes and organizations are underfunded.

20. **The Committee recommends that the State party accelerate its efforts to implement Indigenous Peoples’ self-determination demands, as set out in the Uluru Statement from the Heart (May 2017), including by taking steps towards extra-constitutional recognition of Indigenous Peoples and establishing a meaningful mechanism that enables the effective political participation of Indigenous Peoples as well as entering into good faith treaty-negotiation with Indigenous Peoples. The Committee also requests that the State party:**

(a) Strengthen the funds allocated to the National Congress of Australia’s First Peoples;

(b) Increase support, including financial support, to indigenous-led programmes and organizations providing services to Indigenous Peoples, which is necessary to enable them to discharge their functions effectively.

Indigenous land rights

21. The Committee is concerned that after centuries of conflict and negotiations over their traditional land rights, the claims of Indigenous Peoples to land remain unresolved. Despite the Committee’s previous recommendation (CERD/C/AUS/CO/15-17, para 18), the Native Title Act remains a cumbersome tool that requires indigenous claimants to bear a high standard of proof to demonstrate ongoing connection with the land. The Committee is also concerned about information that extractive and development projects are carried out on lands owned or traditionally used by Indigenous Peoples without seeking their prior, free and informed consent.

22. **The Committee recommends that the State party moves urgently to effectively protect the land rights of Indigenous Peoples including by amending the Native Title Act 1993 with the view to lowering the standard of proof and simplifying the applicable procedures. It also urges the State party to ensure that the principle of free, prior and informed consent is incorporated in the Native Title Act 1993 and in other legislation as appropriate, and fully implemented in practice. Moreover, the Committee recommends that the State party respect and apply the principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, and consider adopting a national plan of action to implement these principles. The State party is also encouraged to reconsider its position and ratify the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).**

Socio-economic situation of Indigenous Peoples

23. The Committee is deeply concerned that Indigenous Peoples continue to experience high levels of discrimination across all socioeconomic indicators, including education, healthcare, employment and housing. Among others, the Committee is concerned about the low life expectancy, the low school attainment and high drop-out rates at all school levels, and the housing conditions, including overcrowding, especially those living in the Northern Territory, where the homelessness rate is nearly 15 times the national average. The Committee is also concerned that Indigenous Peoples including those living in remote areas face discrimination in access to social security benefits, notably through the mandatory income management scheme and the Community Development Programme. The Committee is also concerned about the reported high rate of suicide among Indigenous Peoples, and in particular LGBTQI individuals. The Committee is further concerned about the lack of specific programmes for Indigenous Peoples with disabilities.

24. **The Committee recommends that the State:**

(a) **Effectively implement well-resourced policies that aim to improve the socio-economic situation of Indigenous Peoples, including the Remote Housing Strategy (2016); the National Aboriginal and Torres Strait Islander Health Plan 2013-2023; the Remote School Attendance Strategy; and the National Partnership Agreement on Universal Access to Early Childhood Education;**

(b) **Adopt and implement other adequately resourced programmes, including specific programmes for Indigenous Peoples with disabilities, in consultation with them, and increase support for, and investment in, indigenous community controlled health services and programmes that promote indigenous employment in the health sector;**

(c) **Reconsider the mandatory income management scheme which in effect disproportionately affect Indigenous Peoples, maintain only an opt-in income management scheme, and remove discriminatory conditions in access to social security benefits by claimants living in remote areas, the vast majority of whom are indigenous;**

(d) **Collect data disaggregated by ethnicity, Indigenous Peoples, age, gender, disability, sexual orientation and gender identity, on the extent of suicide and report on the adopted measures to address that.**

Indigenous children

25. The Committee is deeply concerned about the high proportion of indigenous children in contact with the criminal justice system, some of them at a very young age. The Committee is also concerned about the ill treatment suffered by juveniles, especially indigenous children and the conditions in which they are held, including but not only in the Northern Territory. The Committee is deeply troubled to learn about the abuses committed at the Don Dale facility and welcomes its closure, while being aware that there may be other such facilities in other areas of the State party. The Committee is further concerned that indigenous children face a higher risk of being removed from their families and placed in alternative care, many of which are not culturally appropriate and in which, too often, they also face abuse.

26. **The Committee recommends that the State party address the problems of the high rate of incarceration, and placement in alternative care, of indigenous children, in consultation with Indigenous Peoples. The Committee also recommends that the State party:**

(a) **Raise the minimum age for criminal liability to an internationally agreed age, as recommended by the Human Rights Committee (CCPR/C/AUS/CO/6; para 44);**

(b) **Develop alternatives to detention and introduce effective diversion programmes in all States and Territories and repeal any mandatory imprisonment for children;**

(c) **Immediately improve places of detention for juveniles in all States and Territories, and implement the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory (November 2017), and launch effective criminal investigation into the human rights abuses that occurred with a view to bringing alleged perpetrators to justice, punishing them appropriately, if convicted, and compensating victims;**

(d) **Ensure adequate, culturally-appropriate, and accessible legal services for Indigenous Peoples, including by increasing funding to Aboriginal and Torres Strait Islander Legal Services and Aboriginal Family Violence Prevention Legal Services;**

(e) **Address effectively the over-representation of indigenous children in alternative care, including by developing and implementing a resourced national strategy in partnership with Indigenous Peoples; increase investment for family support services at State and territory levels, and ensure that well-resourced community-led organisations can provide child and family support services with a view to reducing child removal rates;**

(f) **Consider establishing Commissioners for indigenous children in each state and territory.**

Indigenous women

27. The Committee is concerned that indigenous women experience intersecting forms of discrimination, indigenous women and girls face higher rates of domestic violence and abuse compared with non-indigenous women, and constitute the fastest growing prison population group across Australia.

28. **Recalling its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee:**

(a) **Reiterates the recommendation spelled out by the Special Rapporteur on violence against women, its causes and consequences, following her mission to Australia in February 2017, to adopt a specific National Action Plan on violence against indigenous women and gender equality, supported with appropriate special measures that would accelerate advancement of those women and girls;**

(b) **Recommends that the State party address the already high rate, and alarming increase, of incarceration of indigenous women and girls, and ensure the refreshed Closing the Gap Strategy includes criminal justice targets, focusing on reducing imprisonment rates of Indigenous Peoples, notably women and children;**

(c) **Calls on the State party to adhere to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).**

Asylum seekers, migrants and refugees

29. The Committee is alarmed at the State party's continuous policy of transferring migrants and asylum seekers arriving by boat without visa to the regional processing centres for the processing of their claims, despite the high number of corroborated reports on the desperate and dangerous conditions prevailing in those centres, in which persons, including children, experience severe human rights violations; and many of these violations are treated with impunity. This has led among others to several cases of self-harm. The Committee also expresses concern that following the closure of the Manus Island regional processing centre

on 31 October 2017, refugees and asylum-seekers transferred there by the State party, were left without any services, protection measures, or adequate arrangements for long-term viable relocation solutions.. The Committee is moreover concerned about information that children and adults years after having been recognized as refugees, are still not resettled, some remain detained, with no certainty about their future.

30. The Committee aligns itself with the position of the Human Rights Committee (CCPR/C/AUS/CO/6, para 35) and the Committee on Economic, Social, and Cultural Rights (E/C.12/AUS/CO/5, para 18) that Australia exercises effective control on the regional processing centers, and thus the Committee concludes that the State party is bound by the Convention obligations towards all persons held in these centers.

31. **The Committee therefore urges the State party to:**

(a) Amend the Maritime Powers Act 2013 to remove powers to detain asylum seekers and refugees on the high seas and transfer them to any country or a vessel of another country;

(b) Halt its policy of offshore processing of asylum claims, transfer all migrants, asylum seekers and refugees to Australia, and process any remaining asylum claims while guaranteeing all procedural safeguards;

(c) Ensure that refugees and asylum-seekers affected by the closure of regional processing centres are protected against refoulement and ensure viable and safe resettlement arrangements for all persons entitled to international protection;

(d) Investigate human rights violations in the regional processing centers, prosecute alleged perpetrators, punish them appropriately if convicted, and provide full reparation to victims;

(e) Implement the recommendations made by the Special Rapporteur on the human rights of migrants, in his report of 24 April 2017 (A/HRC/35/25/Add.3).

32. The Committee is, furthermore, concerned about the State party's policy of indefinite mandatory immigration detention for anyone who arrives in Australia without a visa, including children and unaccompanied minors.

33. **The Committee recommends that the State party:**

(a) Repeal the mandatory detention provisions in the Migration Act 1958, find alternatives to detention of all migrants and asylum seekers arriving to Australia without a visa, ensure detention is used only as a last resort, and ensure regular judicial review of detention decisions;

(b) Ensure that all asylum seekers, regardless the mode of arrival, their ethnicity or country of origin, can access a fair refugee status determination procedure.

Migrant workers

34. The Committee is concerned about the working conditions of migrant workers, especially those on temporary visas and safe haven visas who work with low salaries and long working hours. The Committee is also concerned that due to heavy reliance on their employers combined with lack of knowledge about their rights and entitlements, migrants workers on temporary visa refrain from filing complains. The Committee is also concerned that such workers are barred from sponsoring family members (arts. 2 and 5)

35. **The Committee recommends that the State party increase its efforts to improve working conditions of migrant workers. It should among others raise awareness among migrant workers of their rights and existing avenues to file complaints, and increase labour inspections, including to industries where migrant workers are numerous, with a view to detecting labour rights violations, bringing exploitative employers to justice, and compensating victims. The Committee also recommends that the State party**

strengthen the capacity and financial resources of the Fair Work Ombudsman to enable it to perform its functions effectively. Moreover, the Committee recommends that the State party permit workers on temporary or safe haven visas to sponsor family members.

Education

36. The Committee is concerned by reports that the mainstream education system and school curricula inadequately reflect indigenous history and the impact of colonisation. The Committee is also concerned that teaching of indigenous languages and cultures, remains non-existent or very rare. The Committee is furthermore concerned about reports of Linguicide (art. 7).

37. The Committee recommends that the State party increase its efforts to strengthen public education about multiculturalism including through school curricula. In particular, the State party must take steps to preserve and promote indigenous culture, history, and languages, including through the effective implementation of the National Framework for Aboriginal Languages and Torres Strait Islander Languages. It also recommends that the State party ensure sufficient funding to the Aboriginal Languages Trust that was established pursuant to Aboriginal Languages Act 2017 (NSW), so that it can effectively fulfil its objectives.

Training

38. The Committee notes the information provided by the State party during the dialogue that training of police officers had been carried out in some States. However, it regrets that such training has not been regularly introduced in all Federal and State police forces and lacked systematic integration of anti-racism and diversity dimensions. The Committee also expresses concern about the lack of detailed, updated information and statistics on recent training conducted among law enforcement officers, judges, lawyers and State officials specifically on the prevention of racial discrimination and on the rights enshrined in the Convention, and the impact of such training on the situation of Indigenous Peoples and ethnic minorities (art. 7).

39. The Committee recommends that the State party intensify training programmes on racial discrimination with law enforcement officers at Federal, State, and Territory levels, on the prevention of racial profiling and on proper methods for investigating hate crimes and cases of hate speech. The Committee also recommends that the State party conduct specialized training on the prevention of racial discrimination and on the rights enshrined in the Convention for judges, lawyers and other State officials, as well as for representatives of local government entities and associations. The Committee requests that the State party provide updated, detailed information and statistics in its next periodic report on such training programmes and the impact of such training on the situation of Indigenous Peoples and ethnic minorities.

D. Other recommendations

Ratification of other instruments

40. **Bearing in mind the indivisibility of all human rights, the Committee urges the State party to consider ratifying those international human rights instruments that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the International Convention for the Protection of all Persons from Enforced Disappearance.**

Follow-up to the Durban Declaration and Programme of Action

41. In the light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001), taking into account the outcome document of the Durban Review Conference (April 2009), and that it report accordingly.

International Decade for People of African Descent

42. The Committee takes note of the State party's statement that it has no plans for the Decade for People of African descent. In light of General Assembly resolution 68/237, the Committee requests that the State include in its next periodic report specific information on the concrete measures adopted in that framework, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.

Consultations with civil society

43. The Committee recommends that the State party continue consulting and deepening its dialogue with Indigenous Peoples and with civil society organisations concerned with human rights protection, in particular those working to combat racial discrimination, as well as the Australian Human Rights Commission in the preparation of the next periodic report and in follow-up to the present concluding observations.

Follow-up to the present concluding observations

44. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 16(c), 26(c) and 31(b) above.

Paragraphs of particular importance

45. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 10, 14(g), 18 and 20(chapeau) above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

Dissemination of information

46. The Committee recommends that the State party's reports be made readily available to and accessible by the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

Preparation of the next periodic report

47. The Committee recommends that the State party submit its combined 21st and 22nd periodic reports, as a single document, by 30 October 2020, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports. In addition, it invites the State party to update its common core document in accordance with the

**harmonized guidelines on reporting under the international human rights treaties
(HRI/GEN/2/Rev.6, chap. I).**
