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Thirty-third session

PROVISIONAL SUMMARY RECORD OF THE 769th MEETING

Held at Headquarters, New York,
on Monday, 17 March 1986, at 10 a.m.

Chairman: Mr. CREMONA

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The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Seventh periodic report of Sweden (continued) (CERD/C/131/Add.2/Rev.1)

At the invitation of the Chairman, Mr. Nordenfelt (Sweden) took a place at the Committee table.

Mr. PARTSCH, referring to paragraph 51 of the report, said that article 2, paragraph 1 (d), of the Convention gave States parties considerable latitude. In China's experience, educational measures were at least as effective as penal measures, which was a valid argument for such latitude. However, there was no such latitude with respect to article 4, under which specific forms of racial discrimination were clearly punishable by law.

The CHAIRMAN, speaking as a member of the Committee, congratulated Sweden on its voluntary declaration under article 14 and expressed the hope that other States would follow its example.

Mr. NORDENFELT (Sweden), responding to questions raised by Committee members, said that no single criterion such as reindeer husbandry, kinship, or language was used to determine who was a Sami. In 1976, only 600 to 700 Sami households had been entirely or partially dependent on reindeer breeding. The extent of the Sami population's ties to their culture varied considerably. Sami identity had been strengthened in the past few years because of increased international interest in minorities in general and owing to Swedish Government measures focusing not only on education but also on reindeer breeding, fishing and hunting, which assured the viability of traditional Sami lifestyles. Those measures were consistent with article 1, paragraph 4, and article 2, paragraph 2, of the Convention.

With respect to articles 2 and 5 of the Convention, most of the experts who had been in favour of legislation prohibiting discrimination in the labour market opposed the specific proposals made by Sweden's Commission on Ethnic Prejudice and

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Discrimination. The draft legislation in question was similar to the existing legislation on equality between women and men, which had entered into force in 1980. Disputes and court cases dealt mainly with the question of applicants' qualifications. The law provided that, if an applicant for a position could prove that he was better qualified than the person who had obtained the position, the employer was presumed to have committed an act of sex discrimination and was obliged to prove that he had not intended to do so. The public sector accounted for nearly all such cases because mandatory objective criteria, whose use could be verified, were applied in public-sector hiring. Since no such system existed in the private sector, it would be more difficult in a private-sector dispute to judge which worker was more competent. Critics of the proposed legislation had been of the view that it focused on employment criteria rather than discrimination itself. The Government had taken the first step towards solving that problem by appointing a new ombudsman to deal with discrimination questions, whose task it was to investigate the need for further action and to propose new amendments to the Government on the basis of the experience gained.

The Swedish Government condemned apartheid and did not tolerate the practices referred to in article 3. Like the other Nordic countries, Sweden had a good working relationship with the African National Congress. No military co-operation existed with South Africa, and there were neither cultural nor sports exchanges.

The discriminatory activities referred to in article 4 of the Convention were punishable under Swedish law. The Swedish Government did not consider it necessary to prohibit the establishment of organizations that could be defined as carrying out or aiming to carry out prohibited and punishable acts. However, a change in the Constitution made it possible to restrict freedom of association in the case of associations whose activities involved persecution based on national origin, race, skin colour or ethnic origin. He would inform his Government of the Committee's criticism of Sweden's implementation of article 4 (b).

With regard to article 5 (c) of the Convention, at the current stage the majority of the Swedes accepted the fact that immigrants had the right to vote and to stand for election. In 1976, 1979 and 1982, voter turnout in the case of eligible immigrants had been 60 per cent, 50 per cent and 52 per cent respectively. No figures were yet available for 1985.

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Under the Swedish social security system, foreign workers on home leave were entitled to the same rights in their country as in Sweden. Municipalities were obliged to arrange for home-language courses, if so requested by pupils speaking a language other than Swedish, or by their parents. In 1983, roughly 65 per cent of pupils in the compulsory education system with a home language other than Swedish had chosen home-language tuition. Seventy foreign languages were offered either as a subject in themselves or as languages of tuition, and home-language instruction existed in practically every school subject. General subsidies, mainly covering teachers' salaries, were paid by the State to municipalities. The budget was based on the estimated standard of two lessons per week per pupil. Programme success depended on flexibility in organizing home-language teaching according to local conditions. There were composite classes made up of Swedish-speaking children and children with the same home language. Lessons were provided in both languages. Home-language classes were often provided outside school. The number of students who chose that option varied from place to place, depending on the availabilty of competent teachers. Special teacher training in the home language and a good knowledge of the Swedish language were essential. The National Board of Education certified teachers with foreign diplomas. Programme quality was now higher than it had been at the outset. Teacher-training programmes were available or being planned for the following languages: Arabic, Cantonese and other Chinese dialects, Danish, Finnish, Greek, Hungarian, Italian, Kurdish, Macedonian, Polish, Portuguese, Romanes, Serbo-Croatian, Spanish, Turkish and Syrian. Well-qualified teachers were readily available for the more popular immigrant languages, but it was difficult to find teachers of the other languages. There were 192 places for training home-language teachers in teacher-training colleges.

Swedes were not registered according to race, ethnic origin, or colour, and such information could therefore not be provided.

Concerning article 6, victims of discrimination were protected by law and naturally had the opportunity to bring cases before the courts. They could also request assistance from the public prosecutor, who had the responsibility to institute proceedings when there were grounds for doing so. In addition, the Ombudsman was continuing to take steps to ensure that vulnerable minority groups were properly advised of their rights.

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A number of specific cases involving discrimination were mentioned in paragraphs 69 to 73 of the report. Regarding the case of a Sikh employed by the Gothenburg Tramways described in paragraph 72 (b), the Labour Court had considered that the notice to the employee had not been in opposition to the law, since it had been the employee's duty to carry out the work given to him until a judicial decision had been reached. Certainly, the formal view taken by the Court might be open to some criticism, but further consideration of the merits of the case was difficult since there had been no appeal against the Court's decision and no additional information was available.

No cases other than those described in the report had been heard by the courts in 1983 and 1984. It should be pointed out, however, that although cases involving unlawful discrimination could be taken up by the public prosecutor - even if the alleged victim did not personally seek redress - the prosecutor generally found it difficult to prove that an offence had been committed under the terms of the law. Thus, between 1973 and 1983, of 133 reported instances of violations only eight had resulted in a decision to prosecute. That was one area that the Ombudsman intended to explore further with a view to elaborating effective safeguards.

With regard to article 7, one of the principal aims of the Swedish school system was to foster understanding of ethnic differences, and a subject entitled "Cultures and civilizations" had been introduced recently into the curriculum to that end. Also, in 1985, pupils in co-operation with teachers had launched a campaign - inspired by an initiative originating in France - under the slogan "Don't touch my pal", aimed at dispelling ethnic prejudice and discrimination against students belonging to minority groups. That campaign had been supported nation-wide. Training for law-enforcement and penitentiary-system officials included orientation courses dealing with Sweden's legal commitments in the area of human rights. Lastly, graduate research was now being conducted at the Wallenberg Institute of Human Rights and Humanitarian Law within the law department of the University of Lund.

Mr. BANTON suggested that, in the light of the remarks made about the difficulties that prosecutors faced in bringing court actions against small firms for discrimination in employment, the representative of the reporting State might wish to study copies of the transcripts of certain cases tried in courts in the United Kingdom, in which the provisions of the law had been applied with a considerable measure of success.

Mr. ABOUL-NASR questioned the use of the term "unlawful discrimination" in various parts of the report. Under the Convention, all forms of racial discrimination must be regarded as unlawful, and he asked if he could be provided with an example of "lawful" discrimination in Swedish legislation.

The CHAIRMAN, speaking as a member of the Committee, said that it was often useful to draw a line between differentiation, which could be lawful, and discrimination itself. However, he too had difficulty in understanding how discrimination could be regarded as lawful under the terms of the Convention.

Mr. STARUSHENKO sought further information about the role of the Wallenberg Institute in combating racial discrimination.

Mr. NORDENFELT (Sweden) said that he would be grateful for any material that Mr. Banton might wish to supply to him in connection with the prosecution of small employers for acts of discrimination. Responding to the question raised by Mr. Aboul-Nasr and the Chairman, he said that in Swedish legal terminology offences or crimes were normally qualified as "unlawful" to establish the basis in law for prosecution or redress. The term in no way implied that any form of racial discrimination covered by the Convention was lawful.

In reply to Mr. Starushenko's question, he said that the Wallenberg Institute was an academic institution for research and study of human-rights questions in relation to Swedish and international law. Its purpose was not, however, to engage actively in the defence of particular cases, which was the province of lawyers and the court system.

Mr. OBERG pointed out that, in his earlier comments on the seventh periodic report of Sweden, he had referred to the existence of "lawful" discrimination in the labour market. In his view, the representative of the reporting State had failed to provide a satisfactory answer to the question as to how a victim of such discrimination could seek adequate redress or compensation. In a number of other countries, legal technicalities such as the one referred to by the representative of Sweden had been successfully overcome, and effective protection was provided against discrimination in the field of employment.

Mr. NORDENFELT (Sweden) said that the problem raised by Mr. Oberg and others was very much present in the minds of Swedish lawmakers and continued to be the subject of active consideration. However, no wholly adequate solution that could serve as the basis for new legal provisions had thus far been found.

The CHAIRMAN declared that the Committee had thus completed its consideration of the seventh periodic report of Sweden.

Mr. Nordenfelt (Sweden) withdrew.

Seventh periodic report of the Netherlands (CERD/C/131/Add.7) (continued)

At the invitation of the Chairman, Mr. Kamper (Netherlands) took a place at the Committee table.

Mr. KAMPER (Netherlands) said that he wished first of all to thank the members of the Committee for their comments on the questions raised by his Government in paragraph 4 of its report with regard to conflicting fundamental rights. Those comments would be given careful consideration, and a detailed response would be made in the next report with a view to continuing the dialogue with the Committee on that specific issue.

With regard to questions about the Netherlands Antilles, the following information might be useful. At the time of the proclamation of the Charter of the Kingdom of the Netherlands, on 15 December 1954, the Kingdom had consisted of three countries - the Netherlands, the Netherlands Antilles and Suriname. The latter had become completely independent on 25 November 1975. Consultations between the parties concerned had led to an agreement concerning a separate status for Aruba, which had come into effect on 1 January 1986. As a result of that agreement, the Kingdom of the Netherlands once again comprised three countries: the Netherlands, Aruba and the Netherlands Antilles - the latter consisting of the two remaining leeward islands, Curaçao and Bonaire, and the three windward islands of Saba, St. Eustatius and St. Maarten. Under the legal framework established under the Charter, the three countries served their own interests independently, with complete domestic autonomy, and they were bound, on the basis of equality, to pursue their common interests and provide mutual assistance. The next report would contain further information concerning those constitutional aspects of the Kingdom of the Netherlands.

The initial report of the Netherlands contained information on Dutch citizens of Indonesian stock. Those persons had not been treated as a separate group in statistics for a long time now. They had Netherlands nationality, were culturally almost indistinguishable from indigenous Dutchmen, particularly in respect of language, and were widely distributed throughout the social structure. Information

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regarding the Moluccans, too, had been given in previous reports. Unlike the Netherlanders of Indonesian stock, the Moluccans differed from the indigenous population in terms of both race and culture. They spoke Malay and practised their own religion. Since the majority of the Moluccans had decided not to retain their Indonesian nationality and had not wished to become naturalized Dutch citizens, and as they had been in the Netherlands since 1951 and were likely to remain there, their position had been regulated by a 1977 Act according them equal status with Dutch citizens but without Dutch nationality. Details concerning their integration into Dutch society could be found in previous reports. There had been no recent developments requiring inclusion in the seventh report. If necessary, such information would be included in the next report.

A number of questions had been raised in connection with article 3 of the Convention regarding relations with South Africa. The Netherlands Government traditionally looked to the United Nations as the focal point for concerted international action to put an end to apartheid, and believed that mandatory sanctions by the Security Council were the most effective instrument under the Charter to achieve that purpose. The Netherlands strictly observed resolution 418 (1977) and, at the national level, was in the process of introducing legislation to prohibit the export of paramilitary goods to South Africa and to give a statutory basis to the provisions of resolution 558 (1984) calling on Member States to ban the import of South African arms.

The Netherlands had consistently advocated selective economic sanctions under Chapter VII of the Charter, in particular a mandatory ban on investments and an oil embargo. It believed that for a restriction of new investments in South Africa to be effective, it must be mandatory or at least supported by a significant number of countries. The Netherlands Government fully subscribed to the measure agreed upon with its partners in European political co-operation to cease oil exports to South Africa and actively encouraged Netherlands companies to reduce their imports of South African coal. It had terminated its cultural agreement with South Africa and introduced visa requirements for South Africans, the latter measure enabling the authorities to restrict South African participation in sporting events in the Netherlands.

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Pressure alone, however, would not suffice. Together with its partners in the European Economic Community, the Netherlands had therefore decided that positive measures and programmes designed to eliminate existing inequalities should be intensified, and had increased its contacts and programmes for assisting members of the non-white community and anti-apartheid organizations dedicated to the goal of the peaceful transformation of South Africa's social and political system. In addition, the Netherlands would continue to provide humanitarian assistance to political prisoners and other victims of apartheid through appropriate channels.

The previous report had voiced concern about the general climate in the country with respect to racism and racial discrimination, and in particular about the growing intolerance shown by individuals or groups towards one another and about the rise of certain political groups. Partly as a reaction to certain events, groups had been set up and organizations and action committees had been established to fight racial discrimination. The media had begun to pay more attention to the phenomenon of racial discrimination and how society reacted to it. Governmental institutions had also responded. Earlier reports provided information in that regard. As far as the political process was concerned, parliamentary and municipal council elections were to be held in 1986 and their outcome would show whether candidates of political groups such as the "Centre Party" and other extreme right-wing groupings had any significant support among voters. Recent polls suggested that those groupings, which were in any case marginal, were on the decline.

The Government's policy on investigation and prosecution in cases of racial discrimination applied not only to individuals but also to organizations. The relevant legal provisions had been described in previous reports, and it could be noted that, under articles 15 and 16 of Book 2 of the Civil Code, courts could prohibit an organization if its aims or activities were contrary to public law, morality or the Netherlands legal order. Cases of racial discrimination fell under that description.

The question as to what the "Centre Party" was and represented were more difficult to answer. Some details could be found in paragraph 44 of the report. Political groupings like the "Centre Party" tried to exploit discord about and discontent with developments in society. They took advantage of the attitude of some people towards those members of the population who had come to the Netherlands in the past decades.

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Another category of questions raised by members of the Committee concerned the Government's policy on minorities in the area of education and employment. The measures referred to in paragraphs 25 to 27 of the report were for the benefit of both Dutch people and members of minority groups. The educational system had been adjusted to meet the needs of minorities. The right to work was covered by the Convention. The average unemployment rate in the Netherlands was approximately 17 per cent. The purpose of the measures outlined in paragraphs 10 to 22 of the report was to reduce unemployment among members of minority groups. The available figures would be provided in the following report, together with additional information about affirmative action in the labour market for the benefit of aliens. It was not possible to say when the action in question would produce tangible results. Funds for the purpose of alleviating the problems of unemployed non-nationals were available from the "minorities budget" and from the regular budgets of the ministries concerned. It was difficult to calculate exactly what percentage of those budgets the funds in question represented. The statement in paragraph 17 concerning the financing of measures meant that financing came either from the "minorities budget" or from the regular budget of the relevant ministry. The wording of paragraph 17 could have been more precise.

He now wished to respond to a number of points that did not fit into any particular category. In general there had been a positive reaction in the Netherlands to the revised Franchise Act, under which non-nationals were now permitted to vote and stand for election in municipal council elections. The following report would provide further details about those elections. The terms "resident" and "citizen" were used interchangeably in the report and applied to both nationals and non-nationals. Nationals had Dutch citizenship. In the report non-nationals were also referred to as aliens and foreigners. The Government of the Netherlands defined minorities as Moluccans, residents of Surinamese and Antillean origin, migrant workers and members of their families from the recruitment countries, gypsies and refugees. Its policies were based on the view that people belonging to those categories constituted an integral part of Dutch society. Caravan-dwellers were also defined as a minority, in order to ensure that they derived the maximum benefit from the minorities policy. Since the exact meaning of the "declaration" referred to in paragraph 11 of the report was not

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clear, an explanation would be provided in the following report. The distinction between the municipal police force and the national police force had no practical implications as far as implementation of the Convention was concerned. The total number of non-nationals as a percentage of the population as a whole was approximately 4 per cent. The term "migration syndromes", used in paragraph 22 of the report, referred to the symptoms that had had been observed in immigrants, and its use in the report did not have any negative connotation. The question of the powers of the Ombudsman would be dealt with in the following periodic report, as would any other questions that had not already been dealt with.

The CHAIRMAN said that the Committee had completed its consideration of the seventh periodic report of the Netherlands.

Mr. Kamper (Netherlands) withdrew.

Second periodic report of China (continued) (CERD/C/126/Add.1)

At the invitation of the Chairman, Mr. Huang Jiahua and Mr. Xin Wenpo (China) took a place at the Committee table.

Mr. HUANG Jiahua (China) said that he and his colleague wished to respond to some of the points raised by the members of the Committee. The remaining questions would be dealt with in the following report submitted by the Government of China.

He wished first of all to deal with the question of autonomy for the minority regions. The policy on those regions had been formulated in the light of a specific historical background, relations among the various nationalities concerned and the distribution of the minorities, and it was reflected in the Chinese Constitution and the relevant legislation. The purpose of the autonomous system for the minority regions was to guarantee the right of the minorities in those regions to handle their own internal affairs. He wished to stress, in that connection, that there had been a considerable increase in the number of minority cadres since 1965 and that the minorities were strongly represented at the higher levels. The autonomous regions actually had more extensive rights than the other regions of China did. For example, they had the power to draw up their own separate rules and regulations, to adopt special measures and to implement Chinese legislation and policy in a manner that was in keeping with their own particular characteristics.

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He now wished to turn to the question of the special policies and measures that had been adopted for the benefit of the minorities following the Cultural Revolution. The principles governing the status of the minority regions had been clarified after the Cultural Revolution, particularly with a view to emphasizing the fact that the relationships between the various nationalities in China were relationships between the working people and were therefore not based on the class struggle. The Government believed that the Han minority could not be isolated from other minorities, and vice versa. All nationalities must be regarded as equal and should contribute to China's development. He also wished to stress that unjust sentences handed down during the Cultural Revolution had been reversed. Moreover, China had drawn up a new Constitution, together with new legislation for the autonomous regions, following the Cultural Revolution. It was specified that the autonomous organs had the right to control the region's own financial, economic, cultural and educational affairs. Furthermore, measures designed to promote the economic development of the minorities had been adopted and had proved extremely successful, for example, in Tibet. Appropriate measures had also been adopted with a view to promoting the development of minorities in the areas of culture and education. Considerable sums of money had been spent on restoring the Tibetan temples and monasteries that had been damaged during the Cultural Revolution. In religious circles, contacts had gradually been established with groups in other countries, for example, in Nepal.

With regard to implementation of article 4 of the Convention by China, he wished first of all to stress that the Constitution guaranteed the minorities equal legal rights. Moreover, the Chinese Criminal Code provided that members of all the nationality groups were entitled to have their own language used in court proceedings. So far, the courts had not dealt with any cases of racial discrimination because such problems were solved at an early stage through conciliation procedures at the local level. The physical safety and freedom of the minorities were guaranteed by the relevant provisions of the Constitution and the Criminal Code. In addition to being entitled to use their own languages, the national minorities enjoyed the right to maintain their customs. Where unfounded accusations were concerned, cases that were not of a serious nature were investigated by the competent organs and dealt with by means of criticism or

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re-education. When it was a question of more serious cases that fell within the sphere of the criminal laws, the victims of such accusations could have recourse to the courts. However, the Chinese legal system was far from being complete and China's legislation on racial discrimination was in need of improvement.

In connection with implementation of article 3 of the Convention, he wished to emphasize that the Chinese Government had consistently condemned the racist policies pursued by the Government of South Africa and always supported the just struggle waged by the people of South Africa against racial discrimination and apartheid.

Mr. XIN Wenpo (China), responding to further points raised by members of the Committee, said that within a given autonomous region there might be a certain number of Hans or other minorities. The minority regions' right to autonomy was laid down in the Constitution, which also specified that high-level posts in the regions, states, districts and counties should be occupied by members of the appropriate minority groups. Although the autonomous counties did not exercise the right to autonomy laid down in the Constitution, they could adopt specific measures that were in keeping with their national characteristics. The 1954 Constitution had already provided for the establishment of minority autonomous counties. Subsequently, in the communalization process, the Government and the communes had been merged, and minority counties had disappeared. Some of the autonomous counties currently in existence had been re-established, while others had been newly established.

The Government was carrying out an educational campaign to combat chauvinism by promoting equality, unity and prosperity for all. It was monitoring the implementation of national policies to counteract both Han chauvinism and nationalist tendencies, with an emphasis on the rectification of Han chauvinism. The prohibition in 1951 of historical appellations and place-names that were derogatory or insulting to minorities had come about because, in the old China, the Government had pursued a chauvinist policy that did not recognize minorities in official documents and place-names and where monuments were concerned.

With regard to the use of the putonghua language, the Constitution gave all minorities the right to develop their own languages and dialects. The autonomous organs were required to teach those local languages, and Han cadres were requested

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to learn them. After government documents were published in Han, they were translated into minority languages; moreover, at the meetings of the National People's Congress, simultaneous interpretation into the local languages and dialects was provided. Radio programmes and many publications also existed in the minority languages. If a member of a minority nationality worked for the central Government, he was not required to learn putonghua; however, many workers did so for their own convenience.

The nationalities that used the languages of the Tibetan-Burman group were scattered over south-western China; those languages had been classified by linguists on the basis of similar origin and structure. Of course, nationalities that shared the same language were closely linked. However, each group had its own dialect, and most groups considered themselves to be unique. The Government therefore recognized them as being different nationalities.

In reply to the question concerning the return of a group of Kazaks to their homeland in Xinjiang, he wished to explain that the Kazaks in question had been reluctant to mingle with other Tibetans and had asked to be sent back to Xinjiang. The Government had helped them to return there. Tibetans currently residing overseas could return to their motherland, if they wished to do so, and the Government would welcome them and take care of them or, if they wished to leave, would allow them to do so.

With regard to the question concerning primitive religions, he said that in both south-western and north-eastern China there were certain nationalities that had retained beliefs such as animism and totemism. As those groups became more developed, such beliefs gradually disappeared. There was no derogatory connotation in the Government's use of the term "primitive religion".

Mr. HUANG Jiahua (China) said that, since it was not possible to give a full explanation of the Government's work in implementing the Convention in such a short time, further information would be provided in the subsequent periodic report.

The CHAIRMAN declared that the Committee had concluded its consideration of the second periodic report of China.

Mr. Huang Jiahua and Mr. Xin Wenpo withdrew.

Seventh periodic report of Algeria (CERD/C/131/Add.3)

At the invitation of the Chairman, Mr. Riache (Algeria) took a place at the Committee table.

Mr. RIACHE (Algeria), introducing his country's report, said that the two major considerations that had governed the preparation of Algeria's seventh report had been a profound commitment to human rights and a determination to have a productive dialogue with the Committee. The promotion and protection of human rights and fundamental freedoms had been one of the basic thrusts of Algeria's policy since independence. Its commitment to human values, derived from the egalitarian lessons of Islam, from the socialist ethic to which its people subscribed and from its experience of colonialism, had been expressed at the domestic level through progressive policies seeking to guarantee all citizens the conditions for economic, social and cultural development. Internationally, those values were reflected in Algeria's unconditional support for peoples struggling against colonialism, imperialism, zionism and racial discrimination.

The report contained the relevant Algerian provisions relating to racism and apartheid. He wished to draw attention to the adoption, on 16 January 1986, by referendum, of a new version of the 1976 National Charter referred to in the report. The major feature of the new version was a reaffirmation of Algeria's ongoing commitment to the defence of human rights, the guaranteeing of equal rights for its citizens and the support of just causes around the world. Under article 6 of the Constitution, the National Charter was the fundamental source of the nation's policies and laws.

The meeting rose at 12.50 p.m.