CERD/C/SR.915
12 September 1991

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fortieth session

SUMMARY RECORD OF THE 915th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 6 August 1991, at 10 a.m.

Chairman: Mr. SHAHI

later: Mr. LAMPTEY

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The meeting was called to order at 10.15 a.m.

STATEMENT BY THE UNDER-SECRETARY-GENERAL FOR HUMAN RIGHTS

1. Mr. MARTENSON (Under-Secretary-General for Human Rights) said that the current session of the Committee on the Elimination of Racial Discrimination would differ from previous sessions in two ways. Firstly, the Committee would be holding a joint meeting with the Sub-Commission on Prevention of Discrimination and Protection of Minorities and, secondly, it had adopted an innovative approach to the problem of States parties whose periodic reports were long overdue.

2. The fight against discrimination was central to the human rights work of the United Nations. Both the Charter of the United Nations and the Universal Declaration of Human Rights underscored the principle of equal rights for all, without distinction of any kind, such as race. One of the principal focuses

of the Organization's action to promote equality and combat discrimination in all its forms had been the fight against apartheid. The Ad Hoc Working Group of Experts on Southern Africa within the Centre for Human Rights was keeping a vigilant eye on developments in South Africa and the Commission on Human Rights was continuing its action against apartheid.

3. On the moral or philosophical level, the activities of the international community, particularly the work of the Sub-Commission, had resulted in the refutation of the pseudo-scientific theory of racism. No rational human being could maintain today that colour or "race" had anything to do with individual potential or achievements. However, although the "scientific" basis of racism had collapsed, much remained to be done in dealing with the false beliefs it had left behind.

4. The efforts of the international community had begun to bear fruit in another area, namely, the destruction of any semblance of legitimacy in the policy of separate development or apartheid, and there was reason to believe, despite the difficulties, that a new South Africa would become a reality.

5. The Committee would have several issues before it at the current session - its sources of information, identification of its contribution to the preparatory activities for the 1993 World Conference on Human Rights; and consideration of the programme of action for the Third Decade to Combat Racism and Racial Discrimination.

6. He welcomed the fact that the Committee's current session marked the first time since 1987 that it had been able to hold two sessions in the same year. It was to be hoped that that practice would be considered the rule and not an exception. He recalled that the General Assembly had requested the Secretary-General in December 1990 to seek the agreement of States parties to the Convention to the establishment of a "contingency reserve fund" to ensure adequate funding for the Committee's activities. Although no decision on the matter could be taken before the meeting of States parties in January 1992, the prospects for putting the Committee on a firmer financial basis seemed promising.

7. Regarding other significant developments since the Committee's previous session, on 13 May 1991, Zimbabwe had deposited its instrument of accession to the Convention, bringing the total number of States parties to 129.

8. The Committee's revised study entitled "The First Twenty Years: Progress Report of the Committee on the Elimination of Racial Discrimination" had now gone to press, and the Centre had published Fact Sheet No. 12 in the "Human Rights" series, entitled "The Committee on the Elimination of Racial Discrimination", an English copy of which had been distributed to all members of the Committee. It was soon to be issued in the other official languages. Committee members had also received copies in English of the Manual on Human Rights Reporting, which had recently been published jointly by the Centre for Human Rights and the United Nations Institute for Training and Research (UNITAR). That publication would also be sent to the States parties as soon as the other language versions were available. Finally, the consolidated guidelines for reporting by States parties which had been adopted by the Committee at its previous session in March 1991 had been sent to all States parties, and the States concerned had been requested to submit the required information in a "core document" by the end of 1991.

9. Concerning the status of other human rights instruments and the activities of other bodies responsible for their implementation, he was glad to report that the Second Optional Protocol to the International Covenant on Civil and Political Rights had entered into force on 11 July 1991, three months after receipt of the tenth instrument of ratification. As the Committee was aware, the object of the Protocol was the abolition of the death

penalty, which was so often applied in a racially discriminatory manner.

10. The Centre had also organized, in May 1991, an informal meeting of the 10 members of the most recently established human rights treaty body, the Committee on the Rights of the Child. The purpose of the meeting had been to brief members on matters such as the relationship of the treaty bodies to one another and to other human rights bodies, and cooperation between that Committee and the specialized agencies, the United Nations Children's Fund (UNICEF), other United Nations bodies and other concerned intergovernmental and non-governmental organizations. The Committee on the Rights of the Child would hold its first formal session from 30 September to 18 October 1991 and the number of States parties to the Convention on the Rights of the Child already stood at 93.

11. The steadily increasing number of international human rights instruments and the already large number of States parties to those instruments had resulted in growing demands being placed on the Centre by the relevant bodies. In accordance with resolutions adopted by the Commission on Human Rights and the General Assembly, the Secretary-General would soon be inviting States to make voluntary contributions to cover the cost of installing a computer system and setting up a database.

12. Activities for the Second Decade to Combat Racism and Racial Discrimination continued to yield notable results. As Coordinator for Decade-related activities, he was pleased to observe that the document entitled "Global Compilation of National Legislation Against Racial Discrimination" had been published and that the Secretariat had provided each expert with a copy. The related and equally important study on model national legislation to serve as a guide to Governments in the enactment of further legislation against racial discrimination had been finalized and submitted to the Committee for consideration at the current session.

13. The many activities planned as part of the Second Decade, which was to be completed in 1993, included the preparation of a handbook on recourse procedures for victims of racism and racial discrimination. The Centre for Human Rights was also conducting a study of the effects of racial discrimination in the fields of education, training and employment and on the children of minorities, particularly the children of migrant workers.

14. As to the agenda of the joint meeting between the Committee and the Sub-Commission, the following items might be included: ways and means of coordinating action in combating racism and racial discrimination; mutual assistance for strengthening action undertaken to combat racism and racial discrimination; emerging trends and problems involving racism and racial discrimination; and potential conflicts between the right to protection from racial discrimination and certain other fundamental rights and freedoms.

15. Since the Committee's previous session in March 1991, there had been some signs of further progress towards dismantling the system of apartheid. In order to expedite the process, the Centre for Human Rights had organized, in June 1991, in cooperation with the World Council of Churches, a workshop during which the proposed new South African constitution had been discussed, as had the way in which it might reflect the provisions of the various United Nations human rights instruments. In that connection, he thanked Mr. Foighel for having agreed at short notice to take part in the workshop and to present the topic of the constitutional protection of the rights guaranteed by the International Convention on the Elimination of All Forms of Racial Discrimination.

16. Also in June 1991, under the advisory services and technical assistance programme of the Centre for Human Rights, specialists had been despatched to Mongolia on a two-week mission to help the national authorities to draft a new

constitution reflecting United Nations human rights standards. The Mongolian authorities had been grateful for the guidance given by the Committee in dealing with the strains of a multi-ethnic society.

17. Finally, he expressed concern that, at a time when calls for peace and freedom were heard in every part of the world, hatred and racism continued to prevail. The experience of the Committee on the Elimination of Racial Discrimination in overcoming racism and racial discrimination was being called upon to guide peoples and Governments towards achieving a just and harmonious society. In conclusion, he reaffirmed the readiness of the Centre for Human Rights to assist the Committee in every possible way in order to enable it to bring its deliberations to a successful conclusion.

18. Mr. BANTON pointed out that, at their third meeting, the persons chairing the human rights treaty bodies had recommended that United Nations information centres in the various countries should make the work of those bodies better known. That could only be achieved, however, if a publicity campaign was organized in the countries concerned through non-governmental organizations or other bodies. He asked what measures had been taken to carry out that very constructive recommendation.

19. Mr. ABOUL-NASR, supporting the point raised by Mr. Banton, said that the distribution by United Nations information centres of documents put out by the Centre for Human Rights fell far short of the care that had gone into their preparation. They were not reaching the public and action should be taken to ensure that the United Nations information centres in the various capitals made greater efforts in that direction.

20. Mr. MARTENSON (Under-Secretary-General for Human Rights) said he, too, attached great importance to the recommendation made at the third meeting of the human rights treaty bodies regarding United Nations information centres. The Centre for Human Rights was attempting to make the Information Service more aware of the active role that information centres ought to play in spearheading United Nations action in the field. He was drawing up recommendations and doing everything in his power to ensure that United Nations literature was widely circulated.

21. The CHAIRMAN thanked Mr. Martenson, in his own name and on behalf of the Committee, for his attendance at the Committee's session and his contribution to its work.

ORGANIZATION OF WORK

22. The CHAIRMAN reporting to the Committee on discussions which the Bureau had just held on organization of the work of the current session, said that three States parties - Belgium, Guinea and Togo - had requested that consideration of their reports should be deferred. In the opinion of the Bureau, the Committee could accede to Belgium's request, inasmuch as it had undertaken to submit its report before the end of the year, so that the report could be considered at the next session. On the other hand, the Bureau had taken the view that the consideration of the reports from Guinea and Togo should go ahead, even though neither had sent a delegation, for two reasons: the Committee's conclusions on reports which were several years overdue might serve the countries concerned as a guide in preparing their next reports and would also act as a reminder of the Committee's concern that States should meet their obligations.

It was so decided.

23. The CHAIRMAN pointed out that since the examination of the report from Belgium, which was to have taken place at the afternoon meeting of 14 August 1991, had been deferred, a meeting had become available for the

consideration of item 6 on the Second Decade to Combat Racism and Racial Discrimination. According to the revised programme of work, the item would also be examined at the afternoon meeting of Friday, 16 August 1991. At those two meetings the Committee would therefore consider the draft model legislation, the "model report" and the Committee's contribution to the work of the Preparatory Committee for the World Conference on Human Rights. The revised programme of work also contained items which had been postponed from the last session and were listed in order of priority.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3)

Sixth, seventh and eighth periodic reports of Australia (CERD/C/146/Add.3 and CERD/C/194/Add.2)

24. The CHAIRMAN said that the Committee had before it the sixth periodic report of Australia (CERD/C/146/Add.3) and its eighth periodic report (CERD/C/194/Add.2), a combination of the seventh and eighth reports, which had been due on 30 October 1988 and 30 October 1990 respectively.

At the invitation of the Chairman, Mr. Tickner, Mr. Walker, Mr. Gray, Mr. Barker, Mr. Chapman, Mr. Thomson, Ms. Blair, Ms. Schmider and Mr. Milner (Australia) took places at the Committee table.

25. Mr. TICKNER (Australia), after expressing Australia's unequivocal support for the work of the Committee, said that his country was presenting three reports: the sixth report, for the period October 1984 to December 1986, which had been submitted in April 1989 (CERD/C/146/Add.3); and the consolidated seventh and eighth reports, covering the period up to October 1990 (CERD/C/194/Add.2). He would also be reporting in his opening statement on further developments which had occurred in late 1990 and during 1991. He gave an undertaking that the next report, due in 1992, would be submitted punctually.

26. Australia was an open book on human rights issues. The defence of those rights enjoyed cross-party support. The Commonwealth of Australia had a federal system of government, under which legislative and executive power was shared between the central Government and the constituent units of the Federation, namely the six self-governing States and two internal territories, which for all practical purposes exercised the same degree of self-government as the States. There were also a few external territories which had very small populations and which exercised more limited self-government. Treaties, including human rights instruments, required legislative implementation to be fully effective in Australian law. The Federal Parliament had power to legislate concerning external affairs, including the power to legislate for the implementation of treaties entered into by Australia. State and territory Governments also played an important role; most States had their own anti-discrimination legislation, including racial discrimination legislation, and proposals for such legislation was at various stages of development in the other two States and internal territories.

27. The Australian Government was committed to a policy of multiculturalism, which sought to achieve a more just society and to utilize the talents of all Australian residents, regardless of cultural background or country of origin. An Access and Equity Strategy had been initiated to that end in 1985 and in 1989 had been widened with the goal of eliminating all linguistic, cultural, religious and racial barriers and making government programmes and services available to all Australians. The first review of the Strategy's impact on Aboriginal and Torres Strait Islander people would take place in 1991.

28. Australia had a non-discriminatory immigration programme, and selection

procedures did not breach any of the criteria of the Convention. They reflected Australia's commitment to family reunion and to humanitarian concerns. Relative to its size, Australia's intake of refugees and displaced persons was amongst the highest in the world. In 1988/1989 and 1989/1990, its intake had spanned more than 30 nationalities from all affected regions of the world, demonstrating the non-discriminatory nature of the Government's policy. Immigrants were eligible for Australian citizenship after two years' residence, and citizenship was open to all without regard to their sex, marital status or nationality. Since the combined seventh and eighth reports had been completed, a new system for determining refugee status had been introduced in December 1990, providing for a right of review to a new body called the Refugee Status Review Committee. A representative of the Office of the United Nations High Commissioner for Refugees participated in an advisory capacity.

29. With regard to the significant changes that had occurred since the consideration of the fifth report, there was first of all the Aboriginal and Torres Strait Islander Commission (ATSIC). It had been established under legislation enacted by the Federal Parliament in 1989 and had commenced operations on 5 March 1990, replacing the previous Department of Aboriginal Affairs and the Aboriginal Development Commission. The structure of ATSIC was such that a body of elected Aboriginal and Torres Strait Islander people was for the first time able to determine programme priorities and the allocation of funding within the Aboriginal affairs portfolio. It was made up of 60 regional councils comprising some 780 democratically elected councillors. Its aims were to ensure the maximum participation of indigenous people in the formulation and implementation of government policies that affected them; to promote the concept of indigenous self-management and self-sufficiency; to further the economic, social and cultural development of indigenous people; and to ensure coordination in the formulation and implementation of all relevant policies and programmes without diminishing in any way the responsibilities of all Governments in Australia to provide services to indigenous communities.

30. The allocation of the $A 600 million budget administered by ATSIC was, beginning with the financial year 1991/1992, the statutory responsibility of the elected councillors and the Board of Commissioners. Despite the persistence of some cynicism, the balance of power between the Minister and the Aboriginal and Torres Strait Islander people had changed dramatically. ATSIC was a unique body in the field of indigenous affairs in that it combined representative, advisory and administrative processes in the one organization.

31. With regard to the report of the Royal Commission into Aboriginal Deaths in Custody, which had been introduced in Parliament in May 1991, the Commission had been initiated jointly by the national Government and the Governments of the States and territories in response to calls by Aboriginal and Torres Strait Islander people. It had investigated the deaths in custody between 1980 and 1989 of 88 male and 11 female Aboriginal people. The final report consisted of 11 volumes and included 339 recommendations aimed at addressing not only the circumstances of deaths in custody but all the major problems of discrimination faced by the Aboriginal and Torres Strait Islander people. The Commissioners had not found that any of the deaths had been the result of deliberate violence by police or prison officers. The large number had been due to the disproportionate number of Aboriginal people in custody.

32. The investigation had been extremely thorough. All relevant documents had been studied and the Royal Commission had been able to interview the majority of those whom it had wished to interview. Post-mortem reports had been reconsidered by eminent pathologists and the orders binding on custodians had also been critically examined. Hearings had been held in public; families of the deceased had been represented by legal counsel, to whom all documents had been made available. The Royal Commission had gone beyond most other such bodies in recommending further investigation of a number of cases to determine

whether prosecutions were warranted. The recommendations were currently being examined by the public prosecuting authorities.

33. The Royal Commission had laid open the harshness and oppression experienced by many Aboriginal Australians. The average age of the Aboriginals who had died in prison had been only 29 years. Of the 99, 43 had experienced childhood separation from their natural families through intervention by State authorities, missions or other institutions; 83 had been unemployed at the date of their last detention; only 2 of the 99 had completed secondary schooling; 43 had been charged with an offence at or before the age of 15; 43 had been taken into custody in the period immediately before their deaths on matters directly related to the over-use of alcohol and, in the remaining cases, the Royal Commission had concluded that alcohol had been a contributing factor in their being taken into custody for the last time. The standard of health of the 99 had varied from poor to very bad.

34. The report had documented as never before the impact of European settlement on Australia's indigenous peoples, their dispossession and subordination within a dominant and often hostile society frequently motivated by self-interest, the development of racist attitudes both overt and hidden and the way in which such attitudes had become institutionalized in the practices of legal, educational, welfare and Aboriginal assistance authorities. He could not refer in detail to the 339 recommendations by the Royal Commission, but they were extremely comprehensive and were directed to a wide spectrum of programmes of national, State and territory Governments. As he had stated the previous year in the United Nations Working Group on Indigenous Populations, his Government was aware that the Working Group, Amnesty International and other non-governmental organizations would be monitoring the implementation of the Royal Commission's recommendations. In a very real sense the world was watching events in Australia.

35. In July 1991, a joint forum of federal and State ministers had been convened in Canberra to develop a coordinated national response to the recommendations of the Royal Commission by March 1992. He was submitting a copy of the report and recommendations of the Royal Commission for the information of members of the Committee. By the time Australia presented its next report, action on the recommendations should be significantly advanced and the report would provide comprehensive information on progress.

36. Another proposal for transforming relations between Australia's indigenous peoples and the wider community, which had met with the support of both, was the "process of reconciliation". The necessary legislative machinery would be put in place with the passage through the Australian Senate later that month of an Act to establish a Council for Aboriginal Reconciliation; the legislation had already been passed in the House of Representatives with the support of all the political parties. Where the Aboriginal peoples were concerned, support had been forthcoming from ATSIC, the Aboriginal Coordinating Council in Queensland, the National Coalition of Aboriginal Organizations, the Torres Strait Islander Advisory Board and the Aboriginal and Islander Commission members of the Australian Council of Churches. Support for the proposal in the non-Aboriginal community had come from the churches, the Confederation of Australian Industry, the Australian Medical Association, the National Farmers Federation, the Federation of Ethnic Communities' Councils of Australia and many major companies and community organizations.

37. As Minister for Aboriginal Affairs, one of his objectives had been to eliminate political exploitation; he welcomed the fact that Mr. Michael Wooldridge, the shadow Minister for Aboriginal Affairs, had played an important role in achieving common ground in the Process of Reconciliation. Another government objective was to broaden the opportunity for dialogue between the Aboriginal and non-Aboriginal communities at the level of local

government, the churches, the business community, the trade union movement and community organizations. The Council for Aboriginal Reconciliation would be chaired by an Aboriginal person, and the Aboriginal and Torres Strait Islander peoples would have a majority of the Council's 25 seats. Non-Aboriginal membership would represent the churches, trade unions, business, media and other major interest groups.

38. The reconciliation process contained three key elements: firstly, an ongoing and extensive public awareness and education campaign to promote a better understanding of Aboriginal history, culture and dispossession; secondly, a commitment, which the Government of Australia would seek to obtain from Governments at all levels, to cooperate in the reconciliation process in order progressively to address Aboriginal aspirations in the essential areas of land, housing, law and justice, cultural heritage, education, employment, health, economic development etc.; thirdly, the drafting of a formal document or documents on the basis of extensive consultations, in particular through the mechanism of ATSIC and indigenous community-based organizations.

39. He had already acknowledged that the health of the Aboriginal and Torres Strait Islander communities was of a standard that fell below that of other sectors of the community. Life expectancy was some 20 years lower than the average, and infant mortality was at least three times higher. The National Aboriginal Health Strategy, developed to combat that inexcusable situation, aimed to bring about a significant improvement in environmental health conditions in Aboriginal and Torres Strait Islander communities, establish new, and upgrade existing, health services controlled by the Aboriginal community, establish a National Office of Aboriginal Health within ATSIC, collect comprehensive statistical data on Aboriginal health and implement initiatives to prevent drug abuse. The Strategy required the active participation of the Aboriginal and Torres Strait Islander peoples through the regional councils of ATSIC, the Council of Aboriginal Health and tripartite forums to be established in all States and territories, the goal being to bring together representatives of indigenous communities, the State and territory Governments and the federal Government. Recommendation No. 271 of the Royal Commission dealt with the implementation of the National Aboriginal Health Strategy; with that recommendation in mind, the Commonwealth Government had recently committed itself to providing an additional $A 232 million over a five-year period to fund the first stages of the Strategy. It also sought to secure contributions from the State and territory Governments. Lastly, the Department of Employment, Education and Training would work to train indigenous persons in building and maintaining an essential community infrastructure.

40. The Australian reports outlined the broad powers of the Commonwealth Human Rights and Equal Opportunity Commission, which had overall responsibility for implementing the Racial Discrimination Act of 1975. Apart from its other functions, the Commission handled individual complaints and conducted public inquiries into human rights matters. On issues of racial discrimination, it had completed two major public inquiries, one focusing on the social and material conditions of the Aboriginal communities in three towns along the Queensland/New South Wales border and the other on acts of racial violence directed against persons or organizations advocating non-racist policies. The report of the Commission on the second inquiry had been submitted to the Commonwealth Parliament on 18 April 1991, and, significantly, the Commission had found that the perpetrators of the violence were frequently police officers. That situation, a feature of Australia's history, was unacceptable, and it was therefore essential to ensure a vigorous implementation of existing legislation and to afford the victims better protection and redress. The Commission had recommended enacting legislation to make racist violence and intimidation a federal offence and amending the Racial Discrimination Act to make incitement of racial hostility unlawful and to give the Commission jurisdiction to hear and investigate complaints on that

basis. The Australian Government was currently examining those and other recommendations.

41. As part of the reconciliation initiative, the National Government had announced the following proposals in the area of education: the development of consistent and appropriate Aboriginal studies curricula for all Australian schools (from kindergarten to year 12); the creation of coherent teacher-training courses to promote a better understanding among teachers of Aboriginal questions and greater sensitivity towards Aboriginal and Torres Strait Islander students; development of a sister-schools scheme to encourage direct contacts between students; and the launching of local school strategies in schools with Aboriginal and non-Aboriginal students under the Aboriginal Student Support and Parent Awareness Scheme, in order to foster a better understanding of the local Aboriginal communities.

42. He was pleased to announce that his Government had recently approved Australia's accession to the First Optional Protocol to the International Covenant on Civil and Political Rights. Accession to the Protocol had been one of the recommendations of the Royal Commission into Aboriginal Deaths in Custody. It was a manifestation of Australia's conviction that human rights were a matter of international concern and should be regarded as an affirmation of its willingness to be scrutinized on its human rights performance and to enter into a frank dialogue on those issues.

43. The CHAIRMAN thanked the representative of Australia for his detailed and frank oral presentation of his country's reports. Before inviting the members of the Committee to ask questions, he gave the floor to the country rapporteur for Australia.

44. Mr. WOLFRUM expressed appreciation of the oral presentation, which had provided a wealth of information. The Australian representative had stated that Australia was an open book on human rights issues, and the Committee could therefore expect a fruitful dialogue. It would, however, have been preferable if some of the information which the Australian representative had just given the Committee had been communicated earlier. He considered that the sixth, seventh and eighth reports of Australia (CERD/C/146/Add.3 and CERD/C/194/Add.2) were in keeping with the Committee's guidelines.

45. With regard to the demographic composition of the Australian population, he noted that, according to the most recent census, that of 1986, the next being due in July 1991, 3,477,400 persons, or 22 per cent of the total population of 15,602,000, had been born overseas. According to the responses to a question on ancestry, as self-identified by respondents, the demographic composition was as follows: Aboriginal - 1.0 per cent; Chinese - 1.1 per cent; Dutch - 1.4 per cent; German - 2.4 per cent; Scottish - 3.9 per cent; Australian - 18.6 per cent; British - 2.1 per cent; English - 36.8 per cent; Greek - 1.9 per cent; and Italian - 3.7 per cent. The figures on immigrants revealed a different pattern: 19.75 per cent came from the United Kingdom and Ireland, 5.68 per cent from northern Europe, 5.3 per cent from southern Europe, 5.85 per cent from the Middle East, 2.28 per cent from the United States and Canada, 2.53 per cent from South and other America, 4.72 per cent from Africa, 36.75 per cent from Asia, 2.99 per cent from Oceania and 13.22 per cent from New Zealand. Those figures confirmed the statement in paragraph 16 of the eighth report (CERD/C/194/Add.2) that "the federal Government has emphasized that its multicultural policy is quite distinct from immigration policy. It plays no part in migrant selection".

46. The three reports of Australia underscored its commitment to a policy of multiculturalism, the objective of which was described in paragraph 16 of the eighth report. Paragraph 18 noted, however, that there were also limits to multiculturalism. The Office of Multicultural Affairs referred to in paragraph 24 had an advisory and monitoring role, and it was developing

effective liaison and consultation mechanisms with the broad community, including the ethnic communities. But nothing was said about the composition of the Office or the extent to which immigrants and Aboriginal and Torres Strait Islander peoples were represented. Paragraphs 28, 29, 32 and 34 dealt with the various strategies adopted by the Australian Government to foster multiculturalism and prevent racial discrimination. The goal of the Access and Equity Strategy was to ensure that immigrants and their families had equitable access to Government programmes and services. The Social Justice Strategy was based on four principles: the fair distribution of economic resources; the enhancement of an individual's rights; opportunity for all to participate in the life of the community; and fair access to essential community services. The Community Relations Strategy focused on such areas as legislation, the police, the media, education and housing, which were crucial to the promotion of harmonious community relations.

47. The aim of the law reform policy was to determine whether legislation in certain areas of federal constitutional power was appropriate to a multicultural society.

48. Those policies and strategies were of great importance for the implementation of the provisions of the Convention; that was the reason why the Committee should be informed not only about their existence, but also about the results achieved. In that connection, he would like to know exactly which provisions of the Australian Citizenship Act were to be repealed.

49. The basis for the implementation of the Convention in Australia was the 1975 Racial Discrimination Act, whose objective was to prohibit, in Australia and in Australian territories, all forms of racial discrimination, including those enumerated in article 5 of the Convention. That law, which prohibited any act involving a distinction, exclusion, restriction, or preference based on race, colour, descent or national or ethnic origin, reflected the definition of racial discrimination in article 1 of the Convention. It should be noted that, by virtue of the amendments to the Act, the racial discrimination which it prohibited included indirect discrimination; the protection provided by the Act had been strengthened, and it was no longer necessary to prove that racial discrimination was the dominant reason for an action for that action to be considered unlawful. It should also be noted that employers were vicariously liable for acts of racial discrimination committed by their employees in connection with their duties. The legal provision guaranteeing equality before the law in the enjoyment of rights took precedence over all federal, State and territory laws. He would like to know, however, whether that meant that the other provisions of the Act did not take precedence.

50. At the end of 1986 the Australian Government had established the Human Rights and Equal Opportunity Commission, which was responsible for administering legislation relevant to Australia's obligations under international human rights instruments. A permanent body, it consisted of a part-time President and four full-time Commissioners: the Human Rights Commissioner, the Race Discrimination Commissioner, the Sex Discrimination Commissioner and the Privacy Commissioner, each of whom was responsible for handling complaints on behalf of the Commission within his or her respective sphere. At the same time, he had the impression that the Race Discrimination Commissioner enjoyed greater authority than the others, and he would welcome further information on that matter. He stressed that, under the Racial Discrimination Act, the Commission had the authority, inter alia, to inquire into any act which might constitute an unlawful act of racial discrimination following the receipt of a complaint in writing. While welcoming the establishment of the Commission, which could serve as an example to other countries, he wished to know how it was regarded by the Aboriginal and Torres Strait Islander people. He considered the information submitted on the activities of the Commission insufficient, and wondered whether it might not

be possible to have the reports which the Commission was no doubt expected to furnish annually on its work. He was surprised that the eighth report did not mention the Aboriginal and Torres Strait Islander Commission, to which the representative of Australia had referred in his statement, and asked whether the Aboriginal and the Torres Strait Islanders were satisfied with it and what relations it maintained with the two other Commissions mentioned.

51. Turning to the measures adopted by the States, he noted that New South Wales had an Anti-Discrimination Act dating from 1977, which prohibited racial discrimination in major areas of public life and provided for remedies in cases of discrimination based on colour, nationality and ethnic or national origin. With regard to the State of Victoria, he wondered why the 1977 Equal Opportunity Act had been re-enacted in 1984. It appeared that complaints could be addressed to the Equal Opportunity Board, which could even impose criminal penalties. He was surprised that the Government of the State of Queensland had waited so long before considering the implementation of legislation against discrimination. Did the federal Government not have any means of implementing the Convention in Queensland? In South Australia, the 1986 Equal Opportunity Act prohibited discrimination on the ground of race in the areas of employment, education, property law, housing and the provision of goods and services. A Commissioner for Equal Opportunity was responsible for its implementation. In Western Australia, the 1984 Equal Opportunity Act prohibited discrimination on the grounds of sex, marital status, pregnancy, race and religious or political conviction in employment, education or daily life. At the same time, however, there were exceptions, for example, where a person's race was a genuine occupational qualification or where an act was done in order to meet the special needs of a racial group or pursuant to a law establishing discrimination based on citizenship. He noted that part III of the Act defined race in the terms of article 1 of the Convention. The Act established the post of Commissioner for Equal Opportunity, who was invested with various functions. In February 1983, the Government of Western Australia had appointed a Minister for Multicultural and Ethnic Affairs. He wondered why there was no comparable Act in the Australian Capital Territory, the Northern Territory or Tasmania.

52. The various regulations at the federal and State level met the requirements of articles 2 and 5 of the Convention, but he considered that the relationship between federal and State law was not clearly defined. He would like to know which law would apply in a given case, which Commission or Commissioner would take action, and if a case could be brought before a State Commission and subsequently before the federal Commission. He also wished to know why the federal authorities had never tried to enforce implementation of the Convention in the Australian Capital Territory, Tasmania or the Northern Territory. He asked the representative of Australia to explain the exceptions to the Equal Opportunity Act in Western Australia, to indicate why the Act did not cover charitable bequests, membership of voluntary bodies, religious bodies or establishments providing facilities for the aged, and asked what was meant by the expression "short-term exceptions" and whether other Acts were also subject to exceptions.

53. Referring to the implementation of article 3 of the Convention, he noted that the Australian Government had adopted a whole series of political, social and economic measures against South Africa in conformity with the objective and spirit of that article, but wondered whether there continued to be economic links between the two countries.

54. Where article 4 was concerned, when the Convention had been ratified, the Australian Government had stated that it intended, at the earliest opportunity, to request Parliament to adopt legislation to implement the provisions of article 4 (a). Australian legislation did not currently comply with those provisions. Since the Equal Opportunity Commission was in favour of legislation against incitement to discrimination, he would like to know

whether such legislation was in preparation. Neither the report nor the oral presentation gave any information on paragraph (b) of that article.

55. In its reports, the Australian Government had provided useful information regarding the status of the Australian Aboriginal and Torres Strait Islanders, acknowledging that it should be improved. It had, however, emphasized that the problems confronting the Aboriginal and Torres Strait Islanders, and also immigrants, should not be seen exclusively in terms of racial discrimination, since clashes of value systems and cultures were frequently at issue, and it had added that the attempt to remedy them within the context of the Convention would neither be easy nor, perhaps, desirable. He would like to have information on that issue, particularly in the light of the provisions of article 2 of the Convention, which affirmed that States should take effective measures to enhance the status of disadvantaged ethnic groups. No information had been given on the reason for such clashes of value systems and cultures in Australian society, and he wondered whether it would not be more correct to say that the ruling group was trying to impose its values upon the minorities. The problems to be addressed would not be solely of a cultural character, but would also concern the provision of the necessary infrastructures. There, too, might it not be better to say that the Aboriginals did not always accept the services offered to them?

56. Information could be found in the two latest reports on the special and concrete measures taken in the social, economic, cultural and other fields to ensure adequate development and protection of certain racial groups for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. With regard to land rights, it should be emphasized that the federal and State authorities had taken steps to restore the rights of the Aboriginals to their land. However, what was involved was more a social policy than recognition of a right which had been violated. The Government had abandoned the idea of enacting national legislation on the land rights of the Aboriginal peoples in favour of a State-by-State approach. He wished to know what difference there was between the preferred model mentioned in the reports and the model currently being followed by the States. He also wondered why the Aboriginal communities had been opposed to the draft federal legislation and to what extent the federal plan on land rights differed from the Barunga statement, in which the Prime Minister had promised that negotiations for a treaty would be initiated by the end of 1988.

57. He noted, on the basis of the information contained in the eighth report, that the land rights situation of the Aboriginals was deplorable. Except in South Australia and the Northern Territory, the percentage of land held by the Aboriginals and Torres Strait Islanders was negligible. In Queensland, for example, where they represented 2.37 per cent of the population, Aboriginals owned no more than 0.01 per cent of the land. It was only recently that the States had granted the Aboriginal communities title to the lands of their ancestors. He would like to know what conditions had to be fulfilled for entitlement to leasehold, whether it could be revoked, and what restrictions applied with regard to the economic use of the land. He would also like to know whether only Crown land could be made over or whether landowners could be expropriated, how the Aboriginal lands were administered, and whether a lease could be revoked for economic reasons. Finally, he would like information on the content of the Agreement concluded between the Prime Minister of the federal Government and the Prime Minister of the Northern Territory on 10 September 1989 on the land rights of the Aboriginals and whether it was true to say that the Agreement was based on the current needs of the Aboriginals.

58. As far as the judicial system was concerned, the Aboriginals and Torres Strait Islanders were particularly disadvantaged with regard to access to legal support and advice. Statistics showed that the Aboriginals and Islanders were disproportionately liable to criminal proceedings.

According to the official figures, Aboriginals represented more than 10 per cent of the prison population, although they accounted for only 1.5 per cent of the Australian population. He would like to know whether it was true that those committing minor offences were treated differently according to their ethnic origins. The high percentage of Aboriginals and Islanders in custody indicated that they were sometimes judged by non-indigenous standards, while their own system of administering justice was neither accepted nor acknowledged. Similarly, the exceedingly high number of deaths among Aboriginals and Islanders in custody showed that they were being held in conditions which did not correspond to their needs. The Royal Commission into Aboriginal Deaths in Custody had stated that the deaths had not been due to acts of violence committed by police officers, but that their number was to be explained by the high proportion of Aboriginals in custody. He wondered whether the Aboriginals were not in fact suffering more than whites when they were imprisoned. The problem was one which should remain under consideration. He would welcome details regarding the incidents which had occurred in the Redfern community in Sydney in 1988, 1989 and 1990. Had the police been obliged to use force in order to execute search warrants? Were the May 1990 findings of the Human Rights and Equal Opportunity Commission concerning police activities in Redfern correct? Was it true that, in August 1989, a justice of the Supreme Court of New South Wales had found that it would be preferable not to extradite 16 Aboriginal plaintiffs to Queensland to face riot charges? What were the grounds for such a decision?

59. In their fifth, sixth and eighth reports the Australian authorities had acknowledged that, because of the discrimination, dispossession and dispersal to which the Aboriginal and Torres Strait Islander Australians had been and were subjected, it had been necessary to set up special programmes of assistance to enable them to have full access to their economic, social and cultural rights. To that end, the federal and State Governments initiated and financed a multitude of programmes every year. Even so, unemployment was much higher among the Aboriginals, and especially Aboriginal women. In that connection, attention should be drawn to the policy of developing employment for the Aboriginals and the negotiation and implementation of employment and career-development strategies in the public and private sectors. He wondered, however, why that policy had not been adopted until 1987, and he would like to be informed of its results. He also wished to know the unemployment rate among Aboriginals as compared to the average, the percentage of skilled workers, academics and self-employed persons, and the number of those employed in the public service.

60. The Australian Government acknowledged that the housing situation of Aboriginals and Torres Strait Islanders should be improved, but the information provided on that question was inadequate.

61. According to the sixth and eighth periodic reports, the health status of the Aboriginal and Torres Strait Islander peoples was worse than that of any other group in Australia: life expectancy was some 20 years lower than the national average, and the rate of infant mortality was at least three times higher than that of the rest of the population. In that regard, a national strategy for promoting health had been adopted. The Government at all levels and the Aboriginal and Islander communities had undertaken to cooperate in order to improve the situation. At the same time, he noted that the strategy dated back only to 1989, and he wondered why the authorities had not acted earlier. In addition, he noted that the information regarding the strategy was extremely vague, and he would like to know what specific measures had been taken, particularly in respect of the campaign against alcoholism. He also wondered whether the Aboriginal communities were provided with hospitals and with doctors and nurses who spoke their language and were familiar with their traditions; whether the health policy took into account the fact that Aboriginal cultures and traditions might conflict with the health services offered, and he would like to know what had been the outcome of the

proceedings brought by a group of Aboriginals against the Government in connection with the harm caused by alcoholism.

62. In connection with the right to education, he pointed out that very few Aboriginals and Torres Strait Islanders continued their studies beyond the compulsory period of schooling and that the proportion of those who had never attended school was much higher among the Aboriginals and Torres Strait Islanders than in the rest of the population. Furthermore, most schools did not provide instruction in Aboriginal culture, traditions and languages. In order to remedy that situation, provision must be made both for instruction to enable the Aboriginals and Islanders to adapt to society and also for informing the non-Aboriginal population about their culture and way of life. In that connection, he wondered what the Australian Government had done to preserve the cultural heritage of Aboriginal and Torres Strait Islander Australians. In the case of the latter, rumours were circulating to the effect that the federal Government was in the process of negotiating a treaty with Papua New Guinea. What was the content of that treaty and would it have repercussions on the lives of the people living in the region?

63. As far as immigrants were concerned, he considered that the treatment of both immigrants and refugees fully met the objectives and spirit of the Convention. He would, however, like to know how many refugees had succeeded in settling in Australia in recent years, what were their countries of origin, and whether an AIDS test was compulsory for immigrants. The Australian Government had amended the regulations regarding immigration, allowing illegal residents more time to apply for permission to remain in the country. He would be grateful for further information on that question.

64. In his statement, the representative of Australia had indicated that his country had decided to ratify the Optional Protocol to the International Covenant on Civil and Political Rights. He would like to know whether the Australian Government also intended to make a declaration under article 14 of the Convention.

65. In conclusion, the reports submitted by Australia were very detailed and extremely constructive, and he congratulated the Australian representative on all the information he had provided.

Mr. Lamptey took the Chair.

66. Mr. BANTON said that, as a State party to the Convention, Australia was required to ensure that its component States were applying the provisions of that instrument. In that connection, he regretted that the federal Government had not, in its two most recent reports, been as frank as it might have been in describing the problems it was encountering in that respect. He had in mind in that connection the attempts made by Queensland to circumvent the provisions of the 1975 Racial Discrimination Act.

67. He would like to have details of the land legislation which the Hawke Government had promised to introduce and which was to be based on a package of principles, one of which was the granting to the Aboriginals of control of mining operations on their land. He also considered that the failure to pass any land rights legislation in Western Australia represented a serious setback (see document CERD/C/SR.817, para. 10).

68. Was it true that the States of Western Australia and Queensland had stated that the Royal Commission into Aboriginal Deaths in Custody had not been authorized to examine certain issues which none the less fell within the scope of its mandate?

69. In short, the Committee would like to have a straight answer from the Australian delegation to the following question: was the federal Government

satisfied by the measures so far taken by the State of Queensland to implement the provisions of the Convention?

70. He expressed indignation at the culpable negligence of the authorities in towns situated on the New South Wales-Queensland border (the Toomelah region). As was indicated in paragraph 252 (c) of the eighth report, the Aboriginals in those towns "were living in appalling conditions". He would like to have a copy of the second report, referred to in the paragraph, of the Commission which had brought those facts to light. He also hoped that in the next report of Australia, more comprehensive information would be given on the way in which "the Commission continues to monitor the situation".

71. In that connection, he would like to know whether, in compliance with article 6 of the Convention, Australia was assuring to the Aboriginals of Toomelah effective protection and remedies. It was surprising to see from Australia's fifth report that the Aboriginals in that region had never lodged a complaint of racial discrimination when the law entitled them to do so.

72. Had the recommendations made by the Royal Commission into Aboriginal Deaths in Custody in its interim report been followed up (eighth periodic report, para. 254)? Had they been issued after consultation with the Aboriginals?

73. Had the police received orders to grant conditional release on bail more frequently to Aboriginals in detention, in order to limit the numbers in custody?

74. What were the Australian delegation's views on the allegation by the Fingal community in New South Wales that the State Government would contrive to circumvent the law on the land rights of the Aboriginals and on the fact that the Aboriginals of the Torres Strait had approached the Working Group on Indigenous Peoples of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities?

75. He regretted that, in its report on racist violence in Australia, the Human Rights and Equal Opportunity Commission had not dealt in greater depth with the causes of racist behaviour among large numbers of white Australians. Effective remedies could only be found if the causes were known.

76. Since the main argument used by people whose behaviour was racist was that non-white immigrants were taking their jobs, there must be a determined campaign against racial discrimination in the employment market, in particular by introducing legislation as effective as that, for example, aimed at deterring Australian motorists from drinking and driving.

77. The police was called upon to play a key role in the campaign against discrimination. Police officers must be made aware that they had to set an example in regard to the application of new rules. If they were entrusted with that task, they might find it easier to accept a change of attitude.

78. With regard to detention, the name of a police officer who had made an arrest and would be responsible for the detained person while in custody should be entered in a register (page 319 of the Commission's report).

79. Among the recommendations which appeared on pages 331 to 333 of the Commission's report, one seemed to him to be particularly important, namely the recommendation that the ability to work effectively with non-English-speaking persons should be taken into account in the promotion of police officers.

80. In conclusion, he said that he fully agreed with what Mr. Wolfrum had said, and thanked Mr. Tickner for his oral presentation.

81. Mr. de GOUTTES paid a tribute to the Australian Government for the substantive nature of its report and the copious information provided, but regretted the absence of any statistics on sentences imposed on persons guilty of racist acts.

82. He was surprised that, under the pretext of avoiding a restriction on freedom of speech, incitement to racial hatred was not repressed by federal legislation. He wondered whether that situation would be maintained, particularly in view of the recommendations made by the authors of the report on racist violence in Australia. He also wished to know whether acts such as racial defamation, insults of a racial nature, advocacy of racism, and racist propaganda were covered by federal legislation.

83. He would like to know the specific reasons for the relatively high number of Aboriginal deaths in custody. Were they due to the poor health of the Aboriginals? Were there suicides, and did alcoholism play a part?

84. What was the exact percentage of Aboriginals in custody in relation to the total population? For what offences had they been imprisoned, and what penalties had been imposed?

85. In view of the close links between federal and State bodies responsible for combating racial discrimination, was there not a risk of overlapping? For example, how were the functions of the federal Human Rights Commissioner to be distinguished from those of the Equal Opportunity Commissioner in Western Australia, for example? How did victims of racial discrimination decide to apply to one body rather than another?

86. Mr. LECHUGA HEVIA said he would like to know why the Australian authorities had been so tardy in opening an inquiry into Aboriginal deaths in custody.

87. He would also like to know the number of jurisdictions which had not accepted the recommendations made by the Royal Commission into Aboriginal Deaths in Custody. Paragraph 254 (c) of the eighth report stated that the recommendations had been accepted by most jurisdictions. Did that mean that some jurisdictions did not wish to put an end to a climate which engendered racial discrimination?

88. Mr. VIDAS joined Mr. Banton and Mr. Wolfrum in asking the Australian delegation for explanations regarding relations between the federal Government and the States Governments regarding implementation of the Convention.

89. Referring to paragraph 15 of the sixth report (CERD/C/146/Add.3), he as asked why the members of the Human Rights and Equal Opportunity Commission did not include, in addition to the Human Rights Commissioner, the Race Discrimination Commissioner and the Sex Discrimination Commissioner, a fourth commissioner responsible for handling discrimination against the Aboriginals.
90. How did it come about that the Aboriginals, who represented only 1.5 per cent of the Australian population, owned 12 per cent of Australian land?

91. What had been the results of the negotiations between the federal Government and the Government of Tasmania, which were referred to in paragraph 33 of the sixth report?

92. Had the amendment aimed at extending the law on racial discrimination to cover incitement to hatred and racial defamation, to which reference was made in paragraph 69, been adopted?

93. He welcomed the measures taken by the Australian Government, which were set out in paragraphs 77 and 86 of the report.

94. He would like to know why the number of complaints under the 1975 Racial Discrimination Act had sharply declined between 1985 and 1990.

95. In conclusion, he suggested that the Committee should congratulate Australia on the progress it had achieved since ratifying the Convention.

The meeting rose at 1.15 p.m.