CANADA

CCPR A/35/40 (1980)

154. The Committee considered the initial report (CCPR/C/1/Add.43 (vols. I and II)) submitted by the Government of Canada at its 205th, 206th, 207th, 208th and 211th meetings held on 25, 26 and 28 March 1980 (CCPR/C/SR.205, 206, 207,208 AND 211).

155. The report was introduced by the representative of the State party who stated that the dialogue between the Committee and States parties was potentially one of the most important factors in the long-term development of international protection of human rights and that the Committee's questions and comments could have a significant impact on and help to increase the understanding by the States parties of their obligations under the Covenant.

156. The representative pointed out that the Covenant as such was not part of the law of Canada; that Canada as a federal state, functioned on the basis of a complex division of responsibilities between the Federal and Provincial governments in most areas in which the Covenant applied but that the constitutional division of powers in no way affected the international responsibility of Canada; that his country's implementation of the Covenant must be examined in terms of legislation enacted in a variety of areas and of procedural and judicial guarantees and practices which had evolved with the development of the Canadian legal system; that the debate and the consultations which had preceded Canada's accession to the Covenant and the Optional Protocol had made the Canadian authorities more conscious of the need for better defined measures for the protection of human rights and freedoms; and that the efforts deployed for this purpose were reflected in the proliferation of official bodies to protect human rights and by the improvement of human rights legislation at both the federal and the provincial levels.

157. The representative stated that the detailed report before the Committee was available to all Canadians; that the press release announcing its publication explained that it could be obtained free of charge in English or French; and that, in addition, copies of the report had been or were being sent to all parliamentarians and to all the principal libraries in the country. He gave an account of the developments in the field of human rights, which had occurred since the completion of the report, including judicial decisions relating to the rights of prisoners, changes in the status and the internal law of the Yukon and the Northwest Territories, and recent legislative developments relating to human rights in some of the provinces.

158. Members of the Committee expressed their satisfaction in the comprehensiveness of the report, the frank manner in which it was drawn up and the number of judicial decisions in cases quoted in it. They also commended the publication of the report in Canada as a means of stimulating public interest in the Covenant as well as demonstrating Government's resolve to implement its obligations under it. Some members regretted though that the report had not provided more information on the way in which Canada discharged its obligations in practice and on functions, competence and legal status of the various commissions and committees for the protection of human rights established in Canada. Questions were asked as to whether domestic legislation would be generally interpreted in the light of international obligations; and in the event of conflict between federal law and

provincial or territorial law, what would be the position of the federal government which was committed to observe the Covenant and to implement it throughout Canadian territory.

159. Commenting on article 1 of the Covenant, some members noted that the right to self-determination was not expressly guaranteed in any of the Canadian provinces and that it was not even mentioned in the laws of British Columbia and Quebec. More information was requested on any specific guarantees that may be in existence to ensure respect for that right and on the position of the Canadian Government regarding the right of secession, with special reference to the recent decision to hold a referendum in Quebec and the possibility for the Indians and Eskimos as well to hold such a referendum.

160. As regards article 2 of the Covenant, it was noted that political opinion, property, language and social origin were not among the prohibited grounds for discrimination mentioned in the Canadian Bill of Rights or in the Human Rights Act. It was asked why some acts and codes, that had been enacted after the Covenant had entered into force in respect of Canada, had such narrow prohibition of discrimination. Referring to certain statements in the report, members asked whether the courts had already declared any law of Canada inoperative because its provisions were contrary to those of the Canadian Bill of Rights; whether the Minister of Justice had already had occasion to draw the attention of the House of Commons to the inconsistency of a Bill with the provisions of the Canadian Bill of Rights and how that system worked, at both the federal and provincial levels; which provisions took precedence in the event of contradiction between the provisions of the Covenant and those of provincial legislation; whether a practice contrary to the Covenant might be admissible; and whether there was in Canadian jurisprudence a general rule of presumption that normally the balance should be tipped in favor of the individual 's freedoms. Questions were also asked on whether the Canadian Government could demonstrate that a person who simply claimed to have been a victim of a violation of the Covenant always had a remedy open to him; whether remedies available against officials were subject to procedural restrictions, such as time-limits; whether it was open to the Government to claim that an official had been acting outside the performance of his duties when the act complained of took place in the purported exercise of official functions; and whether, in the event of a public servant being insolvent, the plaintiff could appeal to administrative or judicial courts.

161. Commenting on article 3 of the Covenant, members of the Committee appreciated that considerable progress had been made in legislative instruments to ensure equality between men and women and requested information on the actual situation in this respect and on the role of women in political, economic, social and other spheres of life and on whether there was any policy of encouragement concerning feminist organizations. Referring to a statement in the section of the report concerning Saskatchewan and to relevant Acts of that Province, one member observed the existence of sexual distinction in favor of women and inquired what considerations had caused the Canadian authorities to enact provisions to that effect.

162. With regard to article 6 of the Covenant, members sought information on the efforts undertaken to reduce infant mortality, especially in rural areas; on the measures adopted to limit the use of firearms by police forces; on the extent to which a master was allowed to cause bodily harm to an apprentice or servant so as not to put his life in danger or to be likely to injure his health permanently, as mentioned in the report; and on any legislation in Canada concerning termination

of pregnancy. It was noted with satisfaction that the death penalty had, in practice, been suspended in Canada.

163. In connection with article 9 of the Covenant, it was asked whether the clause in due process of law, appearing in the Canadian Bill of Rights, was applicable in the case of deprivation of liberty for medical, psychiatric, educative or public security reasons; and how the right not to be unlawfully deprived of liberty was respected in practice. Reference was made to the question raised in the report as to whether Canadian law which permitted a person arrested under a warrant to be arrested without informing him about contents of the warrant, sufficiently complied with article 9, paragraph 2, of the Covenant. The opinion was expressed that this did not satisfy article 9, paragraph 2, which required that anyone who was arrested should be informed, not necessarily in detail but at least in substance, of the reasons for his arrest. It was noted that the right to stand trial within a reasonable time was not recognized in Canadian law and a request was made for an explanation of that omission and for information on Canadian jurisprudence in this respect. Information was also sought on the implementation in Canada of the right to compensation for the victims of unlawful arrest or detention.

164. Commenting on article 10 of the Covenant, members of the Committee asked how the chairmen of the disciplinary boards, referred to in the report, were appointed; whether a detainee condemned to solitary confinement, which was a special kind of imprisonment, could appeal against ruling given by the boards; whether there were specific monitoring or inspecting bodies which insured respect for the relevant legislation by the prison authorities; and whether there was any law providing that a prisoner should serve his sentence in an establishment not too remote from his home.

165. With reference to article 13 of the Covenant, it was asked whether any protection was provided to an individual holding a residence permit issued by the Ministry of Employment and Immigration where that permit had expired or was cancelled.

166. As regards article 14 of the Covenant, more information was requested on how judges were appointed and their independence guaranteed; on the circumstances in which court proceedings were held in camera ; and on the practical significance of the right of everyone to be presumed innocent until proved guilty according to Canadian law. Questions were asked on whether an accused person was entitled "to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him" if he spoke neither of the two official languages of Canada; whether there were any legislative provisions designed to ensure that the accused be tried without undue delay and, if so, whether these provisions applied equally to all categories of offences; how equality in the ability to obtain legal representation was ensured; whether it was necessary to have a lawyer in order to proceed or to have access to the courts; and whether evidence obtained by illegal methods, even if it was relevant, was admissible. It was noted that Canada provided only for ex gratia compensation in the event of a miscarriage of justice whereas compensation, according to the Covenant, was mandatory. Referring to a statement in the report that the rule "that a person may not be convicted twice for the same offence may, however, not apply if Parliament so provides" and to the possibility that under the Juvenile Delinquents Act., convicted juveniles in one court could be ordered to stand trial in another court, members asked to what extent that situation was consistent with article 14, paragraph 7, of the Covenant.

167. As regards article 15 of the Covenant, members of the Committee pointed out that the absence in Canadian law of any provision expressly prohibiting Parliament from enacting retroactive legislation made one conclude that such possibility could not be totally excluded and wondered whether any retroactive law had been enacted recently and whether legal prohibition was envisaged in this respect.

168. In connection with article 17 of the Covenant, it was asked whether telephone tapping was strictly controlled, who could authorize the interception of telephone communications, whether such authorization could be for a specific period and, if so, what formalities were required. One member asked to what extent force could be exercised by the occupant of a dwelling to resist a search conducted by a police officer without a warrant.

169. Commenting on article 18 of the Covenant, members of the Committee asked whether atheist propaganda was authorized in Canada; whether the emphasis on the religious instead of the secular character of Sunday as well as the requirement imposed upon teachers in Nova Scotia and Ontario to inculcate in children the principles of Christianity or Judeo-Christian morality did not introduce a discriminatory element; whether there was any policy to promote harmony between the religions in Canada; and whether conscientious objectors were punished or bound by law to perform national service and, if so, what kind of service.

170. In respect of article 19 of the Covenant, more information was requested on the application in Canada of a national broadcasting policy which would determine not only who should have access to broadcasting but also the rights and obligations of those who applied for and obtained broadcasting licences; on what constituted "blasphemous libel" under the Criminal Code and whether that term had received judicial interpretation; on whether any act conflicting with the interests of the State would be deemed as seditious; and on whether decisions concerning film censorship could be contested.

171. In connection with article 20 of the Covenant, some members of the Committee pointed out that, according to the report, the Canadian Government's position did not seem to be in conformity with the Covenant since it was not possible to maintain that war propaganda was lawful for individuals and organizations but not for the absence of any law prohibiting such propaganda, there was any procedure to which a citizen could resort if he felt that the Government was disseminating propaganda in favor of war.

172. With reference to article 21 of the Covenant, it was noted that, in Canada, it was a punishable offence to participate in an "unlawful" assembly and questions were asked on whether that expression was defined by law; whether the right of assembly was a regulated right and, if so, whether it was necessary to obtain authorization before holding meetings; and whether the organizers of such a meeting could appeal against a refusal of permission to hold a meeting.

173. Commenting on articles 23 and 24 of the Covenant, members of the Committee expressed surprise at the fact that, in the Province of Quebec, the marriageable age had been established at 14 years for a man and 12 years for a woman. That age, they maintained, appeared to be rather low for the genuine consent to be assumed, particularly on the part of the woman. It was asked whether that provision was adopted in the context of a population policy or was based on biological facts;

whether it was truly in the spirit of the Covenant; and whether it was not in contradiction with the prohibition by law of sexual relations before the age of 16 years. Information was requested on the status of adulterine children, on whether they could claim the protection of their parents, on the extent to which a child's right to a name was affected by the fact that he was an adulterine child and on the administrative and legal procedures for legitimizing natural children.

174. As regards article 25 of the Covenant, it was asked whether trade unions could play a political role in Canada, for example, by advocating amendments to existing laws or the adoption of new laws and whether any political parties were outlawed; what conditions had to be fulfilled by candidates for a seat in the Senate; whether all citizens had equal access to the Senate or to propose candidates for it, and whether the Governor General was empowered to remove a member of the Senate from office; and whether the conditions for authorizing Government employees to stand as candidates in the federal, provincial or territorial elections were compatible with the letter and spirit of the Covenant. Questions were also asked on why the prohibition of discrimination based on political opinion was not expressly provided for in the Public Service Employment Act and whether there had been instances of persons not being appointed to posts in the public service for reasons relating to their political opinions.

175. With reference to article 26 in conjunction with article 2 of the Covenant, it was noted that the interpretation of these two articles in the report seemed too limited, in that under the Covenant rights must not only be respected but ensured and all persons were entitled not only to equality before the law but to equal protection under the law. Considering the statement in the report that a person could not be discriminated against on any of the grounds, mentioned in the Covenant but not in the Canadian Bill of Rights unless such discrimination was permitted by statute, one member pointed out that inasmuch as there appeared to be the possibility of discrimination authorized by law, more information was needed about the application of this rule and on the extent to which it was consistent with the Covenant.

176. As regards article 27 in conjunction with article 2 of the Covenant, it was stressed that States parties undertook not only to apply the provisions of the Covenant but also to give effect to the rights recognized therein by taking other measures. Members of the Committee requested more information on general Canadian policy on indigenous inhabitants, particularly the Indians and Eskimos in Canada; on whether Canada sought to strengthen ethnic identity, or to assimilate minorities into the general population; on the measures adopted and applied in securing their rights under the Covenant; on the solution reached, if any, to the threat posed to Indians and Eskimos by the spread of industrialization and modernization into the areas they had traditionally inhabited; how did the system of internal autonomy granted to the Indian tribes operate in practice; and whether there had been any exchange of information and experience between Canada and other countries which had Eskimo populations and whether any steps had been taken, concerning the preservation of their cultural identity and integration into society as a whole. In seeking that information, some members of the Committee observed that Indians were referred to in rather pejorative terms and cited what appeared to them as signs of distinction between Indians and Canadian citizens: what was the reason for the enactment of special legislation relating to Indians when no such legislation existed for other ethnic minorities living in Canada and what were the principles on which the Indian Act was based; were the freedoms provided for in article 12 of the Covenant enjoyed equally by the Indians and other Canadian citizens; what would be the legal status of an Indian woman whose name

had been struck off the Indian registrar and whom the Governor General in Council refused to enfranchise and whether there was any possibility of appeal against that decision; and why an Indian child who failed to attend school or had been either expelled or suspended was deemed to be a juvenile delinquent whereas other Canadian children were not deemed as such under similar circumstances. Questions were also asked concerning Canadian experience in absorbing into Canadian society immigrant groups of refugees whom she had admitted in considerable numbers.

177. Commenting on the questions raised by members of the Committee, the representative of Canada emphasized that even if at present time some of the provisions of Canadian legislation were not entirely in conformity will those of the Covenant, he was confident that Canada had not only acceded to the Optional Protocol but was one of the few States parties to the Covenant to have made a declaration that it recognized the Committee's competence to receive and consider communications in which a State party claimed that another State party was not fulfilling its obligations under the Covenant.

178. The Canadian delegation had taken note of the observations made by various members of the Committee concerning a number of provisions in Canadian legislation relating to human rights. Some, for example, had noted that the prohibited grounds for discrimination set forth in various Canadian laws did not correspond exactly to those specified in articles 2 and 26 of the Covenant; others had stressed the fact that no Canadian law expressly prohibited propaganda for war. Others had said that, in their view, some provisions of the War Measures Act were contrary to article 4 of the Covenant, which dealt with measures that a State party might take at a time of public emergency which threatened the life of the nation; it had been said, too, that certain provincial laws governing education were not, perhaps, fully in conformity with article 18 of the Covenant, which guaranteed the right to freedom of religion, and that, in accordance with article 14, paragraph 6, of the Covenant, the Canadian authorities should establish a system of compensation for persons wrongfully convicted. Some members of the Committee had thought it regrettable that Canadian law lacked any constitutional or statutory provision expressly prohibiting Parliament from enacting a retroactive law, since the principle of non-retroactivity of laws was set forth in article 15 of the Covenant; others, lastly, had considered that the fact that a person could be arrested without being informed of the reasons for the arrest was at variance with the requirements of article 9, paragraph 2, of the Covenant. All those observations would be brought to the attention of the appropriate Canadian authorities.

179. The representative explained the mechanisms which existed in Canada to provide for a co-ordinated approach to the implementation of the Covenant at the different levels of Government: namely, the vertical mechanisms within a ministry or department, whether at the federal or provincial level; and the horizontal mechanisms which existed between ministries or departments, particularly between the federal and the provincial governments. He indicated that each minister was responsible for administrating his or her mandated area, subject to general administrative policy guidelines established by the Government, many of which were relevant to the Covenant and that a great many programmes set up by Government ministries and departments were designed specifically to promote the kind of objectives reflected in the Covenant, even though the programmes might not have been established as a direct result of the Covenant. Co-ordination was also exercised through the Commissions on Human Rights, which were responsible at the federal and the provincial level for enforcement of the Human Rights Acts or Codes and which were also

responsible for promoting human rights in their respective areas of competence, handling complaints and encouraging research, publications, information and education of human rights. The purpose of the Interdepartmental Human Rights Committee, whose authority derived from the Cabinet, was to co-ordinate federal policy on human rights matters and to review the way in which the various government departments were applying it. He stressed that co-ordination in a federal system might not be simple, but it was certainly an essential ingredient of successful implementation of policies and programmes on human rights.

180. The representative stated that since the Canadian Parliament and the provincial legislative assemblies had not yet amended the legislation in accordance with the provisions of the Covenant, the Canadian Courts could not directly apply the provisions of that instrument which differed from existing Canadian law, but that when it was necessary to interpret domestic laws whose meaning was ambagious, they could refer to the Covenant as part of international law.

181. Replying to questions raised under article 1 of the Covenant, the representative stated that while the Constitution made provision for the addition or creation of new territories and provinces, it made no provision for the severance of provinces, territories or peoples from Canada or for major variations in their constitutional status. Such changes would have to be the subject of constitutional amendment. Concerning the attitude of the Government of Canada with regard to the referendum in Quebec, he maintained that his Government considered that the "objectif independentiste" of the Government of Quebec but in question the political unity of Canada but that in conformity with international law, this was an internal matter which fell exclusively within national competence of Canada.

182. As regards the comments made under article 2 of the Covenant, the representative pointed out that a number of provincial laws expressly prohibited discrimination on political grounds. He cited several judicial decisions in which the provisions of the Canadian Bill of Rights had taken precedence over those of other federal laws. As to the monitoring role of the Ministry of Justice in determining whether bills and regulations were in conformity with the Canadian Bill of Rights, he cited the case of an amendment to a bill which had been put before the Senate without prior examination by the Minister and stated that the Minister had expressed the opinion that the amendment would conflict with the Bill of Rights in certain aspects and that it had subsequently been modified accordingly. He stressed that it was impossible to state categorically that a legal remedy would be available in Canada for every breach of the Covenant; and that, in cases involving wrongdoing by Government employees in the course of their employment, both the Government and the employee could be sued and it therefore did not matter if the employee was insolvent and that in such a case, the Government would have to pay any damages obtained.

183. Replying to questions raised under article 3 of the Covenant, the representative stated that special services had been set up to analyze the impact of legislation, policies and programmes on the status of men and women and that both federal and provincial governments were trying to foster equality of status within government service. He gave an account of the position of women in the federal political and judicial systems and of their role in the economic and social spheres of life and stated that the Federal Government and the provincial Governments encouraged women's organizations to achieve their objectives by contributing to the funding of research, seminars, conferences and studies and by granting financial aid to voluntary women's organizations. As

regards the provisions of the relevant Acts of the Province of Saskatchewan, considered by some members to be discriminatory in favor of women, he stressed that these provisions had been enacted many years earlier to safeguard the economic position of women and that it did not seem that the time had come to rescind them.

184. In connection with article 6 of the Covenant, the representative stated that a peace officer was liable by law for any excessive use of force and that his personal legal liability obliged him to restrict the use of firearms to the defense of his own life or that of another person; that the Criminal Code imposed a sentence of imprisonment for life on anyone procuring an abortion; and that a woman who procured or tried to procure, an abortion for herself was liable to two years' imprisonment, unless the abortion had been authorized by a special Committee which had considered that the continuation of pregnancy would endanger her life or her health.

185. In relation to article 9 of the Covenant, the representative explained that a peace officer could, without a warrant, arrest a person who had committed a criminal act or appeared to have committed one, who was in the course of committing a criminal act or who was liable to a warrant of arrest, provided that he had reason to believe that the public interest could not be otherwise safeguarded and that, if he did not arrest that person, the latter would not appear in court. The justice of the peace could, if he had reason to believe that it was necessary in the public interest to do so before summoning the party concerned to appear, issue a warrant for his arrest on information supplied by any person who had reason to believe that someone had committed a criminal act. The justice of the peace must not however sign an open warrant and the warrant must give the name or the description of the suspected person, state the offence and order that the person concerned should be arrested and brought before a justice of the peace. He pointed out that under federal law the accused was usually released pending trial; and that, both at the federal and at the provincial level, any person arrested or held in custody must be brought promptly before the competent court and if necessary could resort to habeas corpus if improperly derived of his liberty.

186. As regards article 10 of the Covenant, the representative stressed the independent nature of the post of the chairmen of the disciplinary board and stated that he was appointed from among the members of the legal profession. The Supreme Court of Canada had recognized that disciplinary boards were obliged to act fairly and had laid down that their decisions were subject to control by the judiciary in cases where such boards had failed to respect that principle.

187. Replying to a question raised under article 13 of the Covenant, he stated that the Minister of Employment and Immigration had full discretion to cancel permits for admission to Canada issued by his Ministry; that such permits were issued, mainly on humanitarian grounds, to persons who sought to enter the country without having qualified for admission or who could not qualify; that they were issued on a temporary basis so as to enable such persons to enter for a special purpose or to give them time to qualify for admission if they could; and that persons wishing to enter the country under such conditions were informed that without such permission their presence in Canada would be considered unlawful.

188. Regarding article 14 of the Covenant, the representative explained the procedure for the appointment of judges and pointed out that no person is eligible to be so appointed, neither at the federal nor provincial level, unless he was a barrister or advocate of at least 10 years standing at the

bar of any province or territory; that legal ability and experience were two important factors in the appointment of judges, but that human qualities such as generosity, the ability to listen, integrity and an impeccable personal life were also taken into consideration. He stressed that, until proved guilty, an accused person remained innocent and that his reputation in the eyes of the law remained intact; that every accused person or witness had the right to the services of an interpreter; and that, following a Supreme Court decision, the courts could no longer rely upon the theory of abuse of process to suspend proceedings which might cause prejudice to an accused owing to undue delay in the conduct of the prosecution's case.

189. Replying to questions raised under article 17 of the Covenant, the representative stated that a judge other than a "magistrate" could at the request of the Solicitor-General, at the federal level, or of the Attorney-General, at the provincial level, or of their agents, authorize the interception of private communications provided that he was sure that it would enable the administration of justice to be best served, that other methods of investigation had failed or had little chance of success and that the matter was so urgent that it would not be practicable to carry out the investigation using other methods only. The authorization had, inter alia, to show the offence necessitating the interception, the type of private communication which could be intercepted and the period for which it was valid. Illegal interception was a crime punishable with five years' imprisonment, but that evidence obtained therefrom did not for that reason become inadmissible, unless the judge or presiding magistrate considered that to admit it would tarnish the image of justice. The Solicitor-General of Canada could issue a warrant authorizing the interception or seizure of any communication if he was convinced, on the basis of evidence given under oath, that such interception or seizure was necessary in order to forestall or divert subversive activity directed against Canada or prejudicial to Canadian security.

190. In connection with article 18 of the Covenant, the representative stated that freedom of religion was guaranteed by law; that the advocacy of atheism could not be considered blasphemous libel if it was expressed in good faith and in decent language; that persons whose day of worship was other than Sunday could not be required to work on that day and their employers were obliged to observe that rule, unless they could prove that its application would cause undue hardship to their business; and that the problem of conscientious objection did not arise in practice since there was no compulsory military service in Canada.

191. As regards article 19 of the Covenant, the representative stated that freedom of expression was restricted only by the provisions of the Criminal Code which prohibits defamation and sedition, it being understood that sedition was confined to advocacy of unlawful use of force to bring about a change of Government.

192. Replying to questions raised under articles 23 and 24 of the Covenant, the representative stated that, although marriageable age in Quebec was 14 for a man and 12 for a woman, the consent of the father or the mother was essential until the age of 18; and that, accordingly a bill currently under consideration by the National Assembly of Quebec, the minimum age for marriage would be raised to 18 for both sexes, but persons of at least 16 years of age could obtain permission from the court if they applied for it. As to the status of natural children, he pointed out that they had the same rights as legitimate children, except in the case of ab intestat inheritances, which were handed over

to the legitimate heirs in the order established by law, but that a parent could favor his illegitimate child in his will; that parents must support, provide for and bring up their natural children; and that natural children were made legitimate by the subsequent marriage of their father and mother and in that case they had the same rights as if they had been born of that marriage. If the draft reform under consideration was adopted, natural children would in future be placed on a completely equal footing with legitimate children.

193. As regards article 25 of the Covenant, the representative stated that trade unions could play a political role in Canada as they indeed did in the 1979 general federal election when the Canadian Labor Congress supported one of the political parties; that they could advocate new laws or changes in existing laws; and that their representatives met yearly with federal, provincial, and municipal executives to present resolutions to put into effect the decisions taken at their annual meetings. He stressed that no political party was outlawed in Canada; that everyone was free to join any political party or none; and that with the exception of public servants who, in certain jurisdictions, might have to leave their employment for the purpose, any adult Canadian citizen could be a candidate for a public office.

194. Responding to comments made under article 26 in conjunction with article 2 of the Covenant, the representative pointed out that it was possible for Parliament to enact discriminatory legislation as in the case of pension schemes that made special provision for married pension-holders. The point which the Canadian Government had wished to make in its report, however, was that the laws must be applied equally to everyone unless Parliament deliberately and publicly provided for distinctions of that nature.

195. Replying to the questions and comments raised by members of the Committee under article 27 in conjunction with article 2 of the Covenant, the representative gave a brief history of the development of the status of Indians in Canada in the light of the special relationship that had existed between them and the Canadian authorities following the adoption of the Constitution of 1867 which brought them under the exclusive authority of the Parliament of Canada. Over the years, various bodies had been established to enable the representatives of the Indians and representatives of the Government to exchange views on various aspects of Government policy and to review proposed changes to the Indian Act. Enfranchisement had been a simple formality confirming who left the reserve were no longer entitled to the various rights and privileges accorded to Indians in the reserve by the Indian Act but could now be registered on electoral lists. The present situation was that, as long as a person remained a registered Indian, he had most of the rights of non-Indians, in particular the right to vote, and was also entitled to tax exemptions. Under the Immigration Act of 1976, persons registered as Indians, whether holders of Canadian citizenship or not, had the same right of entry and residence in Canada as Canadian citizens. Indians were free to leave the reserve at all times. Reserves was created as territory over which Indians had exclusive rights and they were not places where Indians were obliged to live. The representative stressed that the Indians participate in the social security system as the rest of the population; that the Government had financed Indian cultural and educational centers; that a number of programmes had been established over the years to foster the social and economic development of Indian communities; and that with regard to Indian territorial claims, the Canadian Government had announced in 1973 that it would negotiate with all natives in areas where original title to land had not been extinguished.

196. The representative pointed out that there was no special act governing Eskimos in Canada and that, according to the Supreme Court of Canada, they came under federal jurisdiction. Unlike the Indians, the Eskimos of Canada had not pressed for special legislation, governing their situation, but they had, together with Indians and Metis, recently been invited to participate in federal meetings to discuss possible constitutional changes for the better protection of native rights.

176. The Committee considered the supplementary report of Canada (CCPR/C/1/Add.62) at its 558th to 560th and 562nd meetings, held on 31 October, 1 and 2 November 1984 (CCPR/C/SR.558 to 560 and 562). 16/

177. In introducing the supplementary report of Canada, the representative of the State party observed that a number of significant measures to protect human rights had been taken in his country since the submission of Canada's initial report, the most important being the coming into force in April 1982 of the Constitution Act, 1982 and with it, in all provinces except Quebec, the Canadian Charter of Rights and Freedoms, which constituted of a series of legal principles having the force and standing of constitutional law.

178. Taking up the various sections of the Charter, the representative explained in detail which sections of the Charter corresponded to the respective provisions of the Covenant.

179. In addition to guaranteeing various rights and freedoms, the charter set out a series of rules governing its application. It also stipulated that the fact that it guaranteed certain rights and freedoms did not restrict any aboriginal treaty or other rights of the Indians, Inuits and Metis of Canada. Further, notwithstanding any other provisions of the Charter, the rights and freedoms referred to therein were guaranteed equally to both sexes. The Charter finally prescribed that it must be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

180. Anyone who considered that his Charter rights had been infringed might, under section 24, apply to a court of competent jurisdiction to obtain such remedies as the court deemed appropriate and just in the circumstances. They included protection against admissibility of evidence obtained in a manner contrary to the Charter. Moreover, under section 52 of the Constitution Act, 1982, where a law was inconsistent with a provision of the Charter, the court must declare it to be of no force or effect.

181. Section 33 of the Charter provided that the Federal Parliament, a provincial legislature or a territorial council might make any of its laws apply for a period not exceeding five years, notwithstanding the provisions of the Charter relating to fundamental freedoms, legal rights and equality rights. However, to continue to have effect a "notwithstanding" clause must be re-enacted, but no re-enactment could be for a period exceeding five years.

16/ The Committee considered the initial report of Canada (CCPR/C/1/Add.43, vols. I and II) at its 205th to 208th meetings held on 25, 26 and 28 March 1980 (CCPR/C/SR.205 to 208 and 211).

182. All the provisions of the Charter relating to fundamental freedoms, democratic rights, freedom of movement and residence, legal rights and linguistic rights had been in force since 17 April 1982. Those relating to equality rights would become operative on 17 April 1985.

183. Although it was true the Charter and the Covenant were not identical in every respect, there was a high degree of similarity and complementarity between them. The Charter gave effect to many of Canada's obligations under the Covenant. Further, the Covenant and the comments made by members of the Committee during the review of Canada's initial report had contributed to many of the changes to the original draft of the Charter.

184. The Covenant was also influencing the interpretation of the Charter. There were at least 20 decisions to date in which judges had referred to the Covenant and other human rights instruments to interpret the provisions of the Charter. One example was the September 1984 decision of the Ontario Court of Appeal in The Queen v. Vedeoflicks Ltd. in which the judge had drawn inspiration from the Covenant to arrive at the conclusion that freedom of religion included not only the ability to hold and openly profess certain beliefs, but also the right to observe the essential practices demanding by one's religion. Moreover, provincial Governments had agreed to consider the requirements of the Covenant when preparing their legislation.

185. The interpretation of the Charter would, however, be determined by the courts in proceedings submitted by persons alleging infringements or denial of the rights guaranteed by the Charter. To date, more than 1,400 judgements had been rendered on the Charter, and at least another 1,000 cases concerning it were before the courts, including some 40 appeals to the Supreme Court of Canada. The litigation sparked off by the Charter over the past two years had revealed certain deficiencies in Canadian laws and the way in which they were applied. However, the interpretation of the Charter thus far had revealed no major pattern of human rights violations in Canada.

186. Entrenching rights and freedoms in the Constitution conferred heavy responsibilities on the Canadian judiciary. In the course of the constitutional debate leading to the adoption of the Charter, concern had been expressed that legitimate policy interests of Parliament or the legislatures might be overridden by the judiciary. As a result, section 33 had been incorporated in the Charter, but only for issues relating to fundamental freedoms, legal rights and equality rights.

187. With one exception, no Government had availed itself of section 33 of the Charter. The National Assembly of Quebec had incorporated a notwithstanding clause in every provincial statute, whether adopted before or after the entry into force of the new Constitution. By that decision, the Government of Quebec indicated its disagreement with the process leading to the new Constitution and with its contents. It was in no way opposed to the protection and promotion of human rights. Indeed, the Government of Quebec had amended the Charte des droits et libertes de la pesonne du Quebec to ensure that, in areas falling under its jurisdiction, all persons in Quebec would enjoy protection similar to that afforded by the Constitution.

188. The Canadian Charter of Rights and Freedoms protected the rights of the aboriginal population. Section 35 of the Constitution Act, 1982, recognized and affirmed the existing aboriginal and treaty rights of the Indian, Inuits and Metis of Canada. Section 37 made provision for the

holding of a constitutional conference to identify and define those rights, including possible new rights for aboriginals. The conference, held in March 1983, had brought together the Prime Minister of Canada, the Premiers of the provinces, the elected leaders of the territorial Governments and the leaders of Canada's aboriginal population and had led to important results, including the extension of aboriginal and treaty rights to men and women on equal basis, and the scheduling of additional constitutional conferences prior to 17 April 1987. The Government also intended to seek the elimination of the discriminatory provisions against Indian women in the Indian Act, in particular section 12 (1) (b) which deprived an Indian woman of her status upon marriage to a non-Indian.

189. As far as legislative measures were concerned, the protection of human rights in Canada did not rest exclusively on the Canadian Charter of Rights and Freedoms. A broad spectrum of measures had been adopted to combat discrimination, including change in the Canadian Human Rights Act and the Canadian Labor Code. For example, the protection of the disabled had been strengthened and the 1983 amendments to the Act prohibited discrimination on the basis of marital or family status.

190. With regard to the right to privacy, guaranteed by article 17 of the Covenant, the Federal Privacy Act, which entered into force on 1 July 1983, protected private life. It also gave Canadian citizens right of access to most of the information about them in Government Files. If access was denied, a complaint could be addressed to the Privacy Commissioner and an appeal might be brought before the courts. The provinces had also adopted legislation to protect privacy. Further, to increase the effectiveness of the measures taken in conformity with articles 6, 10, 14, 23, and 24 of the Covenant, the Criminal Code had been amended to strengthen the protection afforded women, children and the family. The new provisions in the Criminal Code concerning sexual assault ensured greater protection for the complainant.

191. Since the effective enjoyment of human rights required a knowledge of those rights, considerable efforts were being deployed to promote human rights in Canada and also to alert the public to Canada's international human rights obligations. Thus, the texts of the basic United Nations instruments and Canada's reports submitted in conformity with those instruments were distributed free of charge to the public. Funding was also available to non-governmental organizations and individuals seeking to inform the Canadian public about matters related to the Canadian Charter of Rights and Freedoms and to upgrade human rights information. Those organizations had a significant role. The Canadian Human Rights Commissions also conducted campaigns to alert Canadians to the evils of discrimination and to remind them of the remedies available under federal and provincial legislation. The media, the members of the legal profession and the general public were increasingly aware of those rights and new groups consisting mainly of natives, disabled persons and women were militating nationally as well as within international organizations.

192. Referring to misgivings that had been expressed as to the length of time taken by the Government to decide on the admissibility of certain communications, the representative noted that the delay sometimes occurred because of the size and the federal organization of the country, but that they were mostly due to the time devoted to research of which the Committee was the ultimate beneficiary. However, the competent authorities had been requested to proceed more expeditiously and the internal procedures regulating responses was being reviewed.

193. In concluding his introductory statement, the representative of the State party noted that, while Canada's next periodic report was due in April 1985, his Government wished to propose a postponement until April 1988 to enable it to present in that report a better evaluation of the impact of the Canadian Charter of Rights and Freedoms on Canadian laws and administrative practices. Moreover, by 1988 the Supreme Court of Canada would pass judgement on a substantial number of cases involving the Charter.

194. Members of the Committee expressed appreciation for the supplementary report of Canada and for the highly informative introduction provided by the representative of the State party. They welcomed the Canadian Government's seriousness and co-operation with the Committee, expressing particular satisfaction that the Committee's earlier comments had been taken into account in improving the protection of human rights in Canada. Further information was asked for concerning the importance attached by Canada to the Covenant in general and about the Covenant's place in Canadian domestic law at both the federal and the provincial level.

195. With regard to article 1 of the Covenant, one member regretted that there was not more information regarding article 1 in either the initial or the supplementary report of Canada and expressed the hope that such information would be provided, particularly regarding the Canadian Government's attitude to the Namibian and Palestinian people's struggle for self-determination and any practical measures of assistance to those people it contemplated. It was asked whether the use of the term "peoples" in section 35 of the Canadian Charter, in connection with the recognition and affirmation of the rights of the aboriginal people of Canada, did not cast a new light on the applicability of article 1 of the Covenant.

196. Turning to article 2 of the Covenant, several members wondered why the Canadian Charter did not seem to afford protection from violation of individual rights, through discrimination for example, committed by non-governmental or private entities. Further clarification was also requested concerning the precise intent of section 33 of the Charter, and whether its application would not lead to derogations from rights guaranteed under the Covenant. It was noted that the Canadian Charter did not make reference to all non-derogable rights mentioned in article 4 of the Covenant nor to the fact that any derogations that were permitted under the Covenant could only occur in times of public emergency and had to be non-discriminatory.

197. An additional question involving article 2 related to section 24 (1) of the Canadian Charter, which was presumably to be read in connection with article 2, paragraph 3 (c), of the Covenant as an enforcement measure, and not to be interpreted literally, since otherwise individuals merely alleging that violations of rights had occurred would appear not to have recourse to the courts in search of remedies. It was also noted that there was a property qualification for eligibility for membership of the Senate, which seemed incompatible with the prohibition against discrimination based on property contained in article 2, paragraph 1 of the Covenant. Finally, it was asked whether persons excluded from public service on national security grounds could challenge such decisions before judicial or other bodies.

198. In connection with article 3 of the Covenant it was asked why the entry into force of section 15 of the Charter, which dealt with equality and non-discrimination under the law, was to be delayed for three years beyond the entry into force of the rest of the Charter.

199. With reference to article 5 of the Covenant, one member wondered how the important rule of interpretation contained in that article could be invoked in a human rights case in Canada, when the Covenant itself was not applied.

200. Regarding article 6 of the Covenant, members of the Committee expressed a need for information concerning the protection of the right to life beyond issues connected with the death penalty. With regard to the death penalty, concern was expressed at the length of the list of offences for which the death penalty could be imposed under the National Defense Act, which seemed to indicate a departure from the principle of proportionality. It was asked whether the Canadian Interdepartmental Committee on Human Rights, which, in 1983, had considered the question of incomparability between penalties prescribed for certain offences against the Code of Service Discipline and article 6, paragraph 5, of the Covenant, had reached any conclusions and whether, in the view of the Canadian Government, the protection of the right to the life guaranteed by article 6 of the Covenant applied to unborn children.

201. With reference to article 9 of the Covenant, additional information was requested about the remedies available to persons detained for reasons other than criminal offences, such as mentally ill persons confined to psychiatric hospitals or aliens detained prior to expulsion, whether such persons enjoyed protection from arbitrary measures, and whether any person arbitrarily confined to a mental hospital could challenge his admission under section 24 of the Charter. Referring to a well-known case, one member wanted to know what had been done to ensure that individuals could not be subjected to psychiatric experiments without their consents. Another member observed that there was an inconsistency between the subjective right to compensation provided for in article 9, paragraph 5, of the Covenant and the discretionary power of a court, under section 24 of the Charter, to decide whether compensation should or should not be granted. It was further observed that arresting officers were apparently not required to show arrest warrants in making arrests but only to have warrant in their possession "if possible".

202. In connection with article 10 of the Covenant, reference was made to recent reports of riots and suicides in Canadian prisons and it was asked how the Canadian authorities had reacted to such events, what policy was followed in recruiting prison staff and whether there was both a federal and a provincial prison system. Were there any studies or statistics showing that positive results had been obtained in rehabilitating former prison inmates or concerning the number of repeat offenders? Were there any provisions for eliminating all traces of previous prison records after years of good behavior? Additional information was also requested about machinery at the provincial level for the inception of prisons by persons independent of prison authorities.

203. Finally, it was noted that in the Northwest Territories and the Yukon, the number of persons in prison per 100,000 inhabitants was much higher than in the other provinces and it was asked whether that indicated that there were proportionally more Indians than whites in Canadian prisons. If so, it could be further inquired whether indigenous communities had been properly integrated into Canadian life.

204. In connection with article 11 of the Covenant, it was asked whether a debtor who had been declared bankrupt was still able to enter into business agreements.

205. With regard to article 13 of the Covenant, one member asked for additional information about procedures for the expulsion of aliens from Canada and about the treatment of persons arriving in the country without a valid visa.

206. Regarding article 14 of the Covenant, it was asked whether decisions regarding the holding of a trial in camera rather than in public were always taken by the court or at times also by the Government or under some legal provision. Additional information was also requested about the status of the Juvenile Delinquents Act which provided for trials "without publicity, separately and apart from others accused", but which had apparently been declared unconstitutional by a court. It was also asked whether the information that might be prejudicial to the rights of the victim or the accused, and if not, whether legal action had been taken against them and to what penalties they might be, or had been, subjected. Members also inquired whether a foreign lawyer could represent Canadians before Canadian courts without a special license and whether Canadian lawyers could represent a citizen in any court or only certain lawyers in certain courts. In addition, it was asked whether or not the services of an interpreter, when needed, were provided to accused persons free of charge, as required by article 14, paragraph 5 (f), of the Covenant. Further information was sought concerning the degree of independence of superior court judges, the procedures for their removal under section 99 of the Constitution Act of Canada and it was asked whether that Act guaranteed the independence of lower court judges vis-a-vis the Executive. Finally, observing that, by not providing compensation in cases of miscarriage of justice, Canada was failing to comply with article 14, paragraph 6, of the Covenant, one member considered that the situation should be remedied.

207. In connection with article 17 of the Covenant, members noted that the right to privacy was not explicitly recognized in the Charter, nor was it mentioned in the supplementary report. Did any federal or provincial legislation exist referring to the right of privacy? What system existed for protecting the privacy of individuals from infringement through data-processing technologies? Where an individual was denied access to personal information contained in a data bank, was there some type of remedy - a sort of habeas data - available? Citing reports about interference with the privacy of foreign students in Canada, particularly the correspondence of those who were politically active, one member inquired about the extent to which non-interference with privacy was guaranteed to aliens under Canadian laws.

208. With regard to article 18 of the Covenant, additional information was requested by one member on the problem of conscientious objection, particularly in view of the fact that members of the armed forces were still subject to the death penalty. Observing that the restrictions on the rights set forth in article 18, paragraph 3, article 19, paragraph 3, and article 23, paragraph 2, of the Covenant were subject to stricter conditions than those provided in section 1 of the Charter, the member asked whether the restrictions on rights and freedoms possible under that provision were compatible with the Covenant.

209. It was noted that neither the initial nor the supplementary report of Canada addressed Canada's obligations under article 20 of the Covenant and further information was requested in that regard.

210. As for the implementation of article 22 of the Covenant, it was asked whether the jurisdiction of the Canadian Labor Relations Board also covered public service employees and whether there

was any provision for judicial review of the Board's administrative actions or for appeal against its decisions. Additional information was also requested about the nature of the Broad's quasi-judicial and administrative functions and the effect of its decisions at the provisional and national levels, as well as the Board's relationship with the Ministry of Labor.

211. Members also inquired about the legal status of trade unions, whether they could be dissolved as a result of judicial proceeding or by a ministerial decision, whether they were organized at both the national and the provincial level, and whether collective bargaining agreements had general scope or were limited to certain sectors, categories or enterprises. Additional information was also sought about union membership and about the degree to which rights guaranteed under ILO Conventions No. 87 and No. 98 could be exercised under Canada's complex legal system.

212. Referring to article 23 of the Covenant, it was asked why the minimum marriageable age in some Canadian provinces was so low; as an example the Civil Code of Lower Canada was cited which established an age limit of 12 and 14 years for women and men, respectively. It was also asked whether family courts, which had an important role in solving family disputes, operated in all Canadian provinces and territories.

213. Regarding article 25 of the Covenant, it was asked whether article 32 of the Public Service Employment Act, which deprived civil servants of eligibility for election to provincial or federal office, was not so broad as to constitute an unreasonable restriction on rights guaranteed under article 25 of the Covenant. A member also asked whether persons excluded from public service on the grounds that they might constitute a threat to national security could challenge such a decision before the courts.

214. With reference to article 26 of the Covenant, members of the Committee asked for further clarification as to whether section 15 of the Charter prohibited discrimination based on political opinion and how and under what legal rules the right to equality before the law could be restricted. It was asked whether the failure of the Ontario Code to provide protection on the grounds of language, social origin, property and birth, for example, indicated that discriminatory legislative provisions could be adopted.

215. In connection with article 27 the Covenant, it was asked whether any steps had been taken to allow the indigenous population to use their own language before legal bodies or to protect their rights to ancestral lands. Members also inquired whether the term "aboriginal peoples", referred to in section 35 (2) of the Canadian Charter was the same as the term "minorities" employed in article 27 of the Covenant, whether persons belonging to minorities had access to the courts on a group or individual basis, whether treaties or agreements with the aboriginal peoples were fully recognized or restrictively interpreted and whether any members of Indian minority groups had been elected to the Senate or the House of Commons. Further questions were asked about what posts Indians could hold at federal and provincial levels and about measures that had been taken on Indian conditions since the publication in 1980 of the survey by the Department of Indian and Northern Affairs.

216. The representative of the State party expressed appreciation for the Committee's searching comments, which he said showed an understanding of the Canadian situation. Canada had entered a transitional period in the interaction between its domestic law and its commitments under

international instruments, was taking greater account of international standards and was entrenching in the Constitution the fundamental human rights embodied in the Covenant. While the Canadian authorities intended to benefit from the discussions with the Committee, it was unlikely, in view of the complexity of Canada's constitutional system, that all the issues raised by the Committee would be resolved by the time his country's second periodic report was submitted. At the same time, it noted that, although there were some apparent anomalies between the provisions of the Covenant and the Canadian Charter of Rights and Freedoms and some issue were not adequately dealt with in the law itself, that did not necessarily mean that Canada was not strictly complying with the Covenant or that no satisfactory remedies were available.

217. Replying to specific questions raised by members of the Committee, the representative of the State party explained that both vertical and horizontal mechanisms existed for providing a co-ordinated approach to Canada's implementation of the Covenant. Generally speaking, vertical co-ordination was achieved through the activities of federal or provincial ministers who were responsible for various functional areas and through the work of the federal and provincial commissions on human rights. Horizontal co-ordination was accomplished at the provincial level by a minister designated within each province to co-ordinate human rights matters, and at the federal level by the Secretary of State of Canada, assisted by an Interdepartmental Committee on Human Rights, and the Federal-Provincial Committee of Officials responsible for the Human rights.

218. The principal aim was to make the public aware of the issues involved in the promotion of human rights. To that end, human rights material, including the reports to the Human Rights Committee, was widely circulated and the media were encouraged to cover international as well as national human rights affairs. Special attention was paid to schoolchildren, students, and interest groups representing the underprivileged, aborigines, women's groups and visible minority groups so that they were made aware of their rights and could take any appropriate action that might be needed.

219. Regarding the use of indigenous languages, the representative noted that individuals who did not speak either English or French were entitled to the services of interpreters before courts of law, including interpreters for the aboriginal languages. In addition, there were several federal and provincial programmes which assisted aboriginal peoples in preserving their socio-cultural heritage and provided centers where aborigines, particularly children, could learn indigenous languages outside school hours.

220. Replying to questions concerning the ways in which international treaty obligations were transformed into domestic law, the representative explained that such obligations were not automatically incorporated into domestic legislation, since the Federal Executive Government, which made the treaties, simply did not have the required law-making powers. It was up to Parliament to pass any necessary legislation as far as federal law was concerned and, where provincial jurisdiction was involved, the provincial legislatures had to act, failing which Canada was not in a position to apply treaty provisions that involved the need to change existing laws. A complicating factor, in the case of the Covenant was that many provisions, for example correctional issues, were a matter for both levels of government and it was difficult to differentiate between the federal and provincial spheres of competence.

221. With regard to the availability of remedies and procedures for asserting individual rights, it was noted than an individual could attack any law in court as being inconsistent with the Federal Bill of Rights or the Charter. Access to the courts for remedy was broadly available and virtually any person with a legitimate concern about possible violations was able to apply.

222. Addressing questions relating to the limitation of rights under section 1 of the Charter, the representative stressed that any limits had to be "reasonable" and "demonstrably justifiable", with the burden of proof on that score resting with the Government. In addition, the principle of proportionality between ends and means also had to be observed. Thus, the legislature was not free arbitrarily to negate the rights set out in the Constitution. It was particularly noteworthy that in many cases the courts had specifically used the Covenant to assist them in interpreting corresponding rights set out in the Canadian Charter and there had been 20 cases within the past 18 months in which court decisions contained specific reference to the Covenant and to Canada's obligations.

223. With regard to section 35 of the Charter, the representative stated that it was indeed a controversial provision, but one that was necessary for the constitutional entrenchment of human rights standards. In the light of Canada's tradition of parliamentary supremacy, the establishment of immediately enforceable overriding constitutional human rights standards meant that the Government was venturing into the unknown. It should be noted that section 33 was not designed to permit the suspension of obligations under the Covenant in a manner inconsistent with article 4, and its use in Quebec Province had not had a dramatic impact on the lives of people there since the Quebec Charter of Human Rights and Freedoms contained equivalent human rights provisions to those contained in the Canadian Charter. In the view of the Canadian Government, any resort to section 33 would have been compatible with Canada's international obligations, including its obligation to report to the Human Rights Committee and if anyone were ever deprived of a remedy through the use of section 33 they could clearly have recourse to the Human Rights Committee under Optional Protocol, to which Canada was also a party. Section 33 remained controversial in Canada and pressure was being exerted by the Canadian Bar Association and human rights groups for a constitutional amendment to abolish it.

224. With regard to the invocation of the "notwithstanding" clause of section 33 by Quebec Province, it was made clear that Quebec's reasons for doing so were completely unrelated to the protection of human rights. Quebec's own Charter, which afforded the same kind of protection as the Canadian Charter, was applicable to the public and private sectors as well as to relations between individuals and had precedence over other laws. It covered fundamental freedoms, the right to equality, non-discrimination, and recognition of legal, social, economic and cultural rights. It not only addressed instances of intentional discrimination but also systematic discriminatory practices and sought to ensure equality in employment, education and health care. Its implementation was the responsibility of the Quebec Human Rights Commission, an independent organization which, inter alia received complaints, made inquiries and reported to the courts without their charge to the complainant. Thus, the people of Quebec were not deprived of their fundamental rights as a result of the invocation of Section 33.

225. Replying to comments to the effect that the Canadian Charter had no bearing on private action, the representative pointed out that the Charter was not the only instrument for guaranteeing rights

covered under the Covenant. Over the past 40 years, at least, both the federal and provincial Governments had built up extensive networks of protection guaranteeing rights that were recognized in the Covenant and also covering, nationwide, about 25 other kinds of discrimination. For example, a company could not hire or even advertise for a male as opposed to a female worker or pay a man more than a woman for the same work. Thus, although the Charter did not deal with private action, private rights and freedoms were none the less very effectively protected.

226. Responding to concerns that had been expressed over the delay until 17 April 1985 of the entry into force of section 15 of the Charter - the equality of rights provision - the representative noted that, since that section would give equality of rights primacy over all other legislation it was essential to provide provincial Governments with an opportunity to review programmes and statutes which drew distinctions on the basis of age, sex, etc. - some of which, such as those relating to the use of mandatory retirement, were obviously sound.

227. Turning to questions raised by members concerning article 6 of the Covenant, the representative of the State party explained that therapeutic abortions were lawful in Canada in cases where the life or health of the woman concerned would be endangered by the continuation of the pregnancy. Current legislation sought to balance the competing interests of the foetus and the pregnant woman on the basis of health-related - and therefore life-related -criteria. As to the question of the death penalty, domestic provisions authorizing the death sentence had been abrogated and therefore abolished, in 1976 by amendments to the Criminal Code. While the penalty was retained under the National Defense Act, it had not been imposed either during or since the Second World War. The Canadian forces were now studying a comprehensive revision of the National Defense Act and the concerns expressed by the Committee, particularly regarding the need for proportionality between the offence and punishment.

228. Referring to article 9 of the Covenant and the concerns expressed by members about the detention of persons seeking to enter Canada pending an investigation of their background, the representative stated that, while such persons could be authorized to leave the country voluntary without an investigation being undertaken, it was occasionally necessary to detain others in order to prevent the entry of possible criminals, terrorists or illegal immigrants. Such detainees had access to remedies provided by the Immigration Act of 1976, including access to the courts and could invoke the Canadian Charter of Rights and Freedoms or resort to the remedy of habeas corpus.

229. Regarding conscientious objection, the representative noted that the matter was not currently at issue since there was no compulsory military service in Canada.

230. In connection with article 10 of the Covenant, the representative noted that all adults sentenced to more than two years' imprisonment for breach of federal law were detained in federal institutions while other adults were detained in provincial prisons. Juvenile offenders were held in provincial facilities and were to be held in separate establishments as from 1985. Inmates in federal prisons were provided with training programs through the Correctional Service of Canada, which ran the federal establishments. Following the violent incidents which had taken place in prisons the Service had taken a number of measures, including the strengthening of staff training. Under the Criminal Records Act, prison records of persons who had been pardoned were not accessible to anyone, even the police, and under some federal or provincial laws, employment could not be refused to a person

on account of his prison record.

231. With regard to questions related to the independence of the judiciary, the representative explained that there was no distinction between superior court and county court judges in terms of their tenure, since both held office during "good behavior". The reason why only superior court judges were mentioned in the Constitution was probably because of the constitutional standing of the superior courts in the United Kingdom and Canada. The salaries of judges were established and guaranteed under the law and could not be reduced. Procedures for the removal of lower court judges were established in sections 40 and 41 of the Judges Act.

232. Concerning article 17 of Covenant, the representative stated that the silence of the Canadian Charter of Rights and Freedoms on the right of privacy might be more apparent than real. Court rulings indicated that both section 7, encompassing the security of the person, and section 8, guaranteeing security against unreasonable search or seizure, could be successfully invoked in protection of the right to privacy. Wire-tapping was illegal and the Federal Privacy Act together with corresponding provincial legislation placed limits on the disclosure of private information held by the Government as well as restrictions on the collection, retention and utilization of such information. In general, the system in Canada for protecting privacy was fairly comprehensive and ensured full compliance with the provisions of article 17 of the Covenant.

233. As to the related issue of in camera trials in criminal cases, which revealed the conflict between privacy and the right of the public and the media to full access to court proceedings, the Criminal Code and the Young Offenders Act authorized judges to restrict or prohibit public access to the court for reasons of specific public interest, thus making it possible, for example, to safeguard the privacy of young victims of sexual offences.

234. With reference to article 25 of the Covenant, the restriction on the right of civil servants to seek public electoral office was not considered unreasonable, since the public service was based on the principles of merit and impartiality. The Public Service Commission was responsible for assessing requests for leave of absence to seek office submitted by civil servants and could authorize such leave if it found that the office being sought would not be incompatible with the public service position occupied by the applicant. The decisions of the Commission could be appealed. It was not considered unreasonable to refuse entry into public service to persons who might constitute a threat to national security. However, any person refused employment for that reason had a right to be informed of the grounds for refusal and could avail himself of remedies open to him under the Canadian Charter or the Public Service Employment Act. As to the question regarding the property qualification for the office of Senator, the origins of that qualification went back to pioneer days when senators served for life and when society was fairly transient. Such a requirement was then needed to ensure a certain necessary stability. While the question was technically legitimate, it was doubtful that the property qualification had a substantive effect on the implementation of the Covenant.

235. Addressing questions raised by members of the Committee relating to article 27 of the Covenant, the representative agreed that it was essential for indigenous peoples to have land in order to be able to conserve their heritage, but he could not accept that article 27 was the legal basis for that absolute necessity. Settlements reached on land claims by Indians sought to balance economic

development needs with the land needs of the Indian communities.

236. As for the general economic situation of the indigenous population, it was probably true that the unemployment problems in the aboriginal reserves - which four years ago involved about 50,000 people - had not improved much, despite federal and provincial efforts to foster social and economic development. In that regard, however, reference was made to several federal initiatives, including the provision of Government subsidies for housing construction since 1966, the establishment of job creation programmes for the unemployed who had exhausted their insurance benefits, the signing, in 1982, of the first economic development agreement between the federal Government and the Northwest Territories and the granting of special employment attention to indigenous citizens throughout Canada by both the public and the private sectors. The federal Government had also undertaken programmes of financial and other assistance to promote social and cultural development among the indigenous population.

237. Finally, responding to a member's question concerning the number of indigenous persons who were ministers of Government or members of provincial or federal legislatures, the representative stated while he did not know the exact figures, a number of indigenous citizens were in fact currently serving in the House of Commons and in the Senate, and the majority of the members in the Chamber of the Northwest Territories were also of indigenous origin.

238. The matter of compensation for miscarriages of justice, which had been raised by members, was of great concern in Canada. The matter was being given active consideration at both the federal and provincial levels and article 14, paragraph 6, of the Covenant was a very significant element in the analysis being carried out by the federal authorities.

239. Regarding the availability of remedies in cases of pre-trial detention, it was recalled that articles 9 and 10 of the Charter were also applicable to such cases. Moreover, the Criminal Code provided that the person arrested must be presented to a judge with 24 hours, that the matter of bail must be settled within three days and that pre-trial detention could not be extended beyond a total of eight days without the consent of the accused. Habeas corpus was also available and the validity of continued pre-trial detention had to be reviewed by a court every 90 days.

240. On the matter of the availability of remedies for those detained on grounds other than criminal activities, reference was made to the existence of Review Boards for mental health. Legislation in Ontario province provided that a person committed to a psychiatric hospital had the right to be heard and to be represented before the Review Board as well as the right of access to his records, including the medical report on which the committal decision had been based. He could also have recourse to habeas corpus, and to the protection against arbitrary detention afforded under section 9 of the Charter. Persons in hospital could also claim legal aid and have access to independent council regarding their rights and treatment.

241. Turning to the question of protection of detainees in provincial prisons, the representative explained that the relevant mechanisms had not been fully described in the supplementary report since the Government had thought that the Committee's earlier questions had related only to federal establishments. Canada's next report would supply additional information on the situation in the various provinces. In Ontario province the office of Ombudsman had existed for some time, with

the staff of 120 persons and a budget of 5 million Canadian dollars. One third of the Ombudsman's time was devoted to prison-related issues and there had been a full review of all prisons in the province some years ago. Prisoners had uncensored access to the Ombudsman by correspondence and he had free access to the provincial prisons.

242. In response to questions concerning the right of lawyers to appear before Canadian courts, it was explained that Canadians could only be represented by foreign lawyers who received a temporary license from a provincial law society in accordance with its rules. If he could not obtain such license he could nevertheless accompany the Canadian lawyer responsible for the case into the court-room and serve as adviser to him. In lower courts or administrative courts where a Canadian could be represented by persons other than lawyers a foreign lawyer's services could be used. Canadian lawyers could practice in a province only if they were members of that province's law society - lawyers were frequently registered in the law societies of three or four provinces. It was also possible for a lawyer to obtain a license to plead in a specific trial taking place in a province where he did not have law society membership. A lawyer registered in a provincial law society could plead before all courts in that province as well as before the Canadian Supreme Court.

243. As to whether family courts existed in all provinces, it was stated that each province determined for itself whether that type of court was needed to deal with family conflicts.

244. Responding to expressions of surprise that the Ontario Human Rights Code did not cite all the grounds affording protection from discrimination set out in article 26 of the Covenant - particularly the ground of political opinion, the representative explained that each province concerned itself primarily with its own particular problems and focused mainly on grounds which could give rise to discrimination locally. That certainly did not mean that there was no protection against discrimination and discrimination on the ground of political opinion would undoubtedly be punished in Ontario under the law.

245. Referring to one member's observation concerning the disproportionally high number of indigenous persons in custody in the Northwest Territories and the Yukon, the representative stated that steps had been taken to solve that problem.

246. With regard to article 22 of the Covenant, the representative described the Canadian industrial relations system, affirming that, despite the complexity and fragmented character of the system, which reflected Canada's federal structure, the principles relating to free association, the independence of trade unions, the legally binding nature of agreements reached through collective bargaining, the right of employers and employees in cases of conflict to assistance from any impartial third party and freedom to all to withdraw from or to dissolve their organizations were fully respected at both the federal and provincial levels.

247. Referring to article 7 of the Covenant, the representative noted that medical experiments were subject to many safeguards, particularly the provisions of criminal law which prohibited experimentation on persons who were not informed of its nature or who had not given their free consent.

248. Turning to questions that had been raised concerning the absence of Canadian legislation

prohibiting war propaganda, the representative assured the Committee that, despite the absence of explicit legal provisions of that type, the Government and people of Canada were fully aware of the problems of war, the arms race and disarmament. His Government wholeheartedly respected the spirit of the Covenant and would take steps to fulfil its obligations under article 20. It must be recalled, however, that the principle of freedom of expression was absolutely respected in Canada and that the press, in particular, was completely free. There had been a number of developments attesting to Canada's interest in that area, including the recent establishment of a permanent Cabinet post of Ambassador for Disarmament, the setting up of a Disarmament Fund in 1979, and the funding of the Canadian Institute for International Peace and Security in 1984. Canada was contributing and participating actively in promoting disarmament through the United Nations and appreciated the importance of the question of prohibiting war propaganda.

249. Concluding his reply, the representative of Canada stressed that his Government welcomed the constructive dialogue which had been initiated with the Committee and would take due account of the Committee's opinion, as it had already done following consideration of its initial report.

250. The Chairman expressed his warm thanks to the Canadian delegation for its outstanding co-operation with the Committee.
He assured the delegation that its request for postponement of the submission of the next periodic report of Canada would receive appropriate consideration from the Committee.17/

17/ At its 569th meeting, held on 7 November 1984, the Committee decided that the deadline for the submission of the second periodic report of Canada would be extended until 8 April 1988 (CCPR/C/SR.569, paras. 77-80).

45. The Committee considered the second and third periodic reports of Canada (CCPR/C/51/Add.1 and CCPR/C/64/Add.1) at its 1010th to 1013th meetings, held on 23 and 24 October 1990 (see CCPR/C/SR.1010-1013).

46. The reports were introduced by the representative of the State party, who explained that under the Canadian Constitution, legislative authority for the implementation of the Covenant's provisions was shared between federal, provincial and territorial governments. Extensive consultations had thus been necessary between all levels of government prior to Canada's accession to the Covenant, and meetings continued to be held regularly in order to facilitate compliance with its provisions.

47. Referring to the Canadian Charter of Rights and Freedoms, the Federal Human Rights Acts and other legislation which guaranteed and protected the fundamental values enshrined in international human rights instruments, he pointed out that necessary mechanisms had been set up to ensure that those values were upheld. The Supreme Court of Canada in its judgements had often emphasized that the Charter had been significantly influenced by and in many ways reflected the Covenant, in particular with respect to the interpretation given to section 15 of the Charter relating to equality before the law and non-discrimination . Effective remedies for the assertion of the rights and freedoms reflected in the Covenant had been set up, and a substantial volume of litigation had taken place under the Charter. Strong anti-discrimination measures, particularly in areas where discrimination or unfairness were reflected in subtle or indirect ways, had also been adopted.

48. Concerning the recent events at Oka, Quebec, involving Mohawk Indians, the representative underlined the critical importance of addressing aboriginal issues in Canada effectively and in an open and constructive manner. A government strategy to preserve the special place of indigenous peoples, based on the aboriginal and treaty rights contained in the Canadian Constitution, had been announced on 25 September 1990. That strategy was based on the acceleration of land-claim settlements, the improvement of economic and social conditions on reserves, legislative changes regarding the relationship between aboriginal peoples and Governments, and concerns of Canada's aboriginal peoples in contemporary Canadian life. He also noted that pursuant to an Agreement to provide redress to Canadians of Japanese ancestry for injustices they had suffered during and after the Second World War, a Canadian Race Relations Foundation had been established and that a Court Challenge Programme providing for financial assistance to disadvantaged groups and persons who wished to challenge government action relating to equality or minority language rights had been created.

<u>Constitutional and legal framework within which the Covenant is implemented</u>

49. With regard to that issue, members of the Committee wished to receive clarification of the current situation in respect of the 1987 Constitutional Accord relating to Quebec and, more particularly, of the consequences of the rejection of the Accord by certain provinces. They also wished to know whether there had been any further progress since the submission of the third periodic report in the effort to reach agreement on providing a constitutional basis for self-government by the aboriginal groups; what were the respective roles of regular courts, ombudsmen,

the Canadian Human Rights Commission and Human Rights Tribunals in responding to human rights complaints; how Human Rights Tribunals were composed, how much independence they enjoyed and what was the effect of their decisions; what were the activities and composition of the British Columbia Council of Human Rights; and whether there had been any further developments, since the submission of the third periodic report, towards the creation of a body at federal or provincial level with overall responsibility for the protection of human rights embodied in the Covenant. Clarification was also sought of the inconsistencies, if any, between the Charter of Rights and Freedoms and the Human Rights Act as well as between federal and provincial legislation in the field of human rights, and how such contradictions, as well as those between domestic legislation and the Covenant were resolved.

50. In addition, members wished to know what factors or difficulties had been encountered in implementing the Covenant, in particular in respect of the implementation of article 1 of the Covenant and the enjoyment of other human rights guaranteed under the Covenant by persons belonging to vulnerable groups such as minorities, aliens, refugees, prisoners and aboriginal peoples; whether limitations placed on the rights and freedoms protected under section 1 of the Charter were compatible with the corresponding restrictive clauses of the Covenant; whether Indians living in the Yukon and the Northwest Territories had access to the Canadian Human Rights Commission and whether human rights legislation applied to them; whether the aboriginal self-government proposals being negotiated with 161 Indian communities in March 1990 included the right of such peoples to internal self-determination, consisting of their right freely to choose their own domestic and political institutions and form of government, and to pursue their economic, social and cultural development; what the relationship was between article 1 and article 27 of the Covenant in so far as Canada was concerned; and what follow-up action had been taken as a result of views adopted by the Committee under Optional Protocol relating to Canada.

51. In his reply to the questions raised by members of the Committee, the representative of the State party stated that the Meech Lake Accord had not been ratified by the requisite number of provinces and that therefore the process of constitutional reform was stalled. Initiatives to encourage a national dialogue on the fundamental issues were, however, currently under consideration. There had been no further progress since the submission of the third periodic report in the effort to reach agreement on providing a constitutional basis for self-government by aboriginal groups. The first amendment to Canada's new Constitution had arisen out of series of constitutional conferences on aboriginal matters, where self-government had been the dominant issue. Unfortunately, the proposals put forward for constitutional recognition of the right of aboriginal self-government within the context of the Canadian Federation had not attracted sufficient support to result in a constitutional amendment. The aim of the negotiations on self-government by aboriginal groups was to give them control over events which directly affected them. The Government was, however, not willing to concede full sovereignty, in the internationally accepted sense of the word, to the aboriginal groups, because it feared that such a step would result in the breakup of the Federation. Nevertheless, the authorities intended to work with aboriginal people within the existing constitutional framework in order to realize their aspirations for more autonomy and control over matters affecting their lives.

52. Referring to the respective roles of regular courts, ombudsmen, the Canadian Human Rights Commission and Human Rights Tribunals in responding to human rights complaints, the

representative emphasized that, under section 24 of the Charter, the Canadian courts had broad authority to provide any remedy they considered just and appropriate to any persons whose rights had been infringed. Pursuant to section 32 of the Charter, the constitutional protection of human rights was restricted to disputes between private parties and the state. Under Canadian Human Rights Act, any individual or group that had reasonable grounds to believe that a person had engaged in discrimination contrary to the Act could file a complaint to the Human Rights Commission, which operated on an independent basis although its members were appointed by the Government. The Commission served as an initial investigation, conciliation and clarification mechanism to which the parties were given an opportunity to make submissions. Once the Commission decided to refer a case to a Human Rights Tribunal, the Chairman of the Human Rights Tribunal Panel selected the members of the tribunal that was to hear the case. The Panels were selected on a case-by-case basis and were independent of the Human Rights Commission and the Government. The Human Rights Tribunal adjudicated the complaint of discrimination according to a procedure similar to that of a court, although its rules were more informal. In practice, the Commission on Human Rights usually carried the case of the complainant and made representations on his behalf before the Human Rights Tribunal. Tribunal orders could be registered in the Federal Court of Canada and were then enforceable as a court order. Decisions of the Commission not to refer a case to a Tribunal could be appealed against and were subject to judicial review again in the Federal Court of Appeal.

53. Referring to questions relating to the status of the Covenant in domestic law, the representative said that each level of Government acting pursuant to its legislative authority was supreme, subject to the Canadian Charter of Rights and Freedoms. In the case of any conflict in the area of implementation of the Covenant between the federal and provincial legislative power, the federal legislature would prevail. In Canada, international obligations and treaties that might affect private rights and obligations were not self-executing but required domestic legislation in order to be given effect. Each level of Government had therefore to act to ensure the full implementation of all the rights guaranteed by the Covenant in order for those rights to have effect at the domestic level. When Canada ratified the Covenant, it reviewed its human rights legislation to ensure that it complied with it. In addition, a committee of federal, provincial and territorial officials met twice a year in order to supervise the implementation of Canada's obligations under the Covenant. However, the Charter of Rights and Freedoms and the Bill of Rights did not guarantee all the rights enshrined in the Covenant because the relevant legislative processes were complicated and a number of political and linguistic compromises had to be made.

54. Responding to other questions, he stated limitations to the rights enshrined in the Charter were permissible if their objective was important enough to justify interference with an individual's rights and freedom and if the means used to achieve that objective did not have an unnecessarily harsh effect on the individual. Section 52 of the Charter of Rights and Freedoms of the Province of Quebec was currently being contested in the courts. While the Human Rights Act no longer applied to the Yukon, since the territory adopted its own human rights code and arranged for people to refer complaints for decision in the territory, it continued to apply in the Northwest Territories.

55. Responding to questions raised in connection with views adopted by the Committee under the Optional Protocol, the representative explained that after the Committee had decided, in the Lovelace case, that the provisions of the Indian Act were discriminatory and in conflict with article

27 of the Covenant, the Government had amended the Act to provide for the reinstatement of Indian status in respect of women who married non-Indians and their children, as well as other groups. Some 76,000 persons had since acquired Indian status as a result of that amendment. The Committee's decision in the Lubicon Lake Band had confirmed the Government's opinion that it had an obligation to the Lubicons that had to be settled. Private discussions had been held between representatives of the Federal Government, the government of Alberta and the Band's solicitor concerning prospects for acceptance of a government offer by the Lubicons and the possibility for arbitration on outstanding issues. A response from the Band to the government proposal was being awaited.

State of emergency

56. With regard to that issue, members of the Committee wished to know why the protections in section 4 (b) of the new Emergencies Act appeared to be restricted to Canadian citizens and permanent residents and whether such restrictions were compatible with the prohibition against discrimination contained in the article 4, paragraph 1, of the Covenant; what were the relevant provisions of the National Defense Act in respect of protests by indigenous groups; which rights had been suspended under that Act during the incidents near Montreal in the summer of 1990; and whether that suspension was consistent with article 4 of the Covenant. Members also expressed concern about the non obstante clause provided for in section 33 of the Canadian Charter of Rights and Freedoms, which seemed to permit infringements of fundamental rights in certain circumstances, and asked, in that regard, whether the right to life might be involved and, if so, under what circumstances. Further information was also requested on the extraordinary power, referred to in the second periodic report, of the government of Manitoba province to suspend various rights.

57. In his reply, the representative of the State party explained that section 4 (b) of the new Emergencies Act prohibited the detention of individuals on the basis of race, nationality or ethnic origin, color, religion, sex, age or mental or physical disability. The provision was intended to prevent the repetition of incidents which had occurred during the Second World War when Canadian citizens of Japanese decent had been detained solely on the ground of their ethnic origin. Section 4 (b) was subject to the guarantees of the Charter of Rights and Freedoms and the Bill of Rights, and was therefore consistent with the article 4 of the Covenant. Action had been taken during the events of the summer of 1990 under the National Defense Act, which authorized military intervention to assist the civil authority in restoring order. No rights had been suspended, and any individuals who consider that the police had infringed their basic rights had access to the courts.

58. Referring to the questions raised regarding section 33 of the Charter, the representative assured the Committee that its concerns would be drawn to the attention of the Government but noted that in the future the right to life might also be applied in such contexts as abortion, euthanasia and organ transplants.

59. A state of emergency had only been declared once, under the Manitoba Emergency Act, in 1989, when the territory had been affected by major forest fires. The prerogatives under the Act were used in accordance with the provisions of the Charter of Rights and Freedoms and were consistent with article 4 of the Covenant.

Non-discrimination and equality of the sexes

60. With reference to that issue, members of the Committee wished to receive clarification of the references in section 6 of the Charter of Rights and Freedoms to "mobility rights" and wondered whether such rights were guaranteed only to Canadian citizens. They also inquired whether the recent review of the Canadian Human Rights Act had given rise to any proposals to amend federal legislation; why political opinion was not one of the prohibited grounds for discriminatory treatment except in the case of Newfoundland; whether any measures had been taken to amend the Unemployment Insurance Act so as to eliminate discrimination on such grounds; whether Indians could invoke both the Human Rights Act and the Indian Act; and whether the fact that all female offenders in the country were placed in a single federal penitentiary for women, sometimes very far from their usual place of residence, did not constitute discrimination against women. Clarification was also sought of the concept of "reasonable accommodation" and of the functions and activities of the Citizens' Participation Branch.

61. In addition, members recalled that although the Covenant did not speak of the right to immigration or even the right to asylum, the Committee was of the view that article 26 of the Covenant required that all rights and advantages should be accorded to everyone without discrimination of any kind. In that regard, it was asked what measures had been taken to avoid any discrimination on the grounds enumerated in article 26. In particular, concern was expressed over heavy backlog of cases of asylum seekers and, in that respect, over the priority that was being accorded on the basis of the language spoken by the asylum speaker.

62. In his reply, the representative of the State party said that "mobility rights" were covered by general legislation that did not discriminate on the basis of province of origin and did not require residence as a condition of eligibility for social services. Rights restricted to Canadian citizens concerned only the right to enter, stay in and/or leave the country. The comprehensive review of the Canadian Human Rights Act had not yet been completed. Section 15 of the Charter prohibited discrimination on a certain number of grounds, which were not exhaustive and were sufficiently broad to cover any other grounds of discrimination not expressly mentioned. The Federal Government was considering whether or not the questions of political or other opinion should be added to the Canadian Human Rights Act as prohibited grounds for discrimination. Various provisions of the Unemployment Insurance Act had been judged discriminatory by a Human Rights Tribunal and a bill had, consequently, been tabled in Parliament to enable those flaws to be eliminated. The principle of "reasonable accommodation" held that every thing possible had to be done to enable the person to participate in employment or to have access to goods and services, although that requirement had to be subject to a balancing test to see whether it would cause undue hardship, cost or inconvenience to the employer. The Citizens' Participation Branch sought to protect the rights of individuals by helping federal, provincial and territorial governments to implement international treaties, preparing for the ratification of new instruments and promoting a greater awareness of human rights. The provisions of article 67 of the Human Rights Act were intended to prevent the special measures taken on behalf of Indians from being denounced as discriminatory because they did not apply to all Canadians. Only women sentenced to more than two years' imprisonment were committed to a penitentiary; others were held in one of the many establishments administrated by the provinces. It had been recently announced that the women's

federal prison was to be closed and that five regional establishments were to be constructed.

63. Referring to questions raised in connection with asylum seekers, the representative emphasized that the 1951 Convention relating to the Status of Refugees and the Covenant had to be considered jointly, since, although each of those instruments had its own special place, they complemented and reinforced each other. The Canadian Government's position with regard to the backlog of cases was that the situation was complicated by the very large number of people already in Canada and seeking to remain. The Government was, however, doing its utmost to process quickly and without discrimination the cases of thousands of refugees. Each case was considered individually to determine whether the asylum seeker met the required conditions for obtaining the status applied for. Priority had been given to English-speaking immigrants, perhaps because it was easier and quicker to deal with applications when a decision could be taken without recourse to the service of an interpreter. No discrimination was in fact involved since the Government was attempting to deal as fast and as effectively as possible with the situation, and those concerned were meanwhile living, working and in some cases receiving social welfare benefits in Canada.

Right to life

64. With regard to that issue, members of the Committee wished to know, in the light of the defeat in the House of Commons of a motion to reinstate capital punishment, whether there were any prospects for the early ratification by Canada of the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty.

65. In his reply, the representative of the State party said that capital punishment had been abolished in Canada, except for certain offences which came under the National Defense Act. Although the competent authorities were currently giving careful consideration to the Second Optional Protocol in the light of the National Defense Act, with a view to possible accession, no decision had yet been taken.

Liberty and security of the person

66. With reference to that issue, members of the Committee asked what the grounds were for imposing an indeterminate sentence of detention; how the maximum length of such a sentence was related to the maximum fixed term established for a given offence under the Criminal Code; whether there were any maximum limits on the length of pre-trial detention; what was the average length of pre-trial detention; how much variation there was in this regard among the various provinces; and what was the average duration of criminal proceedings. They also requested clarification of the reference to "specified restrictions" on the right of detainees to apply for a writ of habeas corpus in section 708 of the Criminal Code and of the current practice of the Yukon government of incarcerating individuals who were unable to pay fines. They also wished to know at what age a youthful offender was considered to be a juvenile delinquent under Canadian law; whether there was an age below which pre-trial detention was not authorized; and what was the proportion of indigenous persons to non-indigenous persons imprisoned in the Yukon and Northwest Territories.

67. Observing that the Supreme Court had interpreted the term "detained" broadly, members wished to know whether that broad interpretation was actually applied in all cases, particularly to arrested

entry seekers; whether police officers who had power to arrest and detain at the point of entry were obliged to follow a code of conduct; whether there was a complaints mechanism open to individuals who claimed to be victims of arbitrary arrest; what guarantees there were for preventing abuses during detention at police stations; and whether there was any provision for compensation for arbitrary arrest. Further information was also requested on provisions governing the obligation to obtain a person's consent before subjecting him to medical experimentation.

68. In his reply, the representative of the State party explained that the clause of the Criminal Code under which an indeterminate sentence of detention was imposed on a person considered a "dangerous offender" applied only to persons found guilty of a serious personal injury offence which was part of a pattern of generally aggressive, violent or brutal behavior or failure to control sexual impulses. The Supreme Court had decided that the clause was compatible with the guarantees in the Charter of Rights and Freedoms against cruel and unusual treatment or punishment.

69. Section 503 of the Charter of Rights and Freedoms provided that a detained person had to be brought before a justice within 24 hours. Extremely strict time-limits for reviewing decisions were fixed in each case to prevent arbitrary detention, and if the judge considered that continued detention could not be justified, he was obliged to order the release of the accused or issue directives for the trial to take place as soon as possible. The average duration of pre-trial detention varied from province to province, ranging from an average of 3 days in Nova Scotia to 20 days in the Northwest Territories. In all cases, arrested persons were detained in strict compliance with the law and brought before a magistrate very quickly. A petitioner applying for a writ of habeas corpus had first to prove that he actually was under detention and, second, to establish probable grounds for his claim that his detention was illegal. A ruling by the Supreme Court in 1985 had confirmed that any individual who was physically on Canadian territory, in particular an asylum seeker, had access to the same rights as residents. Although it remained a statutory option, the incarceration of fine-defaulters was no longer imposed by the Yukon courts because it was fundamentally unfair to certain racial and socio-economic groups, particularly aboriginals. Juveniles between the ages of 12 and 18 were dealt with by juvenile courts and could be detained prior to trial in the same conditions as adults. The percentage of aboriginals in the prison population of the Northwest Territories and the Yukon was around 45 percent but that figure had to be seen in relation to the total indigenous population of those territories, which was far higher than in any other region of Canada.

70. The Canadian authorities were currently preparing reports on the human rights implications of several medical/legal issues. No medical research performed on or in any way affecting a human being was authorized by the civil and, where necessary, penal authorities unless the person concerned had given his informed consent.

Right to a fair trial

71. With regard to that issue, members of the Committee wished to receive information concerning the guidelines relating to compensating persons for wrongful convictions or imprisonment and on the experience to date in applying such guidelines at the federal and provincial levels. They also wished to know whether there was a system of legal assistance for persons who could not defray the costs of their trial; what guarantees there were for the independence and impartiality of the judiciary,

in particular of the courts dealing with immigration or refugee issues and of the Human Rights Tribunals; what the procedures were for appointing both Supreme Court judges and lower court judges; what were the current provisions regarding a judge's immunity and pension rights; and whether any serving judges were immigrants from Asian or African countries. In view of the fact that the judicial system varied from province to province, it was also asked whether judges were qualified to perform their functions in any province; whether the various provincial systems were totally independent from one another; and whether the Federal Government had considered setting up uniform minimum standards regarding the criteria for the independence of the judiciary and for the examinations system for admission to the bar. Additional information was also requested concerning the equality of individuals before the courts and on the issue of discrimination in the administration of justice.

72. In his reply, the representative of the State party stated that in March 1988, the federal and provincial ministers responsible for the administration of justice had adopted a set of guidelines for persons wrongfully convicted and imprisoned. In the case of non-pecuniary damage, compensation could not exceed $Can 100,000, but there was no recommended limit in the case of pecuniary damage, compensation being then decided according to the individual case. Legal aid was considered an essential feature of the Canadian legal system, and such services were basically the responsibility of the provincial authorities.

73. Responding to questions raised in connection with the independence and impartiality of the judiciary, the representative pointed out that under articles 96 to 100 of the 1986 Constitution Act, the Governor General appointed the judges to the higher, district and county courts in each province. It was for the Federal Parliament to legislate on the salaries, allowances and pensions of judges of the higher, district and county courts. The salaries and allowances of federal judges were fixed by law and could not be altered by administrative decision. Judges appointed at federal level could not be removed from their posts against their will before the compulsory retirement age of 75, except as a result of an independent judicial inquiry. While uniform criteria were applied to federal judges with regard to their appointment, term of office and salary, the conditions applying to provincial lower court judges varied from province to province. Any member of a provincial bar could appear before the Federal Court of Appeal or the Supreme Court. The constitutional obstacles and practices preventing the mobility of judges were to be gradually eliminated.

74. Replying to other questions, the representative referred to the issue of the slowness of justice and explained that Canadian courts gave priority to settling criminal cases quickly and that the Supreme Court had been able to eliminate almost the entire backlog of criminal cases. The authorities had become more aware than in the past of the need to ensure that the judiciary and the bar were truly representatives of Canadian society. Following the Marshall case, measures had been taken in Nova Scotia to ensure that race, color, religion, beliefs or national origin would have no influence on the judgements of the courts in the province. In the cases where the police had fired on blacks who had broken the law, the policemen concerned had been arrested and had faced criminal prosecution following an inquiry carried out by the interior provincial police. The concern aroused by such incidents had led to the setting up, on 13 December 1988, of a Task Force on race relations and policing. A bill had been tabled in Parliament following the Task Force's report and passed in June 1990, replacing the Police Act. New principles had thus been adopted regarding, inter alia, the representation of minority communities in police forces and disciplinary measures to

be applied in order to prevent the recurrence of such incidents.

Freedom of movement and expulsion of aliens

75. With reference to that issue, members of the Committee requested clarification of the provisions governing the expulsion of aliens and asked how the right of aliens to appeal against an expulsion order was ensured in practice; whether such appeal had suspensive effect; and whether there were any differences among the provinces in the legislation or the rules regarding freedom of movement and expulsion of aliens.

76. In his reply, the representative of the State party said that some categories of aliens, particularly foreign residents, could appeal to the Immigration and Refugee Board, a course of action which automatically entailed the suspension of the expulsion order. All other aliens could request the Federal Court of Appeal for a review of the decision and could also obtain a suspension of the expulsion order for 72 hours. There were no differences among the provinces in the legislation or the rules regarding freedom of movement and expulsion of aliens, which came under federal law alone.

Freedom of assembly and association

77. In connection with that issue, members of the Committee wished to receive detailed information on the legislation in the provinces of Ontario, Nova Scotia and Prince Edward Island, which appeared to establish a trade union monopoly contrary to the paragraph 3 of article 22 of the Covenant. It was further asked whether the right to collective bargaining was guaranteed under section 2 (d) of the Charter of Rights and Freedoms; and why the rights of peaceful assembly had to be balanced against the right to make use of public property.

78. In his reply, the representative of the State party explained that in the provinces of Ontario, Nova Scotia and Prince Edward Island, any trade union had to be representative of the employees concerned, that machinery had to exist whereby another trade union could in turn become representative of those employees, and that the workers concerned should generally approve the approach adopted. The right to freedom of association in Canada included the right to collective bargaining. Although everybody was free not to belong to a trade union, a sum equal to the amount of union dues was deducted from each salary, but any person who for social, religious or cultural reasons refused to join a trade union could declare himself a conscientious objector and be exempted from paying union dues. Concerning restrictions on assembly in certain places, the Supreme Court decision in 1982 on a case concerning the requirement to obtain a permit to hold a march in the city of Montreal would undoubtedly undergo further review in the future.

Freedom of expression

79. In connection with that issue, it was asked whether the dissemination of "false news" was a crime under Canadian law and whether everyone had access to information held by public authorities.

80. In his reply, the representative explained that the dissemination of "false news" was an offence

under Canadian law although it was a difficult offence to prove. The term "false news" did not extend to false information disseminated in the belief that it was true. Access to information was covered by laws on freedom of information and on privacy. A commissioner for access to information had been appointed. Anyone could obtain information held by government institutions provided that the information was not detrimental to federal, provincial or international relations, did not concern a current criminal investigation, and was not protected by the Privacy Act.

Protection of family and children

81. With reference to that issue, members of the Committee wished to know whether all discrimination between spouses and all differences in the status and rights between children born in and out of wedlock had been eliminated under various federal, provincial and territorial laws; and whether there had been any further development of case law since the submission of the second periodic report confirming that discrimination on the grounds of marital and family status was prohibited under section 15 of the Charter of Rights and Freedoms.

82. Observing that the Charter of Rights and Freedoms did not seem to provide any specific protection for the rights of the family, members asked whether those rights were recognized in any other part of Canada's law. It was also asked whether recent changes in the laws governing immigration had deprived the dependants of immigrants who had already been admitted to Canada of the priority which they had previously enjoyed; how the immigration authorities would treat an application from members of an immigrant's family who had not yet joined the immigrant in Canada; whether the behavior of an immigrant's children might effect his right to stay in Canada; and what measures had been taken to promote family unity among indigenous groups. Further information was also sought about a recent amendment to the Divorce Act of 1985, under which a person might be refused a civil divorce if he or she had refused to cooperate in the removal of a religious barrier to the remarriage of the other spouse; and about the problem posed by minors joining religious cults without the consent of their parents.

83. In his reply, the representative of the State party said that recent provincial and territorial legislation had eliminated all distinctions between children born in and out of wedlock, with a few expectations relating primarily to cases where it was difficult to establish paternity. Section 15 of the Charter of Rights and Freedoms did not specifically refer to discrimination on the grounds of marital or family status, and the Supreme Court had not yet had an opportunity to pronounce on the matter.

84. Priority processing abroad of the dependents of immigrants had been initiated and was speeding up the resolution of cases in which family members residing in their country of origin were enduring life-threatening situations or were minors were allegedly abused or left unattended. In the past, certain indigenous children had been sent to residential schools outside their communities, where they had been cut off from their families, culture and religion. Currently, however, there were 280 band-managed schools providing education to 36 per cent of indigenous students. Efforts were under way to establish additional agencies designed and managed by indigenous people, which would provide services to all indigenous children and their families in their own communities.

85. The purpose of the recent amendments to the Divorce Act was to avoid the application of undue

pressure on a spouse to obtain the latter's agreement to an unfair divorce settlement in order to conform to the dictates of a religion. Allegations to the effect that the Canadian immigration services had threatened foreign families and civilians were unfounded. If such threats were ever made, corrective action would be taken, and disciplinary measures and civil liability would ensue. With reference to article 18 of the Covenant, some parents had sought court rulings in cases where necessary medical attention had been administrated to a child because of religious beliefs. The courts had dealt with those cases by endeavoring to strike a balance between the right of citizens to freedom of religion and the need for the State to protect members of the community, particularly those in a situation of dependence.

Right to participate in the conduct of public affairs

86. In connection with that issue, members of the Committee wished to know whether the decision in Osborne v. The Queen applied to public servants in general or was restricted to a specific category of public servant; whether that case had any bearing on the right of a public servant to stand for election; and whether a public servant was required to resign in order to become a candidate. Clarification was also sought as to the compatibility with the Covenant of the decision in Fraser v. Public Service Staff Relations Board, in which the Supreme Court had held that limits might be imposed on the right of a public servant to speak on public issues in the interest of maintaining an impartial public service.

87. In his reply, the representative pointed out that the absence of political partisanship, provided for in section 33 of the Public Service Employment Act, was a convention adhered to by all public servants to ensure the neutrality and professionalism of their work. Public servants other than deputy minsters could, however, apply for a leave of absence in order to seek electoral office. In practice, leave was apparently granted and the applicant allowed to return to public service if his bid for election was unsuccessful. The Supreme Court was currently examining existing legislation to determine whether it was adequate under the Canadian Charter and article 25 of the Covenant. In the Fraser case, the Supreme Court had found that, in the circumstances, the Government was justified, as an employer, in expecting that its employees should not engage in an activist campaign against one of its major policies.

Right of persons belonging to minorities

88. With regard to that issue, members of the Committee wished to know what factors and difficulties, if any, existed with respect to the implementation and enjoyment of the rights under article 27 of the Covenant. They also inquired about the content of the self-government proposals being negotiated with Indian communities and the current prospects for a successful outcome of those negotiations; how many members of Indian minority groups had been elected to the Senate or to the House of Commons; and what legislative measures were envisaged by the Canadian Government for making progress in the recognition of linguistic rights.

89. In addition, further clarification was requested regarding the programme of assistance to minorities. It was asked, in particular, whether that programme contained measures, other than mere assistance, that would ensure the minority groups' participation and full incorporation into Canadian society; whether there was any relationship between indigenous treaty rights and self-government

proposals and the settlement of land claims; who had control over the natural resources of the indigenous areas; what measures had been taken with a view to guaranteeing the right to aboriginal self-government; and whether the First Ministers' Conference mentioned in the second periodic report, had in fact been convened. Further information was also sought on the representation of indigenous people in the provincial governments and, in particular, on whether their representations depended on the electoral system or on other factors.

90. In connection with the concept of minorities in Canada, it was asked whether, over and above their status as cultural minority groups, the indigenous minorities were recognized as a people; whether any consideration had been given to amending the Constitution in order to take account of Canada's multicultural heritage; what rights and privileges were enjoyed by languages other than French and English; to what extent Indians could use their language to communicate with the authorities; whether there were any books or newspapers published in languages other than French and English; how the protection of minority-language educational rights mentioned in the report was assured; what cultures were covered by the Multiculturalism Act; whether French speakers were considered as a minority in Canada or English speakers as a minority in Quebec; what were the activities and functions of the Canadian Heritage Languages Institute; and what was the meaning of the term "visible" minorities, used in the second and third reports.

91. With reference to the revision of the Indian Act as a result of the Committee's views, members asked whether there had been any perceived difficulties relating to the fact that Indian rights were restored to the first generation only; how the changes had been received by the various Indian bands; and why the Indian Act was excluded from the Canadian Human Rights Act and what the implications of that exclusion were. Concerning the recent events in Oka, members wished to know what had been the reasons underlying the conflict; what were the prospects for a solution; why civil rights had been suspended without any parliamentary debate; and why the National Defense Act had been invoked rather than the Emergency Measures Act.

92. In his reply, the representative of the State party pointed out that Canada was a country with a multicultural heritage and an evolving demographic make-up. Substantial resources were devoted to protecting and promoting, in accordance with article 27 of the Charter of Rights and Freedoms, the cultural diversity that constituted the national heritage. The objective was, therefore, to give everyone the possibility and the right to participate fully, and on equal footing, in the social, economic and political life of the country. For that purpose, Parliament had in 1988 adopted the Canadian Multiculturalism Act, under which a minister was responsible for administrating and coordinating multicultural programmes executed by government agencies responsible to Parliament. In a period of economic constraints, rigorous prioritization was, however, necessary, and controls on programmes might have the effect of limiting progress to a greater extent than was desirable. Although article 27 of the Charter stated that the interpretation given to the Charter had to be consonant with the promotion, maintenance and enhancement of the cultural heritage of Canadians, it had not yet been possible to guarantee, in the Constitution, new rights for the indigenous peoples.

93. In response to other questions, the representative explained that the indigenous peoples of Canada did not consider themselves to be minorities and were not regarded as such by the authorities. The objective of community self-government was to develop a new relationship between Indian communities and the Federal Government by working out practical new

arrangements for Indian government at the community level. Such arrangements were given effect through specific legislation that would replace the Indian Act for that community. Substantive negotiations were under way on 8 projects, involving 30 bands. An additional 15 projects involving 29 bands were at the framework negotiation stage, and projects involving some 170 other bands were at the initial development stage. In two recent cases, in which the Supreme Court had for the first time interpreted the expression "existing rights of the Indians" in article 35 of the Constitution, it was held that what characterized a treaty was the intention to create obligations, as well as a certain degree of solemnity. Amendment of the Indian Act designed to eliminate discrimination against Indian women, to restore the rights of the bands, and to grant them greater autonomy had posed problems because some bands were opposed to the inclusion of women and children in their lists. That would entail the reintegration of 76,000 persons into communities which had not yet been provided with resources for such an increase.

94. Referring to questions raised in connection with the proportion of seats in Parliament held by members of minority groups, the representative pointed out that there were 295 seats in the House of Commons, 3 of which were held by indigenous people. In the Senate, they held 3 out of 111 seats. In recent elections in the Province of Manitoba, indigenous people had obtained 3 out of 57 seats in the legislature, and in the Northwest Territories, where they formed a majority of the population, indigenous people held 16 out of 24 seats in the legislature.

95. The 1988 Official Languages Act represented significant progress in the recognition of the linguistic rights of all Canadians. With the expectation of the Northwest Territories, the official languages were English and, in Quebec, French. Although only the English-speaking and French-speaking communities could deal with the authorities in their own language, the right to address courts in one's mother tongue was guaranteed by the Constitution, and the possibility of using indigenous languages before the courts was being increasingly provided for, quite apart from the use of an interpreter guaranteed by the Charter of Rights and Freedoms.

96. The Federal Government had initiated and maintained important programs to preserve and enhance the heritage languages of Canada's communities that provided financial support and technical assistance to many communities for that purpose. Six indigenous languages enjoyed official status in the Northwest Territories, where the study of an indigenous language was compulsory for all schoolchildren. In other regions of the country, more attention was beginning to be given to the study of indigenous languages in primary and secondary schools, which now offered teaching in those languages to more than half of the Indian pupils. There were, however, practical limitations on the aid provided by the Government for such purpose, due particularly to the fact that some languages did not have a written form. The Canadian Heritage Language Institute, established for the purpose of promoting all the languages that contributed to the linguistic wealth of the country, subsidized the preparation of language teaching material, and programmes had also been developed to support the languages of Canada's aboriginal communities.

97. In connection with the situation of the Mohawk Indians and the incidents that had recently taken place at Oka, the representative pointed out that the rights of the Mohawk community had never been suspended and that the Mohawks had never been forbidden access to the courts. It was difficult to assess after the event whether the invocation of the National Defense Act had or had not been justified since the developments that had led up to the situation were extremely complex. The

Oka events had caused the authorities, as well as the leaders of the indigenous population of Quebec and of Canada, to reflect on appropriate ways of settling territorial conflicts and to reconsider the legislation in that field. Although the Government was determined to find a prompt, just and equitable solution to territorial conflicts, the situation was still very difficult and it seemed unlikely that the Constitution would be amended in the near future so as to allow all applications for autonomy to be satisfied. Nevertheless, the Federal Government was already planning to transfer certain responsibilities to the territories, particularly with regard to economic development.

Concluding observations

98. Members of the Committee expressed their thanks to the representatives of the State party for their outstanding cooperation in presenting the second and third periodic reports of Canada and for having responded to the Committee's concerns and questions in an objective, frank and precise way. The two excellent reports of Canada were consistent with the Committee's Guidelines regarding the form and contents of reports from States parties under article 40 of the Covenant and had given detailed information about many issues, particularly the jurisprudence of the domestic courts in respect of the various rights embodied in the Covenant. The reports were most usefully supplemented by the information provided by the representatives in their oral statements. It was clear that Canada took its obligations under the Covenant very seriously and that, since the submission of Canada's initial report, many measures had been taken to protect human rights.

99. At the same time, it was noted that some of the concerns expressed by members of the Committee had not been fully allayed. The situation with regard to Canada's minorities, and especially its indigenous peoples, was still a source of concern. The hope was expressed that the Federal Government would continue its constitutional reforms to facilitate the indigenous peoples' movement towards autonomy and that problems encountered by indigenous peoples would be rapidly settled in a spirit of equity and respect for the right enshrined in the Covenant, in particular in its articles 2, 26, and 27. Persons belonging to ethnic, religious or linguistic minorities should not be denied the right, in community with the other members of their group to enjoy their own culture, to profess and practice their own religion, or to use their own language, and assistance programmes should contain measures that would ensure the minority groups' participation and full incorporation into society. Section 33 of the Canadian Charter of Rights and Freedoms, which provided a derogation clause, did not appear to be compatible with the article 4 of the Covenant. Although Canada's policy towards asylum seekers was very liberal, the accumulation of applications for asylum and the system adopted by the Canadian Government to accelerate the processing of applications for asylum, in which a kind of target group was selected, were sources of concern. Other areas of concern included trade union rights and the right to collective bargaining; the question of the applicability of article 14 of the Covenant to administrative decisions; the differences between provincial legislation and federal legislation in the field of human rights; the discrepancies between different provinces in respect of the length of pre-trial detention; and the minimum age for pre-trial detention.

100. The representative of the State party thanked the members of the Committee for the dialogue they had carried on with the Canadian delegation and assured the Committee that the issues that had not been covered during the consideration of the reports would be dealt with in the next periodic report. The Canadian authorities took their role in promoting the provisions of the Covenant at an

international level very seriously and the appreciation expressed by the Committee had been a great encouragement in that task.

101. In concluding the consideration of the second and third periodic reports of Canada, the Chairman expressed satisfaction at the outcome of the dialogue with the Canadian representatives. The reports, together with the explanations provided by the delegation, had given the Committee useful information about national practice and the implementation of the Canadian Charter of Rights and Freedoms. The discussion with the delegation had also allowed the Committee to shed new light on the relationship between articles 1 and 27 of the Covenant.

CCPR A/54/40 (1999)

223. The Committee considered the fourth periodic report of the Government of Canada (CCPR/C/103/Add.5) at its 1737th and 1738th meetings (CCPR/C/SR.1737-1738), held on 26 March 1999, and adopted the following concluding observations at its 1747th meeting (CCPR/C/SR.1747), held on 6 April 1999.

1. Introduction

224. The Committee welcomes the comprehensive fourth periodic report as well as the additional written information covering the period since the submission of that report. The Committee expresses its appreciation for the presence of the large delegation representing the Government of Canada and for the frank and forthright replies furnished by the delegation to the issues raised by the Committee. However, the Committee is concerned that the delegation was not able to give up-to-date answers or information about compliance with the Covenant by the provincial authorities.

2. Principal positive aspects

225. The Committee welcomes the delegation's commitment to take action to ensure effective follow-up in Canada of the Committee's concluding observations and to further develop and improve mechanisms for ongoing review of compliance of the State party with the provisions of the Covenant. In particular, the Committee welcomes the delegation's commitment to inform public opinion in Canada about the Committee's concerns and recommendations, to distribute the Committee's concluding observations to all members of Parliament and to ensure that a parliamentary committee will hold hearings on issues arising from the Committee's observations.

226. The Committee welcomes the final report of the Royal Commission on Aboriginal Peoples and the declared commitment of federal and provincial governments to work in partnership with aboriginal peoples to address needed reforms.

227. The Committee commends the Government of Canada in regard to the Nunavut land and governance agreement of the eastern Arctic.

228. The Committee welcomes the implementation of the Employment Equity Act, which entered into force in October 1996, establishing a compliance regime that requires federal departments to ensure that women, persons belonging to aboriginal and visible minorities and disabled persons constitute a fair part of their workforce.

3. Principal areas of concern and recommendations

229. The Committee, while taking note of the concept of self-determination as applied by Canada to the aboriginal peoples, regrets that no explanation was given by the delegation concerning the elements that make up that concept, and urges the State party to report adequately on implementation of article 1 of the Covenant in its next periodic report.

230. The Committee notes that, as the State party acknowledged, the situation of the aboriginal peoples remains "the most pressing human rights issue facing Canadians". In this connection, the Committee is particularly concerned that the State party has not yet implemented the recommendations of the Royal Commission on Aboriginal Peoples (RCAP). With reference to the conclusion by RCAP that without a greater share of lands and resources institutions of aboriginal self-government will fail, the Committee emphasizes that the right to self-determination requires, inter alia, that all peoples must be able to dispose freely of their natural wealth and resources and that they may not be deprived of their own means of subsistence (art. 1, para. 2). The Committee recommends that decisive and urgent action be taken towards the full implementation of the RCAP recommendations on land and resource allocation. The Committee also recommends that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the Covenant.

231. The Committee is concerned at the inadequacy of remedies for violations of articles 2, 3 and 26 of the Covenant. The Committee recommends that the relevant human rights legislation be amended so as to guarantee access to a competent tribunal and to an effective remedy in all cases of discrimination.

232. The Committee is concerned that gaps remain between the protection of rights under the Canadian charter and other federal and provincial laws and the protection required under the Covenant, and recommends measures to ensure full implementation of Covenant rights. In this regard the Committee recommends that consideration be given to the establishment of a public body responsible for overseeing implementation of the Covenant and for reporting on any deficiencies.

233. The Committee is deeply concerned that the State party so far has failed to hold a thorough public inquiry into the death of an aboriginal activist who was shot dead by provincial police during a peaceful demonstration regarding land claims in September 1995, in Ipperwash. The Committee strongly urges the State party to undertake a public inquiry into all aspects of this matter, including the role and responsibility of public officials.

234. The Committee is concerned that homelessness has led to serious health problems and even to death. The Committee recommends that the State party take positive measures, as required by article 6, to address this serious problem.

235. The Committee is concerned that Canada takes the position that compelling security interests may be invoked to justify the removal of aliens to countries where they may face a substantial risk of torture or cruel, inhuman or degrading treatment. The Committee refers to its general comment on article 7 and recommends that Canada revise this policy in order to comply with the requirements of article 7 and to meet its obligation never to expel, extradite, deport or otherwise remove a person to a place where treatment or punishment that is contrary to article 7 is a substantial risk.

236. The Committee expresses its concern that the State party considers that it is not required to comply with requests for interim measures of protection issued by the Committee. The Committee urges Canada to revise its policy so as to ensure that all such requests are heeded so that implementation of Covenant rights is not frustrated.

237. The Committee remains concerned that Canada's policy in relation to expulsion of long-term alien residents, fails to give full consideration in all cases to the protection of all Covenant rights, in particular under articles 23 and 24.

238. The Committee is concerned about the increasingly intrusive measures affecting the right to privacy, under article 17 of the Covenant, of people relying on social assistance, including identification techniques such as fingerprinting and retinal scanning. The Committee recommends that the State party take steps to ensure the elimination of such practices.

239. The Committee notes with concern that the State party has not secured, throughout its territory, freedom of association. In particular, the Act to Prevent Unionization with respect to Community Participation under the Ontario Works Act, passed by the Ontario legislature in November 1998, which denies participants in "workfare" the right to join a trade union and to bargain collectively, affects implementation of article 22 of the Covenant. The Committee recommends that the State party take measures to ensure compliance with the Covenant.

240. The Committee is concerned that differences in the way in which the National Child Benefit Supplement for low-income families is implemented in some provinces may result in a denial of this benefit to some children. This may lead to non-compliance with article 24 of the Covenant.

241. The Committee is concerned about ongoing discrimination against aboriginal women. Following the adoption of the Committee's Views in the Lovelace case in July 1981, amendments were introduced to the Indian Act in 1985. Although the status as Indians of women who had lost that status because of marriage was re-instituted, the amendment affects only the woman and her children, not subsequent generations, which may still be denied membership in the community. The Committee recommends that these issues be addressed by the State party.

242. The Committee is concerned that many women have been disproportionately affected by poverty. In particular, poverty among single mothers, who suffer a very high rate of poverty, leaves their children without the protection to which they are entitled under the Covenant. While the delegation expressed a strong commitment to address this inequality in Canadian society, the Committee is concerned that many of the programme cuts in recent years have exacerbated such inequalities and harmed women and other disadvantaged groups. The Committee recommends a thorough assessment of the impact of recent changes in social programmes on women and that action be undertaken to redress any discriminatory effects of these changes.

243. The Committee sets the date for the submission of Canada's fifth periodic report at April 2004. It urges the State party to make available to the public the text of the State party's fourth periodic report and the present concluding observations. It requests that the next periodic report be widely disseminated among the public, including non-governmental organizations operating in Canada.