

CANADA

CERD 27TH No. 18 (A/8718) (1972)

53. The Committee noted with satisfaction that the reports submitted by ... Canada conformed with guidelines laid down by the Committee for that purpose (CERD/C/R.12) 6/ and that they contained sufficient information on measures adopted to give effect to the provisions of the Convention. ... Moreover, general recommendation III, which the Committee adopted at its sixth session, was proposed in the course of the examination of the report submitted by Canada (see paragraphs 92-95 below).

6/ [See Official Records of the General Assembly], Twenty-fifth Session, Supplement No. 27 (A/8027), annex III-A

CERD 29TH No. 18 (A/9618) (1974)

138. The second periodic report of Canada was praised for the comprehensiveness of the information it contained and for the candid and objective manner in which it described not only the measures adopted and the gains achieved but also the difficulties which were encountered and those which remained. The detailed information on the ethnic composition of the population, envisaged in the Committee's general recommendation IV, was welcomed. On the other hand, it was noted that the texts of legal provisions cited in the report were not always supplied; and that no effect was made to relate the various measures described in the report to the specific provisions of the Convention which inspired them or which they were designed to apply.

139. With regard to the measures adopted by the Government of Canada to give effect to the provisions of the Convention, it was noted with appreciation that the policy of the reporting State stressed not only prohibition and punishment but prevention as well, and expressed itself not only in legislative measures but also in administrative measures; and that those measures were adopted at the federal, provincial and local levels. The multiplicity of mechanisms and agencies providing protection and assistance was noted; special mention was made of the Canadian Association of Statutory Human Rights Agencies, the eight provincial Human Right Commissions, the anti-discrimination branch established within the federal public service, the Ombudsmen appointed in six provinces, and the office of the Minister of State for Multiculturalism. Another source of satisfaction was the positive measures adopted to promote mutual respect and co-operation among racial groups in Canada, which were in implementation of the provisions of article 7 of the Convention. Special measures taken to protect native groups and speed their advancement and to ensure their participation in public life were also noted with appreciation, particular attention being paid to the measures to protect their land claims and the educational and vocational training programmes inaugurated for their benefit, in implementation of article 2, paragraph 2, of the Convention. On the other hand, doubt was expressed whether the provisions of the Criminal Code fully met the requirements of article 4 of the Convention; and concern was voiced over the exceptions under the Individual's Rights Protection Act and the Fair Employment Practices Act.

140. Questions were asked during the discussion on the following subjects: the effect of the ratification of the Convention by the Federal Government on provincial legislation.; the powers and functions of the human rights commissions and of the ombudsmen; the situation of the indigenous population; certain provisions of the Indian Act; the decision, if any, of the Supreme Court in the cases brought before it by two Indian-born women; the actions, if any, taken by the provincial human rights commissions on the complaints received by them alleging acts of racial discrimination; and immigration policy and laws.

141. The representative of the Government of Canada replied to, or made observation on, all but the last two questions mentioned in the preceding paragraph. With regard to the immigration laws, he stated that they were currently under review by his Government. For further information on the situation of the indigenous populations, he referred the Committee to two studies drawn up by the

Department of Indian and Northern Affairs, concerning the Canadian Eskimos and Indians respectively, which he would presently make available to the Committee; to the 1972 Canadian annual report to the Human Rights Commission, already submitted, and the 1973 report, which would soon be completed; and to the comprehensive study of the indigenous peoples of Canada which his Government would soon submit to the Secretary-General.

CERD A/31/18 + Corr. 1 (1976)

182. The third periodic report of Canada and its annexes and attachments were considered together with the introductory statement made by the representative of the Government of Canada, which brought up to date the information contained in the report. The Committee took note with appreciation of the extensive information contained in the report and related documents, which included the texts of legislative enactments at the federal and provincial levels and information on administrative measures, and which was organized in accordance with the guidelines laid down by the Committee at its first session. The Committee noted also that account had been taken of some of the observations made during the committee's consideration of earlier reports. It was regretted, however, that information on judicial measures was lacking and that some of the questions raised at earlier sessions remained unanswered.

183. Members of the Committee noted with appreciation the variety and scope of the measures taken by the federal and provincial Governments of Canada and described in the report under consideration. The support given to multicultural activities, especially among Eskimos and Indians, in compliance with article 2, paragraph 1(e), of the Convention, was welcomed, as was also the information that, in connection with the current review of the Indian Act, the authorities were consulting with the parties concerned before adopting measures designed to protect their interests. It was observed with satisfaction that, in the treatment of complaints of human rights violations by the appropriate bodies, primary emphasis was placed on settlement by conciliation, and that preference was given to prevention over punishment.

184. Other aspects of the measures described in the report were considered in a critical vein by the Committee. Several members of the Committee expressed the view that the Act amending the Criminal Code - by adding a new section, 281.2, on hate propaganda - did not meet the requirements of article 4 of the Convention. It was recalled that the Act gave effect to the recommendations of the Special Committee on Hate Propaganda in Canada, created in 1965, well before the Convention had entered into force. Section 281.2 of the amended Criminal Code provided for exceptions which were not envisaged in article 4, paragraph (a), of the Convention and which had the effect of restricting the application of the provisions of that article. Similarly, the Acts passed in the various provinces to ban publicity of a discriminatory nature usually contained a clause stipulating that their provisions should not be interpreted as obstructing the right freely to express opinions on any subject; it was not clear to some members how the apparently contradictory clauses could be reconciled, and - in the absence of information on the practices of the court in that regard - it was difficult to determine which of those provisions prevailed over or restricted the other. Concern was also expressed over the status of compliance with the provisions of article 4, paragraph (b), of the Convention. Several members of the Committee commented on the statement in the report that "Canada undertakes to deal with the activities or organizations, in preference to declaring the organizations illegal". It was recalled that, under the Convention, States parties undertook not only to deal with the activities or organizations covered by article 4, paragraph (b) of the Convention, but also to declare illegal and prohibit the organizations themselves. Nor was the information at hand, concerning the manner in which the authorities dealt with the racist activities of organizations, indicative of vigorous application of the relevant provisions of the Convention: according to the report under consideration, following

demonstrations and disturbances associated with a group called the “Western Guard Party”, “charges were laid” in connexion with the possession of fire-arms, but “propaganda materials of a racist nature” were merely confiscated.

185. Several members commented on the information regarding Canada’s relations with South Africa. Referring to the statement that continued relations with South Africa “afford the [Canadian] Government the opportunity to exert some influence on the South African Government”, some members wished to know what had been done in that regard and what results had been obtained. It was observed that continued relations with a racist regime contradicted the spirit of the Convention, and would hardly assist the elimination of apartheid.

186. The following questions were raised : (a) Did the prohibition of racial discrimination fall within the federal or provisional jurisdiction? (b) What was the relationship between the Ombudsmen and the human rights commissions? (c) What was the present immigration policy of Canada? and was it based on considerations that might be at variance with the objectives of the Convention? (d) With regard to the provisions of article 6 of the Convention: Could Canadian nationals apply directly to the courts, in connection with violations of human rights, without first submitting their complaints to the human rights commissions? (e) How had the complaints against alleged racial discrimination - which numbered 81 in 1973 and 62 in 1974 - been settled, and what measures had been taken to remedy them? (f) What directives had the authorities of the Federal Government of Canada given to the Attorney - General of Ontario, with respect to the “hate telephone message” put on by a “white supremacy group”? and what measures had been taken in that regard?

187. With regard to the first question mentioned in the foregoing paragraph, the representative of the Government of Canada said that competence with respect to racial discrimination was divided between the Federal Government and the Provinces; one of the tasks of the federal Human Rights Commission was to maintain contact with the provincial authorities in order to harmonize methods and to eliminate jurisdictional disputes. As for relations with South Africa, she stated that Canada had repeatedly denounced apartheid and was a contributor to the various United Nations funds for southern Africa. The questions that had been raised concerning the application of article 4 of the Convention would be submitted to the Canadian Government, which “would provide all the additional information”.

CERD A/34/18 (1979)

259. The fourth periodic report of Canada (CERD/C/52) was considered by the Committee together with the supplementary information given by the representative of the reporting State in his introductory statement. He touched upon the Canadian Human Rights Act of 1977 and the activities of the Human Rights Commission brought into existence by this Act as well as the activities of the Human Rights Commission set up in every Province.

260. The Committee expressed its appreciation of the fourth report of Canada which was distinctive by the wealth of information and clarity. Some members of the Committee commended the efforts of the Canadian Government to ensure that the indigenous population was not cut off from the rest of the population. Further information was sought on the per capita income, literacy rate, infant mortality rate and unemployment rate among the indigenous groups as compared with the rest of the population as well as on measures taken to involve the indigenous groups in political activities, to open up employment opportunities for them and, in general, to ensure the improvement of their standard of living. A question was asked whether Canadian authorities envisaged the appointment of members of minority groups to the Federal Human Rights Commission. The information given in the report concerning Indian affairs and the Government's decision to revive the Indian Act of 1951 were welcomed. Clarification was sought of such terms as "registered Indians", "status Indians" and "non-status-Indian".

261. Regarding article 3 of the Convention, some members commended measures adopted by Canada to condemn racial segregation and apartheid and especially the announcement of the withdrawal of Canada's commercial counsellors from Johannesburg. The hope was expressed that the Canadian Government would reconsider its attitude towards the maintenance of diplomatic relations with the racist regimes of southern Africa.

262. It was recalled that during consideration of the implementation by Canada of article 4 of the Convention at the fourteenth session, the Committee had been told that the Canadian Government preferred to take action with regard to organizations of a racist nature as and when the need arose, rather than to take preventive measures against them. The representative of Canada had said further information on the matter would be provided in the fourth report. Since no such information was contained in the fourth report, information was sought on the Canadian's Government position concerning the commitments it had entered into under article 4 of the Convention. Some members were interested in details concerning the division of responsibilities between the federal and provincial authorities in matters relating to racial discrimination, and whether any conflict of jurisdiction or duplication of responsibilities among the various authorities had been noted in connection with the operation of the Human Rights Act and the implementation of the International Bill of Human Rights. Clarification was also requested for the concept of "discriminatory practice".

263. Some members noted that the procedure for dealing with complaints described in the report was not clear. Clarification was sought of the jurisdiction and functions of the Anti-Discrimination Branch of the Public Service Commission. Questions were asked as to what extent discretion could be used in constituting a review tribunal and whether any remedy was available when a complaint was

dismissed owing to a lack of evidence and what means of redress were available when the complaint was upheld and a settlement negotiated.

264. In connection with the implementation of article 7 of the Convention, information was sought whether such public agencies as the Canadian Broadcasting Corporation, the National Film Board, National Consensus and, in particular, institutions responsible for television contributed to propagating the purposes and principles of the Universal Declaration of Human Rights, as they ought to under article 7 of the Convention.

265. The representative of Canada answered some of the questions that had been raised and assured the Committee that other questions would be answered in the next report of Canada. Touching upon the position of minorities in Canada, he said that a long-term programme had been undertaken to improve the standard of living and other conditions of the Indian minority. Some of the minority groups, particularly the Indians, were represented in the Canadian Human Rights Commission.

266. Concerning the application of article 4 (b) of the Convention, he pointed out that according to the Canadian Government that provision was to be interpreted in the light of the rest of the article, which contained an explicit reference to the principles embodied in the Universal Declaration of the Human Rights. Since articles 19 and 20 of that Declaration guaranteed freedom of opinion, expression, assembly and association, it was conceivable that conflicting requirements might arise, in which case an effort would, however, have to be made to reconcile them. That was why Canada considered that each case covered by article 4 (b) had to be examined on its own merits. As far as the jurisdictional conflicts between the Canadian Human Rights Commission and the human rights commissions of the provinces were concerned, he stated that that kind of problem was inherent in the very structure of the Canadian State and an effort was being made to come to terms with it.

267. Touching upon the procedure for dealing with complaints he said that it would, in principle, be desirable to amalgamate the various existing facilities for dealing with complaints concerning acts of racial discrimination. Yet the fact that the Public Service Commission comprised an Anti-Discrimination Branch was not of negligible account. It was the duty of the State to provide itself with the means of meeting its obligations as an employer, and many large companies had themselves been led to set up comparable machinery.

268. Referring to Canada's relations with southern Africa, he described measures taken by the Canadian Government to cease to provide various types of support to South Africa. However, the Government of Canada did not think that it would serve the cause of the elimination of racial discrimination if it were to sever diplomatic relations with that country. It believed that the situation there could be improved only through the pursuit of a dialogue by means of which various kinds of pressure could be exerted.

CERD A/36/18 (1981)

311. The fifth periodic report of Canada (CERD/C/50/Add.6 and 7) was introduced by the representative of the reporting state who explained that, since the federal and provincial governments of Canada had all had to give their assent before Canada could ratify the Convention, the report on its implementation was the result of extensive consultations among the federal and provincial authorities. He then outlined the contents of the report and pointed out that, after the preparation of the report in July 1980, the federal government had proposed to the Canadian Parliament that a charter of rights and freedoms should be included in the proposed new constitution. In providing for increased protection of rights and freedoms, the charter should strengthen the guarantees against racial discrimination. If the proposals were approved, as the Government anticipated, the relevant details would be provided in Canada's next periodic report.

312. The Committee commended the Canadian Government on its very informative, substantive and frank report, which could serve as a model to other countries, and expressed its appreciation for the additional information given by the Canadian representative in his introduction. Moreover, the replies given to the (CERD/C/50/Add.7) showed that Canada was prepared to pursue a constructive dialogue on its difficulties in implementing the Convention and that it was adopting the necessary measures to solve those difficulties. It was noted in this connection that the Federal-Provincial Committee of Officials Responsible for Human Rights in Canada had been entrusted with the preparation of reports to the Human Rights Committee and served as a watchdog to ensure that Canadian Law was in accordance with the International Covenants of Human Rights. It was asked why that Committee had not also been entrusted with the task of ensuring the implementation of the Convention in Canada. Information was requested on whether the Canadian Government interpreted the broad definition of racial discrimination given in article 1 of the Convention as applying to relations between the English-speaking and French-speaking people of Canada.

313. In connection with article 2 of the Convention, the Committee drew particular attention to questions relating to the indigenous population living in the country. It was noted from the report that the federal government's relationship with registered Indians was based on the concept of Indian identity within Canadian society rather than on separation from that society or assimilation into it, and it was asked whether that policy still applied in practice to Indians leaving their reserves and joining other Canadian communities, or whether the long-term aim was not to integrate such people into Canadian society. With regard, in particular, to the Inuit population, information was requested about the difficulties arising between those people and the federal government, especially with regard to land ownership. It was asked whether the efforts of the Canadian authorities to enable the Inuit to benefit from North American civilization were not undermining that people's own civilization and causing it to lose its true identity; what steps had been taken to make the ethnic groups, particularly those living in remote reservations, aware of their rights and of the relevant legislation enacted in accordance with articles 2 and 5 of the Convention; how the relevant government programmes were being implemented and whether there was any machinery for their co-ordination, bearing in mind that their effectiveness might depend on such machinery. With reference to the provisions of the Canadian Indian Act, it was asked what the legal consequences of the distinction drawn between registered Indians and non-status Indians were, how it affected Indians who left reservations and lived outside

and whether they retained their special rights under the Indian Act. It was also asked what were the obstacles to the revision of the Indian Act, what attitude the Indian population had adopted in the matter, and whether it would in fact be possible to implement the plan, referred to in the report to make the addendum to the Canadian Human Rights Act applicable to the Indian Act when the revision of the latter Act had been completed. It was observed in this connection that it might perhaps be difficult to secure the application of certain social principles, for example, equality between men and women, without interfering with Indian traditions. The wish was also expressed that the next periodic report of Canada could summarize the information on Indian, Inuit and Metis populations provided in previous reports.

314. Where article 3 was concerned, it was asked whether the Code of Conduct concerning Employment Practices for Canadian Companies Operating in South Africa had any impact on the companies concerned and whether steps taken by the Government, such as termination of most-favored-nation-treatment or withdrawal of export subsidies or credit facilities, had actually led to a reduction of trade between the two countries. The view was expressed that Canada had gone in condemning racial segregation and apartheid, and it was asked whether it intended to go even further since it still maintained a diplomatic mission in South Africa.

315. With regard to article 4 of the Convention, it was observed that according to the information provided in the report it seemed that the acts enumerated in article 4 (a) of the Convention would be prohibited only if committed through the agency of a telecommunication facility covering television and radio, and more information was requested on what seemed to be inadequate extent to which Canada was complying with article 4 (a). Reference was made, in particular, to the Western Guard Party and the John Ross Taylor case mentioned in the report in connection with information concerning article 4 (a), and it was asked whether the appeal pending before Appeal Division of the Federal Court in that case had yet been heard and, if so, what the ruling had been. Furthermore, it was observed that no direct legislative action appeared to have been taken, under article 4 (b) of the Convention to declare illegal and prohibit organizations which promoted or incited racial discrimination. In this connection, it was recalled that the Canadian representative had stated during the discussion in the Committee of the fourth periodic report that his Government preferred to take action with regard to organizations of a racist nature as and when the need arose, rather than to take preventive measures against them, which explained why no legislation specifically prohibited them. Since more information had been promised on the matter, it was asked what the present position of the Canadian Government was in regard to article 4 (b).

316. In connection with article 5 of the Convention, more information was requested on what the Government itself was doing to help the ethnic groups living outside the reservations to enjoy genuinely equal citizenship and the same modern way of life as other Canadian citizens. Reference was made to the announcement in the report that, at request of Band Councils, the Government would suspend certain sections of the Indian Act which discriminated against Indian women who married non-Indians, and information was requested on whether there had been any cases of suspension. Information was also requested with regard to the official policy of Canada concerning the integration of non-naturalized immigrants into Canadian society. With regard to economic and social rights, it was noted with satisfaction that the Canadian Human Rights Act embodied the principle of equal pay for work of equal value, in accordance with the ILO Convention on the subject,

and that the ILO Committee of Experts had expressed satisfaction with that provision but had requested information on methods devised for determining equivalence of work for the purposes of the Act. It was also asked whether the industrial enquiry commissions based their practice on the provisions of the Public Service Employment Act. In addition, reference was made to the information given in the report that unemployment among indigenous peoples was estimated at 75 per cent. Remedial steps were clearly being taken by the Canadian Government and the hope was expressed that the next periodic report would reflect an improvement in the situation and greater participation by those peoples in public services. It also appeared from the report that in the initial phase of the Black Employment Program there had been no progressive increase in the employment of blacks in the public service since 1974, and it was hoped that situation would improve.

317. With regard to article 6 of the Convention, it was observed that the remedies for alleged discrimination seemed to be largely non-judicial in character, the efforts of the Human Rights Commission being mainly directed toward conciliation. It was therefore asked what the situation was in the event of a settlement not being effected by a human rights tribunal or a review tribunal, and whether an appeal could be made to the Federal Court of Appeal, as in cases where the Human Rights Commission dismissed a complaint as being insufficiently grounded. In addition, reference was made in the report to a decision, described by civil rights lawyers as unprecedented, whereby the Ontario Appeal Court had ruled that a person could sue for damages resulting from racial discrimination. It was noted, however, that an appeal against that decision had been lodged with the Supreme Court of Canada, and it was asked whether a final ruling had been given on whether damages were payable for racial discrimination in Canada.

318. In connection with article 7 of the Convention, it was observed by several speakers that the conciliation procedures organized in the Canadian legal order largely contributed to strengthening the educational effect of propagating the principles of non-discrimination. Hundreds of complaints to obtain redress in this way had been presented after the Canadian Broadcasting Corporation had instructed the public of this possibility. This fact is clearly showing the close connection between the measures under articles 6 and 7 of the Convention.

319. In replying to questions raised by members of the Committee, the representative of Canada referred to the question concerning the application of the Convention to relations between the English- and French- speaking people in his country and stated that his Government's report made it clear that any kind of discrimination was intended to be covered; moreover, Canada had two official languages and a constitutional debate was currently in process on their utilization. By the time Canada prepared its next periodic report, the results of constitutional debate would be available and information could be provided on the subject.

320. With reference to questions regarding the implementation of article 2 of the Convention, the representative stated that Indians possessed the same rights as other citizens whether they lived on or off reserved land. Some of the provincial governments provided programmes for Indians living outside the reserved lands, while other programmes were provided by voluntary organizations. Furthermore, measures had been taken in northern Canada to help maintain the cultural identity of the Inuit by means of radio and television programmes in their native languages and by committing their languages to writing. There was a Minister of State responsible for multicultural affairs whose duty

was to ensure that Indian culture was not neglected and that the value of the culture of the many immigrants from other parts of the world was also recognized. Co-ordinating machinery for government programmes did exist in the form of government committees, which endeavored to ensure that the measures taken were in the interests of the indigenous peoples.

321. As regards Canada's diplomatic and commercial relations with South Africa, the representative stated that two annual reports had already been required of Canadian companies which made public the steps they were taking to comply with the code of conduct for multinational corporations. The trade agreement with South Africa was being abrogated and the Commonwealth preference system with that country had ended in June 1980.

322. With regard to article 4 (a) of the Convention, he referred to section 13 of the Canadian Human Rights Act, and pointed out that the prohibition of the repetition of recorded messages likely to expose persons to hatred or contempt because of their religion or race essentially concerned the telephone and not television or radio, for which express exemption on the ground of freedom of speech and reporting existed. The defamation law covered the question. He also informed the Committee that the Federal Appeals Court had dealt with the Western Guard Party and the John Ross Taylor case referred to in the report. The appeal had been rejected and the original decision reinstated. In reply to questions about legislative measures in implementation of article 4 (b), he asked the Committee to view the matter in the light of the type of legislative system prevailing in Canada and stated that until an attempt to disseminate ideas based on racial superiority or hatred, or incitement to racial discrimination occurred, the Canadians considered that there was no need for legislative measures.

323. In connection with article 5 of the Convention, the representative referred to questions concerning the inconsistency between the Canadian Human Rights Act and the Indian Act, especially as it affected the loss of Indian Status by Indian women who married non-Indians. He stated that that situation continued to exist but, as the report indicated, the Indian Act was being revised. In the meantime, where Indian Band Councils so requested, the Canadian Government was prepared to waive the provisions of the Indian Act so that the Human Rights Act would apply and the status of such women would no longer be affected. When the Indian Act was amended or superseded, it would not be necessary to amend the Bill of Rights, as that would have primacy over all other legislation. Under constitutional revision now before Canadian Parliament, there would be a three-year period during which all legislation would be brought into conformity with the new charter of right and freedoms. Where immigration was concerned, he informed the Committee that immigrants into Canada numbered 130,000 to 200,000 a year and on an average, allowing the five-year delay necessary for obtaining citizenship, each year as many people sought Canadian citizenship as entered the country. With reference to the industrial inquiry commissions, he explained that those bodies had been abolished because the Human Rights Act had superseded the legislation by which they had been established, and problems of racial discrimination were investigated under the latter act.

324. In conclusion, the representative of Canada stated that he would report to comments of the members of the Committee back to his Government and suggest to his authorities that Canada's next periodic report should follow the Committee's guide-lines more closely and give additional information on the subjects requested.

CERD A/38/18 (1983)

390. The sixth periodic report of Canada (CERD/C/76/Add.6 and Add. 7) was introduced by the representative of the reporting State, who highlighted three particular matters that best explained Canada's approach in implementing the Convention. He stated that under the federal system of Canada, government responsibilities, including those relating to human rights, were divided among a central Government, 10 provincial governments and 2 territorial governments and that human rights legislation and implementation machinery existed at each level of government. A mechanism had also been established in 1975 to co-ordinate various approaches to human rights questions, foster human rights in Canada and implement the Convention. Furthermore, the Canadian Charter of Rights and Freedom, which had been enacted and entrenched in Canada's Constitution in 1982, represented the culmination of decades of human rights and anti-discrimination legislation by both the federal Government and the provincial governments. Finally, the representative referred to a number of actions taken in Canada to implement various provisions of the Convention, particularly with respect to articles 2, 6 and 7 of the Convention, such as establishment of the federal multicultural programme dealing with ethno-cultural matters and the promotion of harmonious race relations, the establishment of human rights commissions at both federal provincial levels to enforce human rights, the production of educational materials aimed at combating racism in the schools and the development of special programmes to train police officers to act positively in situations involving racial discrimination.

391. The Committee commended the Government of Canada on its excellent report which, together with the exhaustive accompanying documentation, demonstrated Canada's serious commitment to the implementation of the Convention. The report could well serve as an example to other State parties.

392. In connection with article 2 of the Convention, members of the Committee focused their attention on questions relating to the aboriginal population living in Canada. It was noted that the 1981 Canadian census had for the first time made it possible to establish the size of the aboriginal population of the country and the wish was expressed that such information would be available to the Committee. Members of the Committee also wished to receive information on developments affecting the social, economic, cultural and health situation of the aboriginal peoples, so that the Committee could judge the effectiveness of the Government's policy of improving conditions for those peoples and integrating them into society, while respecting their individual identities. In addition, the Committee wished to receive the documents of the Conference on constitutional matters affecting aboriginal peoples of Canada held in March 1983 in order to have a clear picture of the position of the aboriginal peoples in Canadian society. In that connection, it would be desirable to obtain social indicators of the status of indigenous peoples, the visible minorities and other disadvantaged groups, including gross national product and per capita figures for the various ethnic groups of the country. Clarification was also requested of the meaning of the expression "visible minorities" used in the section of the report on multiculturalism and race relations.

393. It was noted that relations between various ethnic groups continued to present problems in Canada and it was observed that it would be of interest to know why, despite the efforts of the Canadian Government to eliminate racial discrimination, problems still persisted in that respect in the

country.

394. Members of the Committee wished to know, in particular, why persons belonging to indigenous groups who had left the reservations no longer enjoyed the same rights or were afforded the same protection as those who remained on the reservations, what happened when tracts of land in the reservations were opened up for commercial exploitation of natural resources, at what rate the indigenous peoples were gaining access to public services and what was the Canadian Government's attitude towards freedom for the indigenous peoples to determine their own needs. It was noted that the principal difficulties associated with the revision of the Indian Act were linked to such issues as the definition of membership, namely, who was entitled to be registered as an Indian, the question of self-government and territorial claims. Since the Government was committed to revising the Act in consultation with the representatives of the indigenous peoples, it would be of interest to know what changes the representatives of the indigenous peoples wanted to introduce and the extent to which the Government felt able to comply with their wishes.

395. Reference was also made to section 35 of the Constitution Act, 1982, under which the existing aboriginal and treaty rights of the aboriginal peoples were recognized, and to section 25 of the Canadian Charter of Rights and Freedoms, under which the guarantee of the rights and freedoms contained in it should not be construed as derogating from any aboriginal, treaty or other rights or freedoms pertaining to the aboriginal peoples. It was asked, in that connection, what the impact of those provisions was, given the fact that existing legislation was not adequate to provide equality between different ethnic groups, and whether section 52 of the Constitution Act, according to which the Constitution of Canada was supreme law and any law that was inconsistent with its provisions was, to the extent of the inconsistency, of no force or effect, would be applied in respect of amendments to the Indian Act. Additional information was also requested with regard to section 37 of the Constitution Act, 1982, according to which, the rights of the aboriginal peoples had yet to be determined.

396. In connection with article 3 of the Convention, members of the Committee noted that the Canadian Government was maintaining diplomatic relations with the Government of South Africa, that it adopted a strictly neutral position with regard to trade in peaceful goods with South Africa and that it simply discouraged, but did not ban, contacts between sportsmen of the two countries. They observed that that attitude towards the apartheid regime of South Africa did not accord with the behavior the Committee would expect from the Canadian Government, given its exemplary role in promoting human rights, and they asked whether the Government monitored the activities of Canadian companies operating in South Africa to ensure compliance with the Canadian voluntary Code of Conduct concerning employment practices, whether that Code had, in fact, produced any tangible results and whether measures adopted by the Government of Canada in order to reduce the volume of trade with South Africa had produced any effect. The wish was expressed that the Canadian Government would contemplate other measures aimed at isolating South Africa.

397. In connection with article 4 of the Convention, reference was made to the Canadian Charter of Rights and Freedoms and it was asked whether any new developments had occurred as a result of the review undertaken by the federal Government in order to determine whether its laws and regulations were in accord with the provisions of the Charter and whether the review would also seek to

determine if Canadian law and regulations were in conformity with the Convention. It was noted that section 15 of that Charter, which contained provisions against racial discrimination, would not enter into force until three years had elapsed from the adoption of that instrument according to section 32 and would have to be ratified by the provinces. It was observed that section 32 as well as section 33 which allowed the derogation by Parliament or the legislature of a province seemed to rob section 15 of its force. It was asked what would happen if a particular province wanted simply to prevent the execution of section 15 and did so by making the declaration envisaged under section 33 of the Canadian Charter. In addition, clarification was requested with regard to the import of the provision in section 1 of the Canadian Charter which established that the guarantees of the rights and freedoms set out in the Charter were subject only to such reasonable limits prescribed by law as could be demonstrably justified in a free and democratic society. The Charter did not explicitly indicate the criteria which would justify limitations and it was observed that the Charter might be interpreted as authorizing distinction on the basis of race, provided that it could be shown to be reasonable, and that such interpretation would be in conflict with the standards that the Committee was responsible for applying.

398. As regards, in particular, the implementation of article 4, paragraph (b), of the Convention, the view was expressed that the legal, judicial and administrative measures adopted by the federal Government and the governments of the provinces to deal with the activities of the Ku-Klux Klan were not altogether adequate and it was asked what measures were envisaged in response to the resolution adopted in June 1981 by the Canadian Association of Statutory Human Rights Agencies, included in the report.

399. With reference to article 5 of the Convention, it was asked whether any provision had been made for the mother tongue and the culture of the children of immigrants to be taught in schools.

400. Referring to article 6 of the Convention, members of the Committee wished to know what exactly were the provisions of section 24 of the Canadian Charter of Rights and Freedoms in respect of resource procedure, what remedies were available for persons complaining of discriminatory treatment, whether the human rights commissions in Canada were administrative tribunals, how their members were appointed and removed, what measures were taken to ensure their independence, especially when dealing with complaints of discrimination brought against public officials, and whether victims of discrimination could bring their complaints directly to the courts or they had first to take them to the human rights commissions.

401. As regards article 7 of the Convention, it was asked whether the evils of apartheid were brought to the attention of the Canadian Public on Human Rights Day.

402. Replying to questions put by members of the Committee, the representative of Canada referred to the rights of aboriginal people living in his country and pointed out that a study entitled "Indian Conditions, a survey", prepared in Canada in 1980, gave a number of economic, social and cultural indicators. He also explained that many native people emigrated from the reservations to larger communities in search of educational opportunities and better social conditions, but most of them still kept in touch with the reservations and many of them spent part of the year in their new communities and the rest of their time on a reservation. That made it very difficult to quantify such migrations.

In that connection, the representative gave information on the normal, social, and educational services for native people which were provided by the various levels of government in the town or community for each reservation and on certain programmes which supplemented those services. With regard to groups which spoke minority languages, he drew the attention of the Committee to the multiculturalism policy of his Government and to the activities of the Ministry concerned with strengthening the ethno-cultural identity of all Canadians. The representative also stated that the Indian Act would become unconstitutional unless it was revised within two years time, that the Prime Minister of Canada had reaffirmed at the Constitutional Conference in March 1983 the Government's intention to repeal the unacceptable sections of the Act and that the Parliament was expected to give the bill on the subject a first reading at its next session, which would open in the autumn. At the same Conference, the premiers of provincial, territorial and federal jurisdictions had undertaken to submit to their respective legislatures amendments to the Canadian Charter of Rights and Freedoms in order to incorporate the rights of native people in the Charter.

403. With regard to article 3 of the Convention, the representative stated that Canada considered that that article referred only to internal measures to be adopted with regard to apartheid, and not to international policy. Canada rejected the policy of apartheid, but it believed that the diplomatic isolation of South Africa would not help to foster the introduction of reforms leading to the eradication of the apartheid system; on the contrary, the maintenance of diplomatic relations made it possible to communicate to the Government of South Africa Canadian opinion concerning its policies. The representative also explained that the neutral attitude of Canada towards trade relations with South Africa meant that it left to the judgement and conscience of each individual the question of engaging in such relations, without encouraging them. Canadian companies operating in South Africa submitted reports to the Canadian Government concerning their compliance with the voluntary Code of Conduct and the Canadian Government monitored such compliance carefully. He recalled that 10 years ago before the Security Council had imposed an arms embargo against South Africa, Canada had adopted such an embargo unilaterally.

404. In connection with article 4 of the Convention, the representative stated that even in the event of an incompatibility between the sections 15 and 32 of the Canadian Charter of Rights and Freedoms, the pertinent human rights legislation would remain in force, that the declaration on the provincial legislative assemblies would lapse five years after its entry into force, but could be renewed, that all legislation must be compatible with the Constitution Act of 17 April 1982, and that the three-year period for the entry into force of section 15 of the Canadian Charter had been set to allow all jurisdictions to adjust their laws to the Charter. Furthermore, Canada strongly condemned racist organizations and their activities, although it did not outlaw them because of the difficulty of reconciling the provisions of article 4 of the Convention with other rights set forth in the Universal Declaration of Human Rights and in article 5 of the Convention. The activities of the Ku-Klux Klan met with public rejection, several of its leaders had been prosecuted and imprisoned and the House of Commons had unanimously adopted a motion strongly condemning the race hatred and intimidation used by that organization.

405. With reference to article 5 of the Convention, the representative informed the Committee that the number of persons born aboard who were granted Canadian citizenship varied between 150,000 and 200,000 a year, that under the multiculturalism programme, new arrivals were assisted in

integrating, but not assimilating themselves into society and that the teaching of heritage languages, was encouraged, namely the languages of communities which did not speak either of Canada's official languages.

406. With reference to article 6 of the Contention, the representative stated that the independence of the "Commission des droits de la personne, Quebec", was guaranteed by various provisions. The commissioners were appointed by the National Assembly on the recommendation of the Premier, which must be confirmed by at least two thirds of the members of the National Assembly. The Commission recruited its employees directly, submitted an annual report to the President of the National Assembly and was empowered to take certain decisions, such as decisions to hold public inquiries into racial discrimination. Aggrieved persons could submit a complaint to the Commission without incurring any expense, or they could apply directly to the courts. Furthermore, under the Ontario Human Rights Code of 1981, the findings of the Ontario Human Rights Commission were binding on the Ontario provincial government. Appeal could be made to the commission against its decision based on its findings and subsequently to the provincial ombudsmen or to the courts.

407. In connection with article 7 of the Convention, the representative of Canada informed the Committee that on 21 March 1983, the International Day for the Elimination of Racial Discrimination, the Canadian Secretary of State had issued a press communique reaffirming Canada's support for the original objectives of the Decade for Action to Combat Racism and Racial Discrimination.

CERD A/42/18 (1987)

387. The seventh and eighth periodic reports of Canada (CERD/C/107/Add.8 and CERD/C/132/Add.3) were considered by the Committee at its 778th and 781st meetings on 3 and 4 March 1987 (CERD/C/SR.778 and SR.781).

388. The reports were introduced by the representative of Canada who referred to various constitutional and statutory mechanisms for the protection of human rights, in particular the Canadian Charter of Rights and Freedoms, incorporated into Canada's Constitution in 1982, Canada's Criminal Code and the Quebec Charter of Human Rights and Freedoms. He stressed the leading role Canada was playing, particularly among the Commonwealth nations, in the struggle against apartheid and his Government's commitment to continuing to exert pressure on the South African Government to abolish that system. He informed the Committee of the action taken by the federal, provincial and territorial Governments of Canada to achieve the objectives of the Second Decade to Combat Racism and Racial Discrimination and made reference to the Special Committee on Visible Minorities established by the Canadian Parliament, and the measures carried out for the promotion and protection of vulnerable groups in employment and training. A new law had just been adopted of equity in employment, which established a requirement for employers under federal jurisdiction to set up programmes aimed at guaranteeing equality in employment for visible minorities, women, disabled persons and aboriginal people. With regard to aboriginal people, he informed the Committee that important initiatives had been taken. On 26 and 27 March 1987, the last scheduled constitutional conference on aboriginal matters would take place between federal, provincial and territorial Governments and aboriginal organizations with a view to the conclusion of an agreement on an amendment to guarantee self-government. He added that the Federal Government had recently adopted new approaches for the settlement of claims to aboriginal title based on traditional and continuing use or occupancy of land.

389. Members of the Committee stressed the high quality of the reports and congratulated the Canadian Government on the efforts it was making to implement the Convention, taking account of the ethnic composition of its multicultural society. The wealth of information contained in the reports should be given careful consideration by other States parties to the Convention. The reports might serve as a model for federal States, where human rights responsibilities were shared by the federation and the entities composing it. There were, however, enormous differences in the information provided by the provinces, and the progress made in implementing the Convention varied from one province to another. It might be useful in future reports to include a part dealing with the measures adopted since the last report at the federal level and in the provinces and territories, as well as the effects of such measures and what remained to be done.

390. Clarifications were requested regarding any differences between administrative divisions as far as the applicability of the Convention was concerned; it was asked what a territory was and whether it was the Federal Government that exercised jurisdiction over the territories. It was also asked what the Canadian Government would in a case where a province ratified a treaty on a matter that was not within its competence. Members stressed the usefulness of continuing to receive periodic information on the ethnic composition of the population of each province. They requested clarification of the

results of the population census by selected home language in Saskatchewan, which seemed to indicate a decline in the Ukrainian and Amerindian populations and to reflect an assimilation trend contrary to the pluralistic approach. It was pointed out that the adjective “visible”, in the title of the Parliamentary Committee on Visible Minorities, had racial connotations and was not in line with article one of the convention.

391. With regard to article 2 in conjunction with article 5 of the Convention, additional information was requested on the progress made by the various provinces in bringing their legislation and regulations in line with section 15 of the Canadian Charter of Rights of Freedoms, which dealt with equal rights and non-discrimination. It was also pointed out that provinces should submit relevant extracts of their legislation, as well as information on the special measures they had developed for the promotion and protection of disadvantaged groups in conformity with section 15, paragraph 2, of the Canadian Charter. It was asked whether the provinces also applied the principle of pluralism in the case of indigenous peoples, who accounted for a sizeable share of the population and constituted a strategic element of society, or whether that principle was applicable only in the case of whites at the federal level. Members of the Committee wished to know whether indigenous populations were developing at the same rate as Canadian society as a whole and whether the Government was taking measures to ensure equality in that area. It seemed that the equality provided for in the Constitution did not exist in practice. Information was requested on the effects of the measures taken to speed the development of the indigenous populations as it was recommended that the reports by the provinces should include data on indigenous peoples, their languages, level of education, income and housing. It was asked whether the provinces had a system of fiscal commissions for periodically reviewing the allocation of revenue for development purposes to the main population and the indigenous population, and whether there were any tax disputes between the provinces and the Federal Government in that regard. Further information was requested regarding the Indian First Nations and the kind of self-government envisaged for them by the Federal Government. Detailed information was requested on the settlement of the claims of the MicMac people of Nova Scotia; notwithstanding the treaty that their Grand Council had concluded with the United Kingdom in 1752, they had been resettled in Indian reserves after 1944 and their settlements and farms had been confiscated. Clarifications were requested concerning programmes to help immigrant women in Canada, but which might destroy the cultural identity of those persons.

392. With regard to article 3, of the Convention, members of the Committee asked for updated information on Canada’s action in the struggle against apartheid. They wished to know whether the Canadian Government was planning to adopt sanctions and, in particular to sever diplomatic relations with South Africa.

393. Concerning the implementation of article 4 of the Convention, members of the Committee pointed out that the law in Canada did not prohibit the discriminatory activities referred to in that article, particularly in paragraph (b) dealing with racist organizations. In New Brunswick, for example, the law did not prohibit any of the activities referred to in article 4 (a), (b), and (c). They noted, however, that the Minister of Justice had directed that the provisions of the Criminal Code concerning racist propaganda be examined with a view to making any necessary amendments to improve their effectiveness. They expressed the hope that the next report would indicate further progress in the implementation of article 4 in general. They requested information on the regulations

in force in the various provinces to give effect to the provisions of article 4 of the Convention. Reference was made to the activities of the Ku-Klux-Klan in Nova Scotia and additional information was requested to provide relevant information on its activities and the measures that had been taken to prohibit it. Each province might be requested to provide relevant information on its activities. Reference was also made to the racist literature distributed through the mail to schoolchildren, and it was asked whether that was done by isolated sections of the population or, rather, by social group with broader support.

394. Further information was requested with regard to the implementation of article 6 of the Convention, in particular, about prompt legal action for individuals who claimed that their rights under the Convention had been violated. It was asked whether the Convention could be invoked directly in Canadian courts, whether the courts which enforced the relevant criminal legislation in relation to the implementation of article 4 of the Convention were federal or provincial, whether they were composed only of professional judges or of lay judges as well, whether legal proceedings based on that legislation were instituted frequently and what the average number of sentences handed down by those courts was.

395. Additional information was requested regarding the proposal made by the Government of Manitoba to initiate discussions in Canada in connection with the advisability of making the declaration under article 14 of the Convention.

396. Replying to questions and observations made by the members of the Committee, the representative of Canada said that the Constitution divided legislative power between the Federal Government and the 10 provinces, and that the power of each level of government was exclusive: the Federal Government could not enact legislation over property and civil rights, an area of legislation reserved to the provinces, while the provinces could not legislate on matters of criminal law or Indians or lands reserved for Indians. Although in strict law, Canada's two territories were governed pursuant to federal legislation, extensive legislative powers had been conferred on the territorial governments under federal laws. Quebec, like the other provinces of Canada, was aware that it did not have direct access to the ratification of conventions in international law. In confirming its commitment to comply with the terms of similar conventions in the future, the province of Quebec had decided to drop the word "ratify" in favor of "declares itself bound by the Convention".

397. The Committee's interest in receiving demographic data would be conveyed to those involved in the preparation of Canada's report. The "uneven information" provided by the provinces might be explained in part by the nature and diversity of Canada's provinces.

398. Each of the governments in Canada had embarked on a review of the whole of its legislation to bring about the greatest consistency with the new constitutional human rights standards following the adaptation of the Canadian Charter of Rights and Freedoms in 1982. Quebec had initiated a similar review, in the light of the Quebec Charter, which was nearing completion. Most governments had begun their review with laws affected by the provisions of the Charter, and by 1985, amendments to some 60 federal laws had been enacted.

399. With regard to equality of rights under section 15 of the Charter, most governments had

decided to review their laws in a second stage, bearing in mind that that section had only come into force in April 1985. Amendments had been proposed in several provinces and changes had been enacted. Paragraph 2 of section 15 had been adopted in the light of certain notorious challenges to affirmative action, and was similar in aim to article 1, paragraph 4, of the Convention; it was designed to ensure that action programmes or special measures designed to provide for the advancement of the disadvantaged groups would not be jeopardized by the new right to equality that was being encompassed in the Constitution. Thus, for example, the equity in employment legislation and programmes mentioned in the report would be insulated against challenges under section 15, paragraph 1, but in the normal course of events it could not be anticipated that section 15, paragraph 2, would itself be a source of legislation. For many years the census had avoided racially discriminatory questions, but, in consultation with representatives of minority groups in Canada, the term “visible minorities” had been selected as a collective term referring to persons who because of their race or color, were distinguishable from, and smaller in number than, the rest of the population. Visible minorities, who in Canada were non-whites, numbered 1.1 million persons or 5 per cent of the total population in 1981. The census data included in that group individuals of black, Caribbean, Indo-Pakistani, Japanese, Chinese, Korean, Indo-Chinese, Filipino, Pacific Island, Lebanese and Arab origin. The term “visible minorities” was not used to cast any racial slur but rather to face openly and publicly to the needs and potential problems of such persons, so that their situation could be examined and employment and other programmes implemented in order to redress inequities.

400. The mini-census of 1986 had enabled the special needs of disadvantaged groups to be recognized through the manner in which information was sought in the census. The groups for which self-identification had been sought included disabled persons, visible minorities and aboriginal peoples. A major census due to take place in 1991 would elicit more data in those areas. The programmes on immigrant women were aimed at helping them to live full and satisfying lives in Canadian society and did not imply cultural assimilation.

401. The report entitled Canada's Native People contained an extensive study, based on the 1981 census, of the geographical circumstances and the economic and social conditions of aboriginal people. The report indicated a clear and unmistakable disparity between the economic and social conditions of aboriginal people and those of the general population. In partial response to that situation, the Government of Canada increased its expenditure on aboriginal programmes to \$2.8 billion for the 1985/86 fiscal year, which represented a growth rate of roughly three times that of the aboriginal population over the past 10 years. Recent years had seen progress in health and social conditions, life expectancy had increased, infant mortality had declined, and advances had been made in improving housing conditions and increasing employment opportunities.

402. In the field of education, levels of participation had increased significantly, with post-secondary enrolment of status Indians increasing from 2,500 in 1979 to 11,700 in 1985, bringing the participation rate for status Indians in line with that for Canadians as a whole. Further measures relating to aboriginal languages had been taken. An agreement with the Federal Government and the North-West Territories allocated more than \$16 million to provide communication services in French and a number of aboriginal languages which had been declared official languages of the North-West Territories. The Federal Government maintained an important programme to provide for wider use of aboriginal languages throughout Canada.

403. The Special Parliamentary Committee on Indian Self-Government had recommended the development, through both constitutional and non-constitutional means, of a new relationship between aboriginal people and the Government, which would give the former responsibility for their own lives and community. Constitutional discussions were currently under way between representatives of Canada's four main aboriginal groups and all levels of government on the constitutional entrenchment of a right to self-government. A constitutional conference on the subject would begin on 26 March 1987.

404. A number of non-constitutional initiatives had also been adopted by the Federal Government to promote self-government, following the report of the Special Parliamentary Committee. Those initiatives included a community negotiation process, by which Indian and Inuit communities were offered an opportunity to discuss their own self-government proposals with the Federal Government. The arrangements available under that process included new legislative initiatives, changes in administrative policy and flexible funding agreements.

405. To support the federal policy of self-government and community-level negotiations, a new Indian self-government sector had been created as part of the Department of Indian Affairs and Northern Development. That sector was currently considering over 20 self-government proposals from Indian Bands affecting over 50,000 Indians, and concrete progress had been made on several of them. The new legislation also contained a provision for ongoing funding arrangements, in the form of grants, between the Band and the Federal Government. In addition, legislation had been enacted to provide self-government to the Cree and Naskapi Bands of Northern Quebec. Self-government negotiations between non-status Indians and Metis communities and the provincial and federal governments were also well under way, as were developments in the north.

406. The Government of Canada had established a Task Force to Review Comprehensive Claims Policy, and, as a consequence of its report, a revised policy had established new approaches to the resolution of claims to aboriginal title based on traditional and continuing use or occupancy of land.

407. The application of the MicMac Grand Council, or MicMac Tribal Society, for a comprehensive land claim had been rejected on the basis that they had not continued to use the land in a traditional manner. The MicMac could initiate the process of specific claims, a well-established process available to all Indian Bands, under which claims could be brought against the Federal Government on the basis of the Government's alleged failure to meet its lawful obligations relating to the administration of Indian Lands or other assets, or arising from the non-fulfilment of the terms of Indian treaties.

408. Reference had also been made to a treaty of 1752, which had in fact been the subject of a recent decision by the Supreme Court of Canada. The Court had held that, as between the Federal Government and the MicMac of Eastern Nova Scotia, the Halifax Treaty of 1752 remained in force under domestic law and thus protected the hunting rights of the descendants of those who had signed the Treaty.

409. The MicMac Tribal Society had submitted a communication to the United Nations Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political

Rights.

410. In relation to article 3, the representative of Canada recalled that sanctions against South Africa had been adopted by the Canadian Government and its Commonwealth partners, particularly in connection with air links, investments, bank loans, imports and tourism. The Canadian Government had also terminated dual taxation agreements and withdrawn its consular facilities from South Africa. Since July 1985, Canada had allocated \$7 million for education grants for the sectors of the South African population suffering most from the oppression of the apartheid regime; it had also contributed to the United Nations Trust Fund for South Africa and provided assistance to non-governmental organizations working in South Africa. In 1986, Canada had pledged \$1.5 million to help the families of political prisoners in that country. Following a recent visit to Zimbabwe by the Canadian Prime Minister, the Canadian Government decided to intensify pressure on South Africa. If no progress was made towards the goals laid down in the Nassau Accord, the Canadian Government was prepared to invoke total sanctions, and if necessary sever its relations with South Africa, as pledged by the Canadian Prime Minister in the United Nations General Assembly in October 1985.

411. Commenting on the questions raised with regard to article 4 of the Convention, he said that the statement made in the seventh periodic report, to the effect that New Brunswick law did not specifically prohibit the activities referred to in article 4 (a), (b), and (c), needed to be understood in the light of the constitutional division of powers that he had already described. To the extent that the implementation of those provisions of the Convention involved the exercise of criminal law, legislative power lay with the Federal Parliament, and it was accordingly federal law that accomplished the relevant prohibitions in that area.

412. Referring to the actions of the Ku-Klux-Klan, the representative of Canada said that those people were marginal, and he reassured the Committee that the Canadian police found it quite possible to keep track of their activities and to act whenever necessary.

413. He referred to three significant prosecutions under the Criminal Code relating to racial discrimination actions which were pending and stressed the wide variety of other criminal and non-criminal legislation which, when taken as a whole, sought to accomplish the true objectives of article 4 within Canada's legal system. He informed the Committee that careful consideration was being given to the inadequacy of Canada's hate propaganda laws, in the course of a fundamental review of its Criminal Code as a whole. Policy development would be continuing for some time to come, and careful consideration of the Convention was an integral part of the process. Furthermore, Customs guidelines were being developed to restrict the entry of hate materials for dissemination in Canada. The Committee's strict view of the Convention would be explained to a Canadian court in the near future, as part of the justification, under section 1 of Canada's Charter, for one of its existing restrictions on freedom of expression.

414. In relation to the observations made on the implementation of article 6 of the Convention, he said that, under Canadian law and practice, a treaty must be incorporated into the legal system by legislation. Adaptation of the treaty did not affect the distribution of legislative competence: the courts had held that, while the Federal Government alone had the power to conclude a treaty, it could not implement the treaty if its subject matter involved an area assigned to the provinces. The

Convention involved obligations affecting both federal and provincial areas of legislation. Because neither the federal nor the provincial legislatures acting alone could fully implement the Convention, it was not open to Canada simply to establish the text of the Convention itself as domestic law. It therefore followed that an individual could not rely directly on the Convention itself if he perceived that rights under the Convention were not being observed. Recourse in such a case was governed by the relevant federal or provincial implementing legislation. The speed of recourse obviously depended on the nature of the alleged breach, but Canadian law was quite capable of reacting very quickly in cases of need through remedies such as habeas corpus, injunctions and the right to bail.

415. Finally, on the question raised in connection with the statement by the Attorney-General of Manitoba proposing that Canada should make a declaration under article 14, the representative of Canada indicated that Canada's position on that issue must take into account the views of all the provinces, the territories and the Federal Government. The question would undoubtedly continue to be subject of intergovernmental discussion in Canada. In the mean time, however, it should be pointed out that, for most practical purposes within the scope of the Convention, Canadians already had a right of recourse to an international review body under the Optional Protocol to the International Covenant on Civil and Political Rights.

CERD A/46/18 (1991)

157. The ninth and tenth periodic reports of Canada (CERD/C/159/Add.3 and CERD/C/185/Add.3) were considered by the Committee at its 905th and 906th meetings, held on 15 March 1991 (see CERD/C/SR.905 AND 906).

158. The reports were introduced by the representative of the State party, who noted that the responsibility for implementing the Convention was shared between the federal, provincial, and territorial governments. According to the results of the 1986 census, the majority of Canadians were still of British or French origin, but approximately 4 per cent were of aboriginal origin and a third of the population of other than British or French origin. Visible minorities accounted for about 6 per cent of the country's population and close to one fifth of the population in major Canadian cities.

159. The increasing diversity of Canadian society precluded indifference to the presence of racial discrimination. Canada's position clearly was that racism and racial discrimination conflicted with its ideals, laws and the image of the kind of country Canadians wished to build. Accordingly, important steps had been taken to create a society reflecting the goals of the Convention. In particular, section 15 of the Canadian Charter on Rights and Freedoms, enshrined in the Constitution in 1982, provided a basis for government action to overcome discrimination of all kinds. That section, together with section 27 of the Charter, had been invoked by the Supreme Court of Canada in three recent decisions upholding prohibitions on the dissemination of hate propaganda. A unique, federally founded Court Challenges Programme provided financial assistance to groups and individuals in legal challenges to laws or government programmes that they believed to be contrary to the equality or language-rights provisions of the Constitution. Federal, provincial or territorial human rights legislation also protected the establishment of independent commissions to investigate, conciliate and, if necessary, litigate complaints of discrimination in the public and private sectors. Victims of racial discrimination thus had access to a full range of remedies in Canada. In addition, widespread public information programmes were conducted by human rights commissions and governments to ensure that all members of the community were aware of those measures.

160. Recognizing that anti-discrimination laws did not suffice, the Canadian Government had taken numerous other measures. The Federal Employment Equity Act aimed to ensure that women, disabled persons, aboriginal people and visible minorities were equitably represented in employment; the Canadian Multiculturalism Act set out the Government's multiculturalism policy and provided a legislative basis for financial and technical assistance to non-governmental organizations or individuals for activities which furthered the objectives of the Act. In March 1989 a plan of action to eliminate racial discrimination in Canada had been published; 21 March 1989, the first International Day for the Elimination of Racial Discrimination, had been made the focus of a major national public education campaign - a campaign which had since been broadened, with other governments in Canada also undertaking activities to mark the Day and the passage by the Canadian Parliament of legislation to establish and endorse a Canadian race relations foundation to foster racial harmony and help eliminate racism. Many of the federal initiatives were reflected in similar developments in the provinces and territories, including amendments to strengthen human rights legislation and expand the educational and enforcement roles of human rights commissions, as well as introducing or

broadening multiculturalism and race relations laws, policies and programmes. Most of the Canadian cities had also established policies, advisory bodies and programmes to fight racial discrimination.

161. With regard to aboriginal peoples, recent initiatives included the announcement in September 1990 of a government strategy to preserve the special place of indigenous people, based on aboriginal and treaty rights contained in the Constitution. The Government's strategy was based on the acceleration of land claims settlement, the improvement of economic and social conditions on the reserves, legislative changes regarding the relationship between aboriginal peoples and the Government, and addressing the concerns of Canada's aboriginal peoples in contemporary life. There was no complacency about racial discrimination in Canada or in confronting complex and difficult issues in a multicultural society. Action was being taken, and the Convention and the contributions of the Committee would continue to be a source of guidance for the development of Canadian policy.

162. Members of the Committee, having noted with satisfaction the very high quality of the reports submitted by the Government of Canada and the significant efforts that had been made to comply with the Convention, pointed out that the Canadian Government had always done its best to fulfil its obligations under the Convention both in letter and in spirit and that its relations with the Committee had been exemplary. They appreciated the fact that Canada had sent such a large and high-level delegation to represent it in the Committee.

163. With reference to the 1987 Constitutional Accord, members of the Committee wished to know what the repercussions had been for Canada as a whole of the failure of that Accord and what measures were being envisaged by the Government to overcome any consequent problems; whether the Constitution of Canada or other legislation contained any provisions for the exercise of the right to self-determination, including arrangements for its implementation through a referendum; and whether the Canadian Government was considering making the declaration provided for under article 14 of the Convention. They requested further information on the functions, composition and methods of work of the human rights tribunal, the establishment of which was envisaged in the Canadian Charter of Human Rights. In connection with the demographic data that had been submitted and which was highly appreciated by the Committee, members wished to know what criteria were used to determine ethnic origins; what the difference was between "Black" and "African Black"; and how many immigrants of Bulgarian origin lived in Canada. They also wished to know what was meant by the words "a distinct society clause complements but does not override the Canadian Charter of Rights and Freedoms or adversely affect minorities" in the letter of clarification, and what the situation was with regard to the Parliamentary Commission set up to look into the "Canada Clause" that would redefine the Canadian identity. Members also sought clarification of the dispute that had arisen between the Mohawks of Kanasatake and the Quebec provincial government over a plot of land brought by the municipality for use as a golf club.

164. With regard to article 1 of the Convention, members of the Committee noted that the references to racial tension and discrimination in the report demonstrated a commendable recognition by Canada of the existence of racial problems. They welcomed the information provided on the Canadian Multiculturalism Act and asked in that connection how many institutions and/or governments had actually implemented its provisions and, where they had not been implemented, what the reasons were for failure to do so.

165. With respect to article 2 of the Convention, members of the Committee wished to know what other measures, in addition to those mentioned in the report, had been adopted to protect and to advance the special position of the aboriginal peoples in Canadian society; what was being done to define aboriginal rights under the Canadian Constitution; whether the recent failure of the Meech Lake Accord would in any way jeopardize such rights; whether any specific procedure was being planned to enable aboriginal “nations” to negotiate self-government in the more comprehensive sense of the term; and what were the functions and powers of the provincial human rights councils or commissions. Particular questions were posed concerning negotiations with certain indigenous groups. Having noted that the Employment Equity Act represented a very significant step forward, members also asked whether there were any employers who had not complied with provisions of the Act and, with a view identifying obstacles to implementation, requested figures concerning its implementation. With reference to the measures adopted to exempt members of “visible minority” groups from certain provisions of the Public Service Employment Act, members wished to know whether this implied that such persons did not need to meet the education or skills requirements of the public service, and hence implied what might be termed a levelling down of recruitment criteria. They also sought updated information on the Immigrant Access Service in connection with employment, health, family and other services.

166. Concerning article 3 of the Convention, members of the Committee stressed the need to continue to take practical measures to exert pressure on South Africa.

167. In connection with article 4 of the Convention, members of the Committee, having noted that the ruling of the Ontario Court of Appeal was a very important one in terms of compliance with the Convention, asked whether there had been any further ruling in the cases referred to in paragraphs 41 to 44 of the ninth report and paragraph 24 of the tenth report and, if so, what had been the verdict.

168. With regard to article 5 of the Convention, members of the Committee wished to know whether there were any restrictions on freedom of movement from one province to another, as well as on the right to settle and acquire property in another province; what was meant by the words “achieving a constitutional amendment on aboriginal self-government” in paragraph 13 of the tenth report; why a code of conduct for the police, introduced in 1989, had been found necessary and what the results of its introduction had been; and on what basis foreigners were admitted for immigration into Quebec and whether in that connection, any problems of racial discrimination had arisen. Members also requested updated information on the Donald Marshall Jr. case, particularly regarding the report which had been promised for January 1990.

169. In addition, members wished to know what rights the aboriginal had if outsiders wanted to build factories on their lands; whether the factories hired aboriginal workers and how they contributed to improvement of the lot of aboriginals; and whether any native groups were being devastated by alcoholism. More information was requested with respect to the indigenous peoples in Saskatchewan, where the uranium-mining industry had ignored their rights and disregarded the ecological and social effects of mining, and on how the study of languages was regulated. Members expressed the hope that the next periodic report would include more information on the implementation of article 5 and would provide an opportunity to review the extent to which the right to work and the right to health were protected against racial discrimination, as well as the

effectiveness of remedies.

170. The representative of the State party, replying to the questions and comments of the members of the Committee, said that relations between the Canadian Government and the aboriginals had evolved from one period to another in terms of specific economic and social conditions. The massive rejection by the aboriginals of the White Paper published by the Government in 1968 had led to a review of policy and to the recognition in the Constitution and in Canadian laws of the special status of the aboriginals. The Government had made great headway since the rejection of the 1968 White Paper and was now negotiating with the aboriginals on comprehensive land claims and self-government. The Constitution contained several provisions regarding aboriginal peoples in Canada, including section 35 of the Constitution Act, 1982, which defined such people as consisting of Indians, Inuit and other natives and recognized “the existing aboriginal and treaty rights of the aboriginal peoples”.

171. The proposal by the Federal Government of the 1987 constitutional conference had included explicit recognition in the Constitution of the right of the aboriginal peoples to self-government and implementation of that right through negotiated agreements but, unfortunately, the proposal had not been approved. The 1990 Constitutional Accord had included a proposal for constitutional conferences every three years to discuss aboriginal constitutional matters, but this was obviated by the failure of the Meech Lake Accord. At present, a number of special commissions and committees were in the process of examining the Constitution as a whole and the aboriginal issues that were involved, but aboriginal rights were also being defined through other processes. The Federal Government had hoped that the Oka Mohawks’ claims would form the subject of a negotiated agreement by January 1990 at the latest, but no agreement had thus far been reached.

172. The question of the self-determination of the aboriginal peoples did not fall within the framework of the International Convention on the Elimination of All Forms of Racial Discrimination, and the Committee was not the appropriate forum to discuss the matter. The issue of making the declaration under article 14 of the Convention had been discussed at length at a meeting of federal and provisional ministers in 1986. However, since Canadians had a number of other measures available to them, more particularly, the machinery of the Human Rights Committee under the Optional Protocol, the ministers had not agreed to a declaration. Canada had at least 12 human rights commissions, councils and agencies to receive complaints of discrimination, as well as many other ombudsmen and bodies dealing with issues of access to information, language and privacy. The commissions, which were independent of the Government, had a mandate to investigate, conciliate and, if necessary, conduct litigation on behalf of complainants seeking a remedy against discriminatory practices. Complaints regarding discrimination brought by the Canadian Human Rights Commission against Bell Canada and Radio Canada were still before the courts. Statistics on ethnic origin were based on the principle of self-identification; if the report did not indicate the proportion of Canadians who regarded themselves as being of Bulgarian origin it was in all likelihood because the proportion was low.

173. In relation to article 1 of the Convention, the representative of the reporting State said that the second report to Parliament described the role of multiculturalism in Canada’s experience of nation building, the task performed by the newly created Department of Multiculturalism and Citizenship,

and the ways in which the federal departments and agencies implemented the Multiculturalism Act. All 158 federal institutions had been asked to account for their activities and 137 had reported thus far. No major obstacles to the implementation of the multiculturalism policy had been identified, and it was clear that implementation would progress further as each institution gained experience. The planned amendments to the Indian Act were designed to bring Canadian legislation into line with the Canadian Charter of Rights and Freedoms and also to respond to the decision of the United Nations Human Rights Committee in the Lovelace case. The principles underlying the amendments were removal of discrimination, restoration of status and membership rights, and increased control by Indian bands over their own affairs.

174. With regard to article 2 of the Convention, the representative of the State party pointed out that employment equity programmes covered four groups - women, disabled persons, visible minorities and aboriginal groups - and that the Employment Equity Act applied to all firms in the private sector falling under federal regulations employing about 650,000 wage earners. In addition, under federal policy, all heads of firms employing more than 100 people and wishing to submit tenders for federal contracts for more than \$200,000 were required to certify their commitment to applying the provisions of the Employment Equity Act and implementing the relevant programmes. Some 1,350 firms were covered, with a total staff of approximately 1 million. The Federal Administration in its entirety was also required to apply the federal employment equity policy. The exclusions from provisions of the Public Service Employment Act were intended to expedite the recruitment of women, disabled persons, visible minorities and aboriginal groups.

175. With reference to article 4 of the Convention, the representative of the State party said that in December 1990 the Supreme Court of Canada had ruled on the cases of John Ross Taylor, James Keegstra, Donald Andrews and Robert Smith and confirmed the judgements under legislation prohibiting incitement to hatred. It had not yet rendered its decision in the case of Ernst Zundel.

176. With regard to article 5 of the Convention, the representative of the State party said that the Royal Commission of Inquiry's conclusions concerning the Marshall case recognized, among other things, that there had been a miscarriage of justice and that criminal justice had failed at every stage of the proceedings. The Commission of Inquiry had, in connection with that case, made 82 recommendations on the administration of penal justice in Nova Scotia, and important measures had been taken by the provincial government and the Federal Government to draw lessons from that miscarriage of justice. Freedom of movement was guaranteed under section 6 of the Canadian Charter of Rights and Freedoms. However, some restrictive measures had been taken in some provinces. In cases involving protection of freedom of expression and the prohibition of racist propaganda, the courts sought to render both balanced and detailed judgements so as not to leave any loophole for incitement to hatred. Canada had no political party with an ethnic basis.

177. In connection with land claims issues, the representative indicated that there were two types of claims processed in Canada: comprehensive land claims and specific claims. To reach a comprehensive land claims agreement, Canada was prepared to confirm a number of benefits and rights for the claimant groups, including land ownership; to provide various forms of financial compensation; to guarantee participation in land and water management and environment protection; and to ensure resource and revenue-sharing and hunting and trapping rights. The standard of living

of aboriginal people had risen in recent decades, and there had been spectacular improvement over the past 15 to 20 years in their health. Since 1960, Indians had been staying longer in school and, thanks to an ambitious higher education programme for Indian and Inuit students, there were now nearly 22,000 students from those groups receiving a higher education. A third of the entire housing stock for Indians on reserves had been built in the past six years and another third had been substantially renovated, and expenditure of \$275 million had just been announced to expand water and sewerage services in some northerly communities. Life expectancy among the Indians, which had admittedly been lower than for the population as a whole, had increased by 10 years over the past three decades, but there was an alcohol problem in some communities. Employment rates had risen 10 per cent between 1971 and 1986. Since these figures were still lower than for the Canadian population as a whole, the Government had launched special economic programmes to narrow the gap.

178. A total of 53 aboriginal languages were spoken in Canada, and three quarters of Indian students in federal schools and one third in provincial schools received instruction in their own language. In the Yukon and the Northwest Territory, where the aboriginals accounted for a high proportion of the population, the aboriginal languages were recognized in court proceedings.

Concluding Observations

179. In concluding the consideration of Canada's ninth and tenth periodic reports, members of the Committee expressed their appreciation that the Canadian Government had submitted a very comprehensive report, prepared in accordance with the Committee's guidelines, and had not tried to cover up problems which could not fail to arise in such a complex society as Canada's. The very number and competence of the members of the Canadian delegation reflected the Government's willingness to pursue its dialogue with the Committee and to remedy problems which still impeded implementation of the Convention. However, some obstacles encountered in instituting self-government for the aboriginals had not been mentioned and the time- frame for responding to territorial claims by the aboriginal communities had not been indicated. It was unfortunate that the various provinces had not agreed at Meech Lake on the changes to be made in the Canadian Constitution.

CERD A/49/18 (1994)

298. The Committee considered the eleventh and twelfth periodic reports of Canada (CERD/C/210/Add.2 and CERD/C/240/Add.1) at its 1043rd and 1044th meetings, held on 2 August 1994 (see CERD/C/SR.1043 and 1044).

299. The report was introduced by the representative of the State party, who stated that responsibility for implementing the Convention in Canada was shared between the federal, provincial and territorial governments.

300. He referred to initiatives that had been taken in the enforcement and administration of laws to deal with the problem of racial discrimination, especially after incidents in recent years between the police and members of visible minorities. Institutions responsible for the administration of justice had also responded to increasing concern about crimes aimed at specific ethnic or racial groups and the Canadian Judicial Council supported comprehensive education for the judiciary on a variety of social issues, including race matters.

301. Reference was also made by the representative of Canada to his Government's initiatives in the processes for negotiating land claims and for developing governmental arrangements with aboriginal groups. He stated, in particular, that the Statement of Political Commitments of the federal Government concerning the Mushuau Innu community in Davis Inlet had been accepted by the Band Council in April 1994 and that the Royal Commission on Aboriginal Peoples had recently completed an extensive research and public consultation process, involving visits to communities across Canada.

302. Members of the Committee welcomed the legal and other measures that Canada had taken at both the federal and the provincial level to combat racial discrimination. However, considerable efforts had still to be made to improve the situation of immigrants, especially those coming from Africa and Asia, minorities, and aboriginal people.

303. Members expressed appreciation for the detailed information provided but noted that the reports did not address certain important issues, such as the practical implementation of the Canadian Charter of Rights and Freedoms; the developments concerning the initiatives taken by the Canadian Human Rights Commission to have the Charter amended to give human rights provisions precedence over other laws; the steps taken to solve the conflicts between Mohawk communities and Canadian authorities over land in the municipality of Oka; the constitutional reforms, especially with regard to the question of the definition of aboriginal people; the results of the census of June 1991; and the health conditions of the aboriginal people.

304. Members of the Committee wished, in particular, to receive clarification on the responsibilities for the areas covered by the Convention exercised by the federal Government and by the provincial and territorial governments of Canada. It was noted that human rights issues were mainly dealt with by the provincial governments. Members asked whether the Government of Canada would consider amending the Constitution to ensure that all fundamental human rights issues were subject to federal rather than provincial law so as to harmonize all the existing provisions and avoid inconsistencies. In

addition, reference was made to a letter addressed to Committee members by the Canadian Council of Churches containing several remarks on the implementation of the Convention in Canada, as well as the suggestion that the Canadian Human Rights Commission could serve as a national authority under article 14 of the Convention. In this connection, attention was drawn to general recommendation XVII (42) on the establishment of national institutions to facilitate the implementation of the Convention, and it was asked whether Canada would consider making the declaration to recognize the competence of the Committee to deal with individual communications provided for in article 14 of the Convention.

305. With reference to article 1 of the Convention, members of the Committee wished to know which specific laws and rules regulated immigration, whether immigration was a matter for the provincial rather than the federal authorities and whether immigrants had the opportunity to maintain their cultural identity. They also wished to receive a clear explanation of the meaning in Canadian society of the expressions "identifiable groups" and "visible minorities".

306. With regard to article 2 of the Convention, members of the Committee referred to information received from non-governmental sources according to which immigrants from Africa and Asia were less well treated in Canada than immigrants from Europe and in some cases were subject to systematic discrimination. They asked, in this connection, what the basic educational requirements were for recruitment into the police force, whether the Government of Canada was seeking to intensify human rights training programmes for law enforcement officials in accordance with general recommendation XIII (42) and how the Canadian legislation dealt with asylum-seekers and economic migrants. Members of the Committee also referred to the amendments to the Indian Act adopted in 1985 to remove discriminatory provisions and asked several questions on the practical consequences of those amendments, especially in the light of the fact that the Canadian Commission on Human Rights in 1990 had described the amendments as paternalistic relics of the past, incompatible with Canada's domestic and international obligations. Furthermore, they wished to receive more detailed information concerning the development of the negotiations between the Canadian authorities and the aboriginals with regard to comprehensive land settlement and self-government agreements in various provinces. It appeared that such negotiations were proceeding at an extremely slow pace and that few new agreements had been concluded. More information was also requested about the community-based aboriginal justice programmes and the Federal-Provincial-Territorial Working Group on Multiculturalism and Race Relations in the Justice System; social indicators concerning aboriginal people, in particular, the rates of infant mortality, alcoholism, drug abuse, delinquency, imprisonment and suicide; the Police-Minority Youth Summer Employment project; the action taken by the federal Government to solve the problems of the Indians at Oka and the Mohawk communities of Kanasatake and Kahnawake after the incidents of the summer of 1990; the work done by the Royal Commission on Aboriginal People, and the steps taken by the Law Reform Commission to ensure equal access of aboriginal persons to justice.

307. With reference to article 4 of the Convention, members of the Committee wished to receive information about the scope of a decision taken by the Supreme Court in 1992 concerning section 181 of the Canadian Criminal Code. That provision, which made it a criminal offence to publish a false statement likely to cause injury to the public interest, was ruled to be inconsistent with the guarantee of freedom of expression in section 2 (b) of the Canadian Charter of Rights and Freedoms.

Members also asked whether there were differences in the scope of activities of human rights bodies in the different provinces and whether their activities were consistent with article 4 of the Convention. More information was requested concerning the influence among young people of the so-called "hate groups".

308. Concerning article 5 of the Convention, members of the Committee regretted that the reports lacked information in particular on the implementation of the right to health, especially with regard to aboriginal people, and asked for information about the national native alcohol and drug abuse programme and on how the aboriginal people perceived the programme. Members of the Committee drew particular attention to the Employment Equity Act and regretted that it was only applicable to limited categories of workers. They asked why the Canadian Human Rights Commission had no direct responsibility for enforcement of the Employment Equity Act, whether there was any mechanism to implement that Act, and why aboriginal people were not fully represented in the workforce, especially in higher levels of employment. More information was also requested about employment, education and religious freedom, particularly in respect of small minority groups, the actual achievements of the Employment Equity Working Group for Aboriginal Employees, and the extent to which aboriginal people and immigrants enjoyed effective access to the justice system.

309. With regard to article 6 of the Convention, members of the Committee stated that, according to the information received, it was doubtful whether the provincial judicial systems in Canada fully met the requirements of that article. They also asked for information on the joint federal/provincial initiative under way to create a Canadian police race relations centre, as well as on the functions, composition and rulings of the human rights tribunal established under the Canadian Human Rights Act. In addition, information was requested about the number of complaints of racial discrimination, the action taken in that regard and the effectiveness in practice of the remedies available.

310. In connection with article 7 of the Convention, members of the Committee generally welcomed the various measures taken in Canada to combat racial prejudice and promote multiculturalism. They wished to know, in particular, what the impact was of the new Broadcasting Act, whether all languages spoken in Canada were used in radio and television broadcasting, to what extent aboriginal languages or dialects were used, and whether it was possible for aboriginal groups to establish regional broadcasting operations. More information was also requested about the achievements in practice of federal multiculturalism programmes.

311. In their reply, the representatives of Canada said that the structure of their Government's report was imposed by constitutional principles of cooperation between the federal authorities and the provinces and territories, but account would be taken of any suggestion on presentation that was compatible with constitutional requirements.

312. They also said that, under the Constitution, responsibilities were clearly divided between the federal Government and the provinces and shared only in a few specific areas. Only the federal authorities were empowered to sign international treaties, but they could not oblige the provinces to amend their legislation to give effect to the provisions of those treaties because matters within their exclusive jurisdiction were involved, as in the case of many human rights texts. Machinery for permanent consultation with the provinces and territories on the signature and implementation of

international instruments nevertheless existed.

313. The Canadian Charter of Rights and Freedoms, which guaranteed a great many fundamental rights and freedoms and prohibited any form of discrimination, had been incorporated in the Constitution of Canada since 1982 and was part of the supreme law of the country. The federal Government and all of the provincial governments were bound by the Charter. With regard to the 1977 Canadian Human Rights Act, the representatives of Canada explained that jurisdiction in respect of human rights was divided between the federal Government and the provincial governments, which enacted laws and codes dealing primarily with discrimination. The implementation of the codes was usually ensured by bodies independent of the Government. In the event of failure to implement them, a complaint could be brought before a court. A provision was under consideration to give the Canadian Human Rights Act precedence over any other act.

314. With regard to article 1 of the Convention, the representatives of Canada provided explanations of the terms "visible minority" and "identifiable group". They stressed that "visible minority" was in no case a legal term.

315. Referring to the questions asked in connection with article 2 of the Convention, the representatives of the State party provided detailed information on developments in the negotiations between the Canadian Government and aboriginal groups on the land claimed by the latter, on the measures taken by the Government at the national and international levels following the events at Oka and on the measures it had taken for the benefit of the Innu community in Davis Inlet so that it might enjoy decent living conditions. They stressed that, although the amendments to the Indian Act (Bill C-31) had been criticized, they were intended to bring the Act into line with the Canadian Charter of Rights and Freedoms. Since their adoption, over 94,000 persons had gained Indian status and were benefitting from health, housing and higher education programmes reserved for aboriginals. The representatives of Canada also referred to some provisions on respect for aboriginal culture which were contained in the "policy on the maintenance of law and order in the First Nations".

316. With regard to the questions raised under article 4 of the Convention, the representatives of the State party outlined the arguments which had led the Supreme Court to define the scope of legislation prohibiting incitement to hatred in order not to infringe freedom of expression. They nevertheless stressed that incitement to hatred was still punishable under article 319 of the Criminal Code and they described the special procedures developed by the police to investigate activities motivated by hatred.

317. Referring to article 5 of the Convention, the representatives of Canada said that statistics on employment equity showed that there had been regular progress in the representation of "visible minorities" and aboriginal people, and noted that other information on the effectiveness of the implementation of the Employment Equity Act would be given in the next report.

318. Concerning article 6 of the Convention, the representatives of the State party provided information on the status of the initiative for aboriginal justice which was being financed by the Government and had included over 60 projects as at 1 March 1994.

319. In respect of article 7 of the Convention, the representatives of Canada provided information

on the Canadian Race Relations Foundation, which was being set up and should assist researchers and institutions working in areas such as the law, the media and education. Information was also provided on the functions of the Ministry of Multiculturalism and Citizenship, which had recently become the Ministry of the Canadian Heritage.

Concluding observations

320. At its 1065th meeting, held on 17 August 1994, the Committee adopted the following concluding observations.

(a) Introduction

321. The delegation which presented the reports of Canada is commended for its constructive dialogue with the Committee and the useful additional information and explanations it provided orally in response to the questions and comments of Committee members. It is recommended that information be included in the next periodic report. Appreciation is also expressed to the State party for its regularity in fulfilling its reporting obligations. However, it is noted that the reports are not prepared in conformity with the Committee's general guidelines for the submission of reports. As a result it is difficult for the Committee to assess how the Convention is implemented in Canada in general.

(b) Positive aspects

322. Satisfaction is expressed at the measures taken in Canada to improve the situation of aboriginal peoples. Particular reference is made in this respect to the recent land claim settlements in the eastern and central Arctic, the Gwich'n and Sahtu Dene Metis settlements in the Mackenzie Valley and in the Yukon Territory. Measures taken to eliminate racial discrimination and to promote multiculturalism in Canadian society are also welcomed. Reference is made in this respect to section 15 of the Charter of Rights and Freedoms and the Canadian Multiculturalism Act of 1988. It is noted with satisfaction that each Canadian province has adopted legal measures to combat discrimination and that particular efforts have been made to promote multicultural education, especially in Newfoundland and Labrador where the Department of Education formally adopted in 1992 a multicultural education policy for introduction in the school system. The educational measures taken to combat prejudice and racial discrimination in Canada are considered to provide models that could be followed by other States parties in respect of the implementation of article 7 of the Convention.

(c) Principal subjects of concern

323. Concern is expressed at the statement that the federal Government cannot compel the provincial and territorial governments to align their laws with the requirements of the Convention. It does not accept that the responsibility for the areas covered by the Convention is shared by the federal, provincial and territorial governments.

324. Concern is also expressed about references to "visible minorities" in regard to Canadian

anti-discrimination policy, since this term does not fully cover the scope of article 1 of the Convention.

325. Concern is further expressed about the following issues: the slowness at which negotiations have been undertaken further to define aboriginal rights to land and resources in many parts of the country; the limited scope of the Employment Equity Act of 1986, which covers only 10 per cent of workers in Canada and does not fully guarantee equal employment opportunities for aboriginal peoples or their representation in high-level employment; the treatment of immigrants from the Asian and African regions, who, according to various non-governmental sources, appear not to be adequately protected against discrimination; and the existence of racist organizations.

326. In addition, it is noted with concern that, in spite of various positive measures taken by the Canadian authorities on both the provincial and federal levels to ensure adequate development and protection of aboriginal people, certain social indicators concerning, especially, alcoholism, drug abuse, suicide and the incarceration rate show that aboriginal people may be more affected by social problems than other social groups in the country.

(d) Suggestions and recommendations

327. The Committee recommends that the next periodic report of Canada be drafted in accordance with the Committee's general guidelines and provide information on measures taken by the federal, provincial or territorial governments in separate sections following the sequence of the articles of the Convention. The report should contain replies to the unanswered questions and include more precise information on the relation between federal and provincial legal measures taken to implement the Convention.

328. The Committee recommends that legal provisions at both the federal and provincial levels concerning human rights be harmonized to avoid any possible difference in treatment; that equality in access to and treatment by courts be fully guaranteed; that the Employment Equity Act be extended to wider categories of workers, including federal civil servants, to improve the effectiveness of remedies in this field; and that general recommendation XVII (42) on the establishment of national institutions to facilitate the implementation of the Convention be brought to the attention of the Canadian Human Rights Commission.

329. The Canadian authorities should strengthen their efforts to implement their existing national programmes and measures with a view to implementing fully articles 2, 4, 5 and 6 of the Convention. In particular, measures should be undertaken to ban racist organizations, to improve the employment and health situation of aboriginal people, to speed up negotiations on aboriginal land claims, to enforce remedies existing under the law, and to protect immigrants, especially those of African and Asian origin, against discrimination.

330. Noting that Canada has accepted the individual complaint procedures established under some of the international instruments in the field of human rights, the Committee recommends that the Canadian Government consider making the declaration necessary to accept the communication procedure established under article 14 of the Convention.

331. The Committee draws the attention of the State party to the amendment to article 8, paragraph 6, of the Convention, which was approved by the Fourteenth meeting of States parties and by the General Assembly in its resolution 47/111, and encourages the State party to expedite its action formally to accept that amendment.

CERD A/57/18 (2002)

315. The Committee considered the thirteenth and fourteenth periodic reports of Canada (CERD/C/320/Add.5), which were due on 15 November 1995 and 15 November 1997, respectively, at its 1525th and 1526th meetings (CERD/C/SR.1524 and 1525), held on 5 and 6 August 2002. At its 1547th meeting (CERD/C/SR.1547), held on 21 August, it adopted the following concluding observations.

A. Introduction

316. The Committee welcomes the thirteenth and fourteenth periodic reports of Canada, as well as the additional information provided by the delegation. The Committee expresses its appreciation for the attendance of a high-ranking delegation and the constructive dialogue which the Committee was able to have with the State party.

317. The Committee notes that the periodic reports were submitted with a delay of about six and four years, respectively, and that they covered the period 1993-1997, although they were submitted in 2001.

318. The Committee welcomes the input from all levels of government into the State party's periodic reports, but notes that the reports do not fully comply with the Committee's reporting guidelines. In particular, the existence of different sections in the report for federal, provincial and territorial action does not give a comprehensive picture of the measures adopted by Canada to implement the Convention.

B. Positive aspects

319. The Committee notes with satisfaction the strong and steadfast commitment to human rights manifested by Canada through, in particular, the existence of numerous federal, provincial and territorial instruments and institutions aimed at enhancing human rights, such as the Canadian Charter of Rights and Freedoms, the Canadian Human Rights Act, and the provincial and territorial Human Rights Acts.

320. The Committee notes the central importance and significance of the Multiculturalism Act and the relevant policy developed by the State party, which includes measures to protect and promote cultural diversity.

321. The Committee further notes with satisfaction the Statement of Reconciliation made by the Federal Government expressing Canada's profound regret for the historic injustices committed against Aboriginal people, in particular within the residential school system. The Committee further welcomes the commitment of the State party to building a new partnership with Aboriginal people and the adoption of numerous programmes for their benefit.

322. The Committee expresses its appreciation for the introduction of an amendment to the Canadian Human Rights Act to repeal the provision excluding the Indian Act from the scope of the Canadian Human Rights Act.

323. The Committee welcomes the extension of the scope of the Employment Equity Act to the federal public service and the Canadian Forces, and notes with satisfaction the progress achieved regarding the representation of Aboriginals and minorities in the federal public service.

324. The Committee welcomes the amendment to the Criminal Code (sect. 718.2) introducing racial discrimination as an aggravating circumstance.

325. The Committee welcomes the acceptance by the State party, on 8 February 1995, of the amendment to article 8, paragraph 6, of the Convention.

C. Concerns and recommendations

326. The Committee reiterates that the principal responsibility for the implementation of the Convention lies with the Federal Government of Canada. The Committee is concerned that the Federal Government cannot compel the provincial and territorial governments to align their laws with the requirements of the Convention. Noting in this connection the inter-provincial consultative procedure, in which the federal authorities are appropriately involved, the Committee expresses the hope that this procedure will be intensified so that proper implementation of the Convention is ensured at all levels.

327. The Committee notes that the Canadian Charter of Rights and Freedoms does not impose obligations on non-State actors and suggests that the possibility of enlarging the scope of this instrument in that respect be considered.

328. The Committee reiterates its concern about references to "visible minorities" in Canadian anti-discrimination policy since this term, which basically refers to non-white persons, does not appear to cover fully the scope of article 1 of the Convention.

329. The Committee notes with concern that the process of implementing the recommendations adopted in 1996 by the Royal Commission on Aboriginal Peoples has not yet been completed. The Committee regrets that no in-depth information was provided by the periodic reports on this matter, and requests that the State party indicate in detail in its next periodic report which recommendations of the Royal Commission were responded to and in what way.

330. The Committee expresses concern about the difficulties which may be encountered by Aboriginal peoples before the courts in establishing Aboriginal title over land. The Committee notes in this connection that to date no Aboriginal group has proven Aboriginal title, and recommends that the State party examine ways and means to facilitate the establishment of proof of Aboriginal title over land in procedures before the courts.

331. The Committee views with concern the direct connection between Aboriginal economic

marginalization and the ongoing dispossession of Aboriginal people from their land, as recognized by the Royal Commission. The Committee notes with appreciation the assurance given by the delegation that Canada would no longer require a reference to extinguishment of surrendered land and resource rights in any land claim agreements. The Committee requests that in the next periodic report, information be provided on the significance and consequences of limitations imposed on the use by Aboriginal people of their land.

332. The Committee is concerned that some aspects of the Indian Act may not be in conformity with rights protected under article 5 of the Convention, in particular the right to marry and to choose one's spouse, the right to own property and the right to inherit, with a specific impact on Aboriginal women and children. The Committee recommends that the State party examine those aspects, in consultation with Aboriginal peoples, and provide appropriate information on this matter in its next periodic report.

333. The Committee reiterates its concern about the high rate of incarceration of, violence against and deaths in custody of Aboriginals and people of African and Asian descent, and recommends that the next periodic report contain information on the efficacy of programmes adopted with a view to reducing these phenomena and on the results of any inquiries undertaken.

334. The Committee is concerned with the high number of incidents of discrimination targeting Aboriginals and people belonging to minorities in the field of employment. The Committee recommends that the State party submit more detailed information on the results achieved to eradicate racial discrimination in the field of employment, including management positions, at federal, provincial and territorial levels and in the public and private sectors, and provide the Committee with disaggregated data, as well as an assessment of the activities of the employment equity review tribunals.

335. The Committee expresses concern about information on patterns of racial discrimination affecting people of African and Asian descent and at expressions of prejudice in the media against such people, as well as against foreigners and refugees. It is further concerned that the State party focuses on the prohibition of activities conducted by racist organizations rather than on the prohibition of such organizations, as required by article 4 (b) of the Convention. The Committee wishes to receive more information on the practical implementation of article 4 of the Convention and of section 718.2 of the Criminal Code, which establishes racial discrimination as an aggravating circumstance.

336. The Committee notes with concern that current immigration policies, in particular the present level of the "right of landing fee", may have discriminatory effects on persons coming from poorer countries. The Committee is also concerned about information that most foreigners who are removed from Canada are Africans or of African descent. The Committee recommends that greater attention be given to the possible discriminatory effect of Canadian immigration policies.

337. The Committee is concerned about allegations that children of migrants with no status have been excluded from the school system in some of the provinces and hopes that the situation will be remedied.

338. The Committee notes with concern that, in the aftermath of the events of 11 September 2001 Muslims and Arabs have suffered from increased racial hatred, violence and discrimination. The Committee therefore welcomes the statement of the Prime Minister in the Ottawa Central Mosque condemning all acts of intolerance and hatred against Muslims, as well as the reinforcement of Canadian legislation to address hate speech and violence. In this connection, the Committee requests the State party to ensure that the application of the Anti-terrorism Act does not lead to negative consequences for ethnic and religious groups, migrants, asylum-seekers and refugees, in particular as a result of racial profiling.

339. The Committee notes a significant discrepancy between the number of complaints relating to racial discrimination brought before Canadian human rights commissions and the relatively small number of positive admissibility decisions. It recommends that the State party ensure the efficiency and accessibility of the complaint system, in conformity with article 6 of the Convention.

340. The Committee invites the State party to reconsider the possibility of making the declaration provided for in article 14 of the Convention.

341. Despite the reservations expressed by Canada on the Durban Declaration and Programme of Action, the Committee strongly recommends that the State party take into account the relevant parts of these documents when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on action plans or other measures taken to implement them at the national level.

342. The Committee suggests that the State party consult with non-governmental organizations in the process of drafting its periodic reports. It further recommends that these reports be made widely available to the public from the time they are submitted and that the Committee's concluding observations be similarly publicized.

343. The Committee requests that, when drafting the next report, the Government of Canada follow the sequence of the articles of the Convention and include subsections on measures adopted at all levels, including by provincial and territorial governments. The Committee recommends that the State party submit its fifteenth periodic report jointly with its sixteenth, seventeenth and eighteenth periodic reports on 15 November 2005 and that it address the points raised in the present observations in that report.