

CANADA

CESCR E/1989/22

79. The Committee considered the second periodic report of Canada on the rights referred to in articles 6 to 9 of the Covenant (E/1984/7/Add.28) at its 8th and 11th meetings, on 10 and 13 February 1989 (E/C.12/1989/SR.8 and 11).

80. Introducing this report, the representative of the State party said that Canada was a federal country comprising 10 provinces and 2 territories, the respective powers of the central Government and the governments of the provinces being defined in the Canadian Constitution Act, while those of the territories were conferred by legislation. Although it was for the central Government to ratify international treaties, direct responsibility for their implementation lay with the provincial governments and the governments of the territories, which were required to account for the measures they had adopted.

81. In the case of reports prepared under various international human rights instruments, he said that they were widely disseminated in Canada with the express aim of encouraging Canadians to familiarize themselves with the responsibilities entered into by their Government.

82. He emphasized the importance of the Canadian Charter of Rights and Freedoms and of its provisions on rights to equality; the Charter had entered into force in 1985 and had led to the amendment of several laws and the annulment by the courts of many provisions held to be at variance with it. Furthermore, the courts frequently referred to the provisions of the Covenant in interpreting the relevant provisions of the Charter.

83. Referring to new developments in Canada since the report had been drafted, he stated that the Province of Ontario had adopted legislation on equality of remuneration, that other provinces had adopted legislative provisions concerning equal pay for equal work, and that the protection accorded to workers as regards occupational safety and health had been considerably increased in Nova Scotia. Despite regional disparities, the unemployment rate had continued to decline in all regions (from 9.4 per cent in December 1986 to 7.6 per cent in December 1988). In particular, the unemployment rate for women and young people had fallen steadily in recent years and, in December 1988, had stood at 9.6 per cent in the case of adult women and 11.9 per cent in the case of young people.

84. Lastly, referring to the work of the federal, provincial and territorial commissions on the rights of individuals, which administered legislation on those rights, and to their courts of inquiry, he stated that they were constantly confronted with new situations that obliged them to find solutions for which there were no precedents. Thus, the subjects taken up included problems relating to AIDS virus detection tests, the use of drugs at work and employment opportunities for disabled persons.

General matters

85. The Committee took note with appreciation of the report submitted by the Government of Canada and commended the representatives of the State party on its presentation. It was, however, generally felt that the report was too legalistic and did not contain sufficient information on the practical implementation of the rights set forth in articles 6 to 9 of the Covenant.

86. With regard to the general framework within which the Covenant is implemented, members of the Committee inquired whether the divisions of powers between the Federation and the Provinces had led to any significant disparities in the enjoyment of the rights set forth in articles 6 to 9 of the Covenant by citizens of the different provinces, whether there were any possible adverse consequences for the enjoyment of these rights flowing from the entry into force of the Canada-United States of America Free Trade Act, and whether any consideration had been given to the inclusion of economic and social rights in the Canadian Charter of Rights and Freedoms. Further information was sought concerning the measures adopted by the Government pursuant to its responses entitled "Toward Equality", mentioned in paragraph 12 of the report, and on the meaning of the third section in paragraph 6 of the report, concerning paragraph 6 (2) (b) of the Constitution.

87. In addition, members wished to know whether there was a constitutional court, to settle disputes arising between the central Government and a province, and what the constitutional differences were between provinces and territories. Further information was sought concerning the justiciability of social and cultural rights, and any measures taken by the Government to disseminate information concerning the Covenant, including the role of non-governmental organizations in such endeavors and in the elaboration of the report. They also wished to receive further information on the Canadian jurisprudence regarding economic, social and cultural rights, in particular in respect of the new legislation on sexual harassment in Quebec, and inquired what steps had been taken to combat indirect discrimination against women.

88. Referring to the situation of the vulnerable and disadvantaged groups, they wished to know what specific measures had been taken to provide a minimum income for everyone, including the long-term unemployed, in which respect the rights of the foreigners and refugees were restricted as compared with those of citizens, whether specific legislation applied to the many immigrants who came to Canada to find work, and what was the meaning of the term "visible minority" used in the report.

89. With regard to the indigenous population in Canada, in particular the Mikmaq Indians in Nova Scotia, it was asked how article 1 of the Covenant was implemented in practice, whether amendment to the Indian Act had already been enacted following negotiation between the Government and Indian minorities, whether the Mikmaq Indians had sought the intervention of the Ombudsman in their case, and what was the current status of treaties between the Government and indigenous populations. Further information was also requested concerning the unemployment rate among Mikmaq Indians, the Native Economic Development Program, and the Government's view on its dispute with the Mikmaq Indians regarding the administration of their territory. Lastly some members wished to know what the position of the Government was with regard to the information contained in the written statement submitted by the Four Directions Council (E/C.12/1989/NGO/1).

90. Lastly, the observer of ILO informed the Committee about the ratification and application by Canada of the relevant ILO conventions.

91. Replying to questions asked by the members of the Committee, the representative of the State party referred to the distribution of powers between the federal Government and the provincial governments, and emphasized that federalism was not a source of any appreciable disparities as regards observance of the rights provided for in the Covenant. Where necessary, provincial programs for the protection of a particular right were financed to a large extent by federal credits so as to ensure uniform protection throughout Canadian territory. Furthermore, pensions paid under the Canadian pension plan were standardized and payable irrespective of place of residence in Canada. However, in the case of other rights, such as those guaranteed by article 7 of the Covenant, for whose enjoyment the financial aspect was of lesser importance, the various governments enjoyed a certain independence in adopting the necessary legislative and administrative measures. So as to ensure co-ordination of the provincial and territorial human-rights policies and to resolve any conflicts that might occur, ministerial conferences on the subject were held regularly and a committee on governmental action at the national level met twice a year. Moreover, courts before which disputes had been brought by private individuals or a provincial government, or by the federal Government for an advisory opinion, were also empowered to resolve disputes between the federal and provincial authorities. As to the difference in status between the provinces and the territories, he pointed out that in practice both types of entity had the same legislative and executive powers. The constitutions of the territories, unlike those of the provinces, were enunciated in federal legislation. Nevertheless, it seemed unlikely that there could be any amendment to that legislation which had not been endorsed by the territorial government in question.

92. Referring to the free trade agreement recently arrived at by Canada and the United States, he expressed his conviction that it would lead to an expansion of the Canadian economy and an increase in job creation. It did not limit the capacities of governments in Canada to develop and strengthen social programs and, moreover, federal and provincial labor legislation was not covered by the agreement.

93. Replying to other questions, he said that certain economic and social rights were already enunciated in the Canadian Charter of Rights and Freedoms such as the right to work in the place of one's choice and freedom of association. As regards the inclusion of others rights, Parliament had considered that it was preferable to leave it to the competent legislative bodies to settle complex questions requiring solutions geared to a constantly changing economic and social situation. Nevertheless, several provincial laws, including the Quebec Charter of Rights and Freedoms of the Individual and the Saskatchewan Human Rights Code, unequivocally guaranteed several of those rights. As regards governmental initiatives to give effect to the policy for the promotion of equality, he highlighted various measures already taken concerning the statutory age of retirement, the access of women to certain posts in the Canadian army and social benefits intended for part-time workers. As to article 6 of the Canadian Charter, he stated that the provisions of that article enabled a province to establish preferential employment programs for residents of that province if provincial employment rates were below the national average.

94. He reminded the Committee that international treaties did not, in Canada, automatically have force of law, but they must be the subject of legislative measures incorporating them within Canadian law. Nevertheless, the Canadian courts frequently referred to them in interpreting the Canadian Charter of Rights and Freedoms, as was apparent from a recent decision by the Canadian Supreme Court on certain trade union rights, a decision which had very clearly been based on the Covenant. In that connection, he admitted that the report had not given sufficient information

describing the progress made and jurisprudence relating to articles 6 to 9 of the Covenant. He pointed out, however, that jurisprudence relating to those rights had, in many cases, been so recent and tentative that it was very difficult to refer to it. Responsibility for drafting the reports submitted by Canada lay with the country's 13 governments. After being prepared, they were circulated to non-governmental organizations, which had an opportunity of submitting their comments to the Government.

95. Referring to other questions, he described the various legislative measures and jurisprudence relating thereto prohibiting sexual harassment at work. The Canadian Supreme Court had recently held that employers were indirectly responsible for any sexual harassment in their undertaking. It was therefore incumbent on them to take any measure contributing to deterrence, prevention or information on that prosecutable act and the proceedings to which it might give rise. Trade unions and employers had endeavored to eliminate such behavior and, in some cases, offenders had been dismissed. He also drew attention to the various codes relating to human rights and Canadian law on the rights of individuals, which protected the citizen against any form of racial discrimination. He further emphasized that lawful immigrants or permanent residents were entitled to equal treatment with Canadian citizens as regards the implementation of articles 6 to 9 of the Covenant.

96. Referring to the numerous questions asked about Canada's aboriginal populations, he emphasized the complexity of the problem, and explained that the situation of those populations varied widely. Thus, in the case of Indians alone, there were in Canada more than 590 groups with very different languages and cultures. Although some Indians enjoyed a more than satisfactory standard of living, quite clearly the economic and social situation of far too many aboriginals was deplorable. The Canadian Government was endeavoring to respond constructively, equitably and effectively to their needs and aspirations by making the necessary changes. Thus, legislation relating to the Indians had been appreciably revised, in particular as regards the retention of Indian status by women who had married non-Indians. The laws relating to the Cree Naskapi in Quebec and the Sechelt Indians bore witness to the Government's desire to grant greater autonomy to Indian groups. Generally speaking, self-determination was a recognized right of the Canadian people as a whole, but it could not allow action liable to jeopardize Canada's territorial integrity or political unity. He informed the Committee that the Government had made 19,000 hectares of land available to some 14,000 Mikmaqs. In addition, it was continuing its policy of granting them greater responsibility for the management of their own affairs. Programmes were thus being financed with the aim of reviving Indian art and handicrafts, training Indian heads of undertaking and granting loans to persons wishing to set up a company.

Article 6: Right to work

97. Members of the Committee wished to know which steps had been taken by the Government to promote realization of the right to work by everyone and to ensure the equal rights of men and women in the enjoyment of this right, how the Government reconciled the increase in unemployment rates from 6 per cent to 14 percent with its obligations under article 6 of the Covenant, why the unemployment rate was so high among women, young people and ethnic groups and what measures were envisaged to reduce it, and how programmes for vocational guidance and training were financed. Further information was requested on the 1982 National Training Act, on any integrated national plan aimed at the rehabilitation of the unemployed in useful and productive employment and the balancing of supply and demand in the labour market, and on the protection provided for job

security, in particular, with regard to compensation for dismissal, re-instatement in the case of unjustifiable dismissals, the role of industrial courts in such matters and the promptness of adjudication in relevant cases. In this connection the view was expressed that the 10-year period after which, in the event of dismissal, workers had a guaranteed right to work was too long.

98. Additionally, members referred to the legislation on the abolition of compulsory retirement and inquired how long people normally worked in Canada, whether the legislation had any adverse effects on the unemployment rate, whether persons working after the age of 65 received the same pension as those who had retired at that age, whether receipt of an old age pension was compatible with continuance at work, whether any measures had been taken to provide special work for elderly persons who could no longer work normally, and how pension funds were administered. Further information was also sought on the implementation of the right to equal access to work for men and women.

99. Replying to the points raised, the representative of the State party indicated that the unemployment rate had been declining steadily for several years and that the number of jobs created had been increasing steadily. Following consultations with the provinces, business circles and the trade unions, the federal Government had adopted in 1985 a Canadian employment strategy. This comprised six major programmes, the aims of which included better adaptation of workers to the development of technology and changes in the labor market, better access to employment for disadvantaged groups, including long-term unemployed, encouragement of training in specialized fields and promotion of innovative approaches to the changing labor market. In 1988-1989, funds totaling \$1.6 billion had been allocated for this strategy. Discrimination in employment or in working conditions was prohibited by law and, additionally, the Federal Employment Equity Act imposed on employers an obligation to seek to employ women, native people, members of visible minorities, and handicapped persons, by eliminating systematic obstacles and adopting programmes of action. The fact that the unemployment rate for adult females had been slightly higher than that for adult males since 1983 was due to the fact that women worked in seasonal industries in certain areas, or to their concentration in certain sectors which had been more seriously affected by economic fluctuations. A feature of the participation of young people in the economically active population was the marked fluctuation between study, part-time work and seasonal work. The employment situation of the Mikmaq Indians was unsatisfactory and special measures had been taken to put an end to their economic dependence.

100. Referring to the measures taken to ensure job security, the representative drew attention to various laws providing for reasonable notice or the payment of a termination allowance in the event of dismissals. The notice could be dispensed with in certain circumstances and in the case of fixed-term contracts. Expedient and inexpensive appeal procedures were available to workers and they were protected against abusive dismissal. Furthermore, both the Canada Labor Code and the Codes of Nova Scotia and Quebec dealt with the question of unfair dismissal by establishing an actual right to employment in such cases, subject to seniority in employment, ranging from 1 to 10 years according to different codes. The question of reduction of the 10 years period could be settled only by the political authorities concerned.

101. In connection with Canada's policy regarding a statutory retirement age, the representative referred to the general ageing of the population. He also pointed out that mandatory retirement at

a particular age might present problems under article 15 of the Canadian Charter of Rights and Freedoms, which prohibited discrimination based on age. In that connection, he mentioned certain judicial decisions and said that the Government was determined to abolish any provisions establishing a specific age for retirement. An experiment carried out in Quebec since 1986 shown that such policy had no effect on employment: most workers still retiring at the customary age. Compulsory retirement had thus been eliminated in the Federal Civil Service and amendment of the Canadian legislation on the rights of the individual was envisaged. Replying to another question, the representative said that the contributions paid by wage-earners and employers to the Canadian pension fund were deposited in a special account and did not become part of the public revenue.

Article 7: Right to just and favorable conditions of work

102. Members of the Committee wished to know what methods were used in Canada for the determination of salaries and wages, whether there were any prior consultations with employers and unions before the Government issued minimum wages-order, and whether there were benchmarks for safety and health which had been nationally agreed among social partners. Further information was sought on any specialized and professional inspectorate responsible for the enforcement of standards relating to safe and healthy working conditions. Furthermore, it was asked what the present state of jurisprudence in respect of legislation in this area was, whether there were severe penalties for infringing such legislation, especially when occupational accidents resulted infringing such legislation, especially when occupational accidents resulted in death, and whether such legislation had to be enacted at the provincial as well as the federal level.

103. In addition, members wished to receive further information on the practical implementation of the right to equal remuneration for men and women, and on equal opportunities legislation. They further inquired what was the percentage of senior women civil servants and managers, and whether Quebec had any plans for reducing the number of civil servants. It was also asked whether it was intended gradually to reduce the maximum working day and the maximum working week, in particular in the Northwest Territories, and why maternity leave was not remunerated in Canada.

104. Replying to the questions asked, the representative said that the law guaranteed a minimum wage, the amount of which was reviewed and increased periodically by orders made following consultation between the employers and the trade unions. The minimum wage constituted a floor and wage-earners or their trade unions could negotiate a higher minimum wage with their employers. In 1987 female workers' wages amounted to 69.5 per cent of those of male workers, compared with 58.4 per cent 10 years earlier. Various laws prohibited discrimination between men and women in the matter of working conditions. However, while the legislation providing for equal pay for equal work presented no difficulty of implementation, the same was not true of legislation providing for equal pay for work of equal value, where complex criteria were involved. Equity in the matter of pay was designed to prevent certain categories of employment where women predominated being less well paid than other categories where male workers predominated, for work of equal or comparable value. The provincial commissions on human rights had mostly to concern themselves with many complaints received on this subject.

105. Referring to the questions asked concerning workers' safety and health, the representative said that the competent inspection services generally included doctors, engineers and specially trained technicians. Throughout the country, moreover, there was a tendency towards promotion of co-

operation in this field between employers and wage-earners through establishment of joint safety and health committees. Regarding the establishment of safety and health standards, the representative drew particular attention to the WHIMS system whose purpose was to develop uniform criteria for the production, import and use at workplaces of dangerous substances. This system, instituted in 1987, had been developed following intensive consultations between all the social sectors concerned. Infringement of the regulations of the health of workers and industrial hygiene could entail the imposition of a fine which at the federal level, could amount to \$100,000 in the case of serious offences. The fine could also be accompanied by a prison sentence. However, most disputes in this area were settled at the level of the government departments concerned.

106. Replying to other questions, the representative explained that the policy of reducing the number of civil servants in Quebec was part of a rationalization effort aimed at making the administration more efficient. Several State enterprises had been privatized and certain entities forming part of the civil service had been reorganized. The normal average duration of work in Canada was 8 hours per day and 40 to 48 hours per week, work exceeding the normal duration and up to the legal maximum being paid at overtime rates. In the Northwest Territories, where the period of daylight was very long in the summer, and where most of the work was done during that season, both the workers and the employers had expressed a desire for a maximum working day of 10 hours and a maximum working week of 54 hours, as that would make it possible for workers to stay a shorter time away from their families.

107. The representative also explained that the federal Government's unemployment insurance scheme provided for 15 weeks of maternity leave. In the event of the death of a mother, it was possible for the father to take paternity leave on health grounds in order to care for his child. Furthermore, employers were prohibited from dismissing a female wage-earner during her maternity leave.

Article 8: Trade union rights

108. Members of the Committee wished to receive further information on the application of the legal provision according to which unions should not act in a manner that was arbitrary, discriminatory or in bad faith, on whether this provision did not vest excessive discretionary power to the Minister of Labor, on whether this provision was compatible with the rights set forth in article 8 of the Covenant, and on any court cases in this matter. Additional information was also requested on collective bargaining and on whether there was a balance of power between unions and employers and on the role of the State in collective bargaining. Clarification was also sought of the compatibility of the prohibition of strikes in disputes concerning collective agreements with the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (Convention No.87), Right to Organise and Collective Bargaining Convention, 1949 (Convention No.98), and the Labour Relations (Public Service) Convention, 1978 (Convention No.151). In particular, clarification was requested concerning the application of the industrial relations legislation under which strikes and lockouts were prohibited when a collective contract was in force. Furthermore, members wished to receive further information on trends in the membership of trade unions over the past six years.

109. In reply, the representative of the State party said that the obligation to ensure equitable representation was designed to protect the wage-earners affected by a collective contract by obliging

the trade unions to ensure representation of all the wage-earners affected, in an equitable and non-discriminatory fashion. In his view, this provision was entirely consistent with the rights enunciated in article 8 of the Covenant. Any dispute in this area was dealt with by the Canadian labour relations council, a body composed of trade union and employers' representatives. The legislation governing collective negotiations was designed to support efforts made by the social partners to maintain constructive relations and prevent unfair practices. It was thus quite logical that where trade unions and employers had concluded a collective contract they should undertake not to resort to strikes or lockouts while the contract was in force. The rate of trade union membership had declined from 40 per cent in 1983 to 37.6 per cent in 1987 owing to the rapid growth of new jobs since 1983. The representative also explained that the limitations on the right to strike imposed in essential services or in the event of national crisis endangering the population as a result of a strike was in conformity with the ILO principles and conventions on freedom of association. In certain cases, however, the ILO Committee on Freedom of Association or the Committee of Experts on the application of ILO conventions and recommendations had made suggestions and recommendations. In this connection, the representative pointed out that Canada had always co-operated with those monitoring bodies by furnishing requested information in due time.

Article 9: Right to social security

110. Members of the Committee wished to receive further information regarding the level of unemployment benefits as compared with wages, and the consequences of the exhaustion of an individual's entitlement to unemployment benefits. It was also inquired whether university and high school graduates were entitled to any benefits before they could find their first employment. Additionally, members wished to receive further information on the benefits available to women workers, and on Canada's attitude toward international co-operation and its contributions to international funds. It was also asked why Canadian public expenditure on social security benefits seemed to be lower than in other comparable countries, whether foreign workers involved in industrial accidents were entitled to social security benefits or whether they could be deported, and whether, if a mother died, the father was entitled to leave of absence when his child fell sick.

111. The representative of the State party said that the unemployment benefit amounted to 60 per cent of the average wage received during the period of employment, up to a maximum of \$383 per week. At the end of the period of payment of the allowance, the recipient could apply for assistance to the province or to the local authority concerned. Secondary school or university graduates could likewise apply to the local authority for help when seeking initial employment. Referring to bilateral agreements on social security, the representative said that ILO sought to encourage its members to conclude such arrangements in order to eliminate obstacles to the movement of workers and to ensure greater justice in the area of social security. In that area, the Canadian Government encouraged the conclusion of bilateral agreements.

Concluding observations

112. In concluding consideration of the report, members of the Committee renewed their thanks to the delegation for having responded in considerable detail to many of the questions posed. By the same token, it was noted that while it may be especially burdensome for federal States to discharge their reporting obligations adequately with respect to each of the constituent provinces and territories, it was nevertheless important that details of difficulties encountered and of the extent of

non-realization of the relevant rights be included in the report. It was said, however, that parts of the Canadian report had consisted largely of a recitation of relevant legislative provisions and that this did not enable the Committee to draw any detailed conclusions as to the State party's compliance with the Covenant.

CESCR E/1994/23

90. The Committee considered the second periodic report of Canada on articles 10 to 15 of the Covenant (E/1990/6/Add.3) at its 5th and 6th meetings on 17 and 18 May 1993 and, at its 18th meeting, on 27 May, adopted the following concluding observations.

A. Introduction

91. The Committee commends the State party on its excellent report which contains detailed and complete information on the legal framework for the implementation of the rights under consideration, on the manner of interpretation and application of the many respective laws by the Canadian courts as well as on the programmes and initiatives designed to realize economic, social and cultural rights. The Committee welcomes the extensive statistical data provided by the Government and appreciates the considerable efforts made to provide further information in reply to the questions submitted in writing. The Committee notes with satisfaction the detailed explanation given by the delegation of Canada to all questions raised by the Committee as well as the fact that several ministries, departments and agencies had been consulted in the course of the preparation of the report.

92. Finally, the Committee is very appreciative of the constructive manner in which the delegation referred to the contributions of Canadian non-governmental organizations to the Committee's review of the implementation of the Covenant in Canada.

B. Positive aspects

93. The Committee notes with satisfaction the general strengthening of the protection of human rights in Canada through the Canadian Charter of Rights and Freedoms and through improvements of other human rights legislation. The Committee was informed that the Charter of Rights and Freedoms guarantees, in section 7 the right to security of the person and, in section 15, the equal benefit and protection of the law. It notes with satisfaction that Canadian courts have applied these provisions to cover certain economic and social rights, and that the Supreme Court of Canada has, on occasion, turned to the International Covenant on Economic, Social and Cultural Rights for guidance as to the meaning of provisions of the Charter.

94. The Committee notes, in particular, that the courts have applied section 15 of the Charter to extend parental benefits and security of tenure in the field of housing. The Committee was informed that the process of interpretation of the Charter is still in its early stages, but that its provisions and the interpretations adopted by the Supreme Courts will give full consideration to the rights in the Covenant when interpreting and applying the Canadian Charter of Rights and Freedoms.

95. The Committee has received information on the Court Challenges Programme which has, in the past, enabled disadvantaged groups or individuals to take important test cases before the courts. Recognizing the importance of effective legal remedies against violations of social and economic and cultural rights, and of remedying the conditions of social and economic disadvantage of the most vulnerable groups and individuals, the Committee highly commends the State party for having developed such a programme.

96. The Committee notes with satisfaction that the State party has made significant progress in many areas covered by articles 10-15. It notes improvements to maternity and parental benefits and important initiatives to prevent child abuse and neglect and address domestic violence. It notes that a child tax credit has been introduced to assist low income families.

97. The committee notes with satisfaction that the poverty rate among elderly couples has declined significantly over the last decade, primarily because of the positive effect of the Old Age Security Programme and the Guaranteed Income Supplement.

98. The Committee notes with satisfaction that Canadians as a whole body enjoy a high standard of health care, with a health-care system based on universality and accessibility. The Committee notes that infant mortality rates among Canadians have declined, particularly among aboriginal Canadians, a group which previously had extremely high infant mortality rates.

C. Factors and difficulties impeding the application of the Covenant

99. The State party reported no fundamental difficulties impeding the application of the Covenant, although it was noted that Canada has been affected by the recent recession. By the same token it enjoyed one of the highest rates of economic growth during the 1980s.

100. On a technical level, the State party reported that it takes considerable time to compile information requested by the Committee because of the involvement of 10 provinces and 2 territories in most of the areas covered by the Covenant.

D. Principal subjects of concern

101. In view of the obligation arising out of article 2 of the Covenant to apply the maximum of available resources to the progressive realization of the rights recognized in the treaty, and considering Canada's enviable situation with regard to such resources, the Committee expresses concern about the persistence of poverty in Canada. There seems to have been no measurable progress in alleviating poverty over the last decade, nor in alleviating the severity of poverty among a number of particularly vulnerable groups.

102. In particular the Committee is concerned about the fact that, according to information available to it, more than half the single mothers in Canada, as well as a large number of children, live in poverty. The State party has not outlined any new or planned measures to remedy this situation. Of particular concern to the Committee is the fact that the Federal Government appears to have reduced the ratio of its contributions to cost-sharing agreements for social assistance.

103. The Committee received information from non-governmental organizations about families being forced to relinquish their children to foster care because of their inability to provide adequate housing or other necessities.

104. The Committee is concerned that there seems to exist no procedure to ensure that those who must depend entirely on welfare payments do not thereby derive an income which is at or above the poverty line.

105. A further subject of concern for the committee is the evidence of hunger in Canada and the reliance on food banks operated by charitable organizations.

106. The Committee is concerned that the right to security of tenure is not enjoyed by all tenants in Canada.

107. The Committee has learned from non-governmental organizations of widespread discrimination in housing against people with children, people on social assistance, people with low incomes, and people who are indebted. Although prohibited by law in many of Canada's provinces these forms of discrimination are apparently common. A more concerted effort to eliminate such practices would therefore seem to be in order.

108. The Committee notes the omission from the Government's written report and oral presentation of any mention of the problem of homelessness. The Committee regrets that there are no figures available from the Government on the extent of homelessness, on the number of persons evicted annually throughout the country, on the lengths of waiting lists or on the percentage of houses accessible to people with disabilities.

109. Given the evidence of homelessness and inadequate living conditions, the Committee is surprised the expenditures on social housing are as low as 1.3 per cent of Government expenditures.

110. The Committee is concerned that, in some court decisions and in recent constitutional discussions, social and economic rights have been described as mere "policy objectives" of Governments rather than as fundamental human rights. The Committee is also concerned to receive evidence that some provincial governments in Canada appear to take the position in courts that the rights in article 11 of the Covenant are not protected, or only minimally protected, by the Charter of Rights and Freedoms. The Committee would wish to have heard of some measures being undertaken by provincial governments in Canada to provide for more effective legal remedies against violations of each of the rights contained in the Covenant.

111. The Committee is very concerned to learn that the Court Challenges Programme has been cancelled.

112. The Committee is concerned to learn that, in a few cases, courts have ruled that the right to security of the person in the Charter does not protect Canadians from social and economic deprivation, or from infringements of their rights to adequate food, clothing and housing.

113. The Committee is concerned that provincial human rights legislation has not always been applied in a manner which would provide improved remedies against violations of social and economic rights, particularly concerning the rights of families with children, and the right to an adequate standard of living, including food and housing.

E. Suggestions and recommendations

114. The Committee recommends the incorporation in human rights legislation of more explicit reference to social, economic and cultural rights.

115. The Committee recommends concerted Government action to eliminate the need for food banks.

116. The Committee recommends the extension of security of tenure to all tenants and draws the attention of the State party to its General Comment number 4 on the Right to Adequate Housing (article 11, para. 1 of the Covenant), in particular paragraph 8.

117. The Committee recommends that the Federal Government implement the recommendations of the Standing Committee on Human Rights and the Status of Disabled Persons, of June 1992, to restore the Court Challenges Programme, and that funding also be provided for Charter Challenges by disadvantaged Canadians of provincial legislation.

118. In recognition of the increasingly important role played by the courts in ordering remedial action against violations of social and economic rights, the Committee recommends that the Canadian judiciary be provided with training courses on Canada's obligations under the Covenant and their effect on the interpretation and application of Canadian law.

119. The Committee encourages the Canadian courts to continue to adopt a broad and purposive approach to the interpretation of the Charter of Rights and Freedoms and of human rights legislation so as to provide appropriate remedies against violations of social and economic rights in Canada.

120. The Committee recommends that the key governmental bodies concerned enter into a dialogue at the domestic level with the representatives of the Canadian non-governmental organizations that have presented information to the Committee.

121. Finally the Committee requests the Canadian Government to inform the Committee of any developments and measures taken with regard to the issues raised and recommendations made in paragraphs 14 to 32 of the present concluding observations.

CESCR E/1999/22

376. The Committee considered the third periodic report of Canada on the rights covered by articles 1 to 15 of the Covenant (E/1994/104/Add.17) at its 46th to 48th meetings, held on 26 and 27 November 1998 and, at its 57th meeting on 4 December 1998, adopted the following concluding observations.

A. Introduction

377. The Committee expresses its appreciation to the Government of Canada for the submission of its detailed and extensive report, which generally follows the Committee's reporting guidelines, and for the comprehensive written answers to its list of issues. The Committee notes that, while the delegation was composed of a significant number of experts, too many questions failed to receive detailed or specific answers. Moreover, in the light of the federal structure of Canada and the extensive provincial jurisdiction, the absence of any expert particularly representing the largest provinces, other than Quebec, significantly limited the potential depth of the dialogue on key issues. The Committee notes with satisfaction that the Government of Canada engaged in extensive consultation with non-governmental organizations in the preparation of the report, that it submitted a core document (HRI/CORE/1/Add.91) and that it provided supplementary information during the consideration of the report.

B. Positive aspects

378. The Committee notes that, for the past five years, Canada has been ranked at the top of UNDP's Human Development Index. This indicates that, on average, Canadians enjoy a singularly high standard of living and that Canada has the capacity to achieve a high level of respect for all Covenant rights. That this has not yet been achieved is reflected in the fact that UNDP's Human Poverty Index ranks Canada tenth on the list of the industrialized countries.

379. The Committee notes with satisfaction that the Supreme Court of Canada has not followed the decisions of a number of lower courts and has held that section 15 (equality rights) of the Canadian Charter of Rights and Freedoms imposes positive obligations on Governments to allocate resources and to implement programmes to address social and economic disadvantage, thus providing effective domestic remedies under section 15 for disadvantaged groups.

380. The Committee notes with satisfaction that the Federal Government has acknowledged, in line with the interpretation adopted by the Supreme Court, that section 7 of the Canadian Charter concerning liberty and security of the person guarantees the basic necessities of life, in accordance with the Covenant.

381. The Committee notes with satisfaction that the Human Rights Tribunal in Quebec has, in a number of decisions, taken the Covenant into consideration in interpreting Quebec's Charter of Human Rights and Freedoms, especially in relation to labour rights.

382. The Committee notes that, in recognition of the serious issues affecting aboriginal peoples in

Canada, the Government appointed the Royal Commission on Aboriginal Peoples, which released a wide-ranging report in 1996 addressing many of the rights enshrined in the Covenant.

383. The Committee welcomes the reinstatement by the Federal Government of the Court Challenges Program, as recommended by the Committee while reviewing the State Party's second periodic report. / See E/1994/23, paras. 90 to 121./

384. The Committee welcomes the Canadian Human Rights Commission's statement about the inadequate protection and enjoyment of economic and social rights in Canada and its proposal for the inclusion of those rights in human rights legislation, as recommended by the Committee in 1993.

385. The Committee views as a positive development the high percentage of women attending university and their increasing access to the liberal professions traditionally dominated by men. The Committee notes that Canada has one of the highest percentages of population having completed post-secondary education and one of the highest percentages of GDP devoted to post-secondary education in the world.

C. Factors and difficulties impeding the implementation of the Covenant

386. The Committee notes that since 1994, in addressing the budget deficits by slashing social expenditure, the State party has not paid sufficient attention to the adverse consequences for the enjoyment of economic, social and cultural rights by the Canadian population as a whole, and by vulnerable groups in particular.

387. The Committee heard ample evidence from the State party suggesting that Canada's complex federal system presents obstacles to the implementation of the Covenant in areas of provincial jurisdiction. The Committee regrets that, unless a right under the Covenant is implicitly or explicitly protected by the Canadian Charter through federal-provincial agreements, or incorporated directly in provincial law, there is no legal redress available to either an aggrieved individual or the Federal Government where provinces have failed to implement the Covenant. The State party's delegation emphasized the importance of political processes in this regard, but noted that they were often complex.

388. While the Government of Canada has consistently used Statistics Canada's "low income cut-off" as a measure of poverty when providing information to the Committee about poverty in Canada, it informed the Committee that it does not accept the low income cut-off as a poverty line, although it is widely used by experts to consider the extent and depth of poverty in Canada. The absence of an official poverty line makes it difficult to hold the federal, provincial and territorial governments accountable with respect to their obligations under the Covenant.

D. Principal subjects of concern

389. The Committee has received information about a number of cases in which claims were brought by people living in poverty (usually women with children) against government policies which denied the claimants and their children adequate food, clothing and housing. Provincial governments have urged upon their courts in these cases an interpretation of the Canadian Charter

which would deny any protection of Covenant rights and consequently leave the complainants without the basic necessities of life or any legal remedy.

390. The Committee is deeply concerned at the information that provincial courts in Canada have routinely opted for an interpretation of the Canadian Charter which excludes protection of the right to an adequate standard of living and other Covenant rights. The Committee notes with concern that the courts have taken this position despite the fact that the Supreme Court of Canada has stated, as has the Government of Canada before this Committee, that the Canadian Charter can be interpreted so as to protect these rights.

391. The Committee is also concerned about the inadequate legal protection in Canada of women's rights guaranteed under the Covenant, such as the absence of laws requiring employers to pay equal remuneration for work of equal value in some provinces and territories, restricted access to civil legal aid, inadequate protection from gender discrimination afforded by human rights laws and the inadequate enforcement of those laws.

392. The Committee is greatly concerned at the gross disparity between aboriginal people and the majority of Canadians with respect to the enjoyment of Covenant rights. There has been little or no progress in the alleviation of social and economic deprivation among aboriginal people. In particular, the Committee is deeply concerned at the shortage of adequate housing, the endemic mass unemployment and the high rate of suicide, especially among youth, in the aboriginal communities. Another concern is the failure to provide safe and adequate drinking water to aboriginal communities on reserves. The delegation of the State party conceded that almost a quarter of aboriginal household dwellings required major repairs and lacked basic amenities.

393. The Committee views with concern the direct connection between aboriginal economic marginalization and the ongoing dispossession of aboriginal people from their lands, as recognized by the Royal Commission on Aboriginal Peoples, and endorses the recommendations of the Commission that policies which violate aboriginal treaty obligations and the extinguishment, conversion or giving up of aboriginal rights and title should on no account be pursued by the State party. The Committee is greatly concerned that the recommendations of the Royal Commission on Aboriginal Peoples have not yet been implemented, in spite of the urgency of the situation.

394. The replacement of the Canada Assistance Plan by the Canada Health and Social Transfer entails a range of adverse consequences for the enjoyment of Covenant rights by disadvantaged groups in Canada. The Government informed the Committee in its second periodic report in 1993 that the Canada Assistance Plan set national standards for social welfare, required that work by welfare recipients be freely chosen, guaranteed the right to an adequate standard of living and facilitated court challenges of federally-funded provincial social assistance programmes which did not meet the standards prescribed in the Act. In contrast, the Canada Health and Social Transfer has eliminated each of these features and significantly reduced the amount of cash transfer payments provided to the provinces to cover social assistance. It did, however, retain national standards in relation to health, thus denying provincial "flexibility" in one area, while insisting upon it in others. The delegation provided no explanation for this inconsistency. The Committee regrets that, by according virtually unfettered discretion to provincial governments in relation to social rights, the Government of Canada has created a situation in which Covenant standards can be undermined and

effective accountability has been radically reduced. The Committee also recalls in this regard paragraph 9 of General Comment No. 3 (1990). 5/

395. The Committee is concerned that newly-introduced successive restrictions on unemployment insurance benefits have resulted in a dramatic drop in the proportion of unemployed workers receiving benefits to approximately half of previous coverage, in the lowering of benefit rates, in reductions in the length of time for which benefits are paid and in increasingly restricted access to benefits for part-time workers. While the new programme is said to provide better benefits for low-income families with children, the fact is that fewer low-income families are eligible to receive any benefits at all. Part-time, young, marginal, temporary and seasonal workers face more restrictions and are frequently denied benefits, although they contribute significantly to the fund.

396. The Committee received information to the effect that cuts of about 10 per cent in social assistance rates for single people have been introduced in Manitoba; 35 per cent in those for single people in Nova Scotia; and 21.6 per cent in those for both families and single people in Ontario. These cuts appear to have had a significantly adverse impact on vulnerable groups, causing increases in already high levels of homelessness and hunger.

397. The Committee notes with concern that, in all but two provinces (New Brunswick and Newfoundland), the National Child Benefit introduced by the federal government, which is meant to be given to all children of low-income families, is in fact only given to children of working poor parents since the provinces are allowed by the federal government to deduct the full amount of this benefit from the amount of social assistance received by parents on welfare.

398. The Committee notes with grave concern that the repeal of CAP and cuts in social assistance rates, social services and programmes have had a particularly harsh impact on women, in particular single mothers, who are the majority of the poor, the majority of adults receiving social assistance and the majority among the users of social programmes.

399. The Committee is gravely concerned that such a wealthy country as Canada has allowed the problem of homelessness and inadequate housing to grow to such proportions that the mayors of Canada's 10 largest cities have now declared homelessness a national disaster.

400. The Committee is concerned that provincial social assistance rates and other income assistance measures have clearly not been adequate to cover rental costs of the poor. In the past five years, the number of tenants paying more than 50 per cent of their income towards rent has increased by 43 per cent.

5/ E/1991/23, annex III.

401. The Committee is concerned that, in both Ontario and Quebec, governments have adopted legislation to redirect social assistance payments directly to landlords without the consent of recipients, despite the fact that the Quebec Human Rights Commission and an Ontario Human Rights Tribunal have found this treatment of social assistance recipients to be discriminatory.

402. The Committee expresses its grave concern at learning that the Government of Ontario proceeded with its announced 21.6 per cent cuts in social assistance in spite of claims that this would force large numbers of people from their homes.

403. The Committee is concerned that the significant reductions in provincial social assistance programmes, the unavailability of affordable and appropriate housing and widespread discrimination with respect to housing create obstacles to women escaping domestic violence. Many women are forced, as a result of those obstacles, to choose between returning to or staying in a violent situation, on the one hand, or homelessness and inadequate food and clothing for themselves and their children, on the other.

404. The Committee notes that aboriginal women living on reserves do not enjoy the same right as women living off reserves to an equal share of matrimonial property at the time of marriage breakdown.

405. The Committee notes with concern that at least six provinces in Canada (including Quebec and Ontario) have adopted "workfare" programmes that either tie the right to social assistance to compulsory employment schemes or reduce the level of benefits when recipients, who are usually young, assert their right to choose freely what type of work they wish to do. In many cases, these programmes constitute work without the protection of fundamental labour rights and labour standards legislation. The Committee further notes that in the case of the province of Quebec, those workfare schemes are implemented despite the opinion of the Canadian Human Rights Commission and the decisions of the Human Rights Tribunal that those programmes constitute discrimination based on social status or age.

406. The Committee notes that Bill 22, "An act to prevent unionization", was adopted by the Ontario Legislative Assembly on 24 November 1998. This law denies to workfare participants the rights to join a trade union, to bargain collectively and to strike. In response to a request from the Committee, the Government provided no information in relation to the compatibility of the law with the Covenant. The Committee considers the law to be a clear violation of article 8 of the Covenant and calls upon the State party to take measures to repeal the offending provisions.

407. The Committee is concerned that the minimum wage is not sufficient to provide an adequate standard of living for a worker and his or her family.

408. The Committee is perturbed to hear that the number of food banks almost doubled between 1989 and 1997 in Canada and that they are able to meet only a fraction of the increased needs of the poor.

409. The Committee is concerned that the State party did not take into account the Committee's 1993 major concerns and recommendations when it adopted policies at federal, provincial and

territorial levels which exacerbated poverty and homelessness among vulnerable groups during a time of strong economic growth and increasing affluence.

410. The Committee is concerned at the crisis level of homelessness among youth and young families. According to information received from the National Council of Welfare, over 90 per cent of single mothers under 25 live in poverty. Unemployment and underemployment rates are also significantly higher among youth than among the general population.

411. The Committee is also concerned about significant cuts in services on which people with disabilities rely, such as cuts in home care, attendant care and special needs transportation systems, and tightened eligibility rules for people with disabilities. Programmes for people who have been discharged from psychiatric institutions appear to be entirely inadequate. Although the Government failed to provide to the Committee any information regarding homelessness among discharged psychiatric patients, the Committee was told that a large number of those patients end up on the street, while others suffer from inadequate housing, with insufficient support services.

412. The Committee views with concern the plight of thousands of "Convention refugees" in Canada, who cannot be given permanent resident status for a number of reasons, including the lack of identity documents, and who cannot be reunited with their families for a period of five years.

413. The Committee views with concern that 20 per cent of the adult population in Canada is functionally illiterate.

414. The Committee is concerned that loan programmes for post-secondary education are available only to Canadian citizens and permanent residents and that recognized refugees who do not have permanent residence status, as well as asylum seekers, are ineligible for these loan programmes. The Committee views also with concern the fact that tuition fees for university education in Canada have dramatically increased in the past few years, making it very difficult for those in need to attend university in the absence of a loan or grant. A further subject of concern is the significant increase in the average student debt on graduation.

E. Suggestions and recommendations

415. The Committee recommends that the State party consider re-establishing a national programme with specific cash transfers for social assistance and social services that includes universal entitlements and national standards and lays down a legally enforceable right to adequate assistance for all persons in need, a right to freely chosen work, a right to appeal and a right to move freely from one job to another.

416. The Committee urges the State party to establish officially a poverty line and to establish social assistance at levels which ensure the realization of an adequate standard of living for all.

417. The Committee recommends that federal and provincial agreements should be adjusted so as to ensure, in whatever ways are appropriate, that services such as mental health care, home care, child care and attendant care, shelters for battered women and legal aid for non-criminal matters, are available at levels that ensure the right to an adequate standard of living.

418. The Committee calls upon the State party to act urgently with respect to the recommendations of the Royal Commission on Aboriginal Peoples. The Committee also calls upon the State party to take concrete and urgent steps to restore and respect an aboriginal land and resource base adequate to achieve a sustainable aboriginal economy and culture.

419. The Committee recommends that the National Child Benefit Scheme be amended so as to prohibit provinces from deducting the benefit from social assistance entitlements.

420. The Committee recommends that Canada's Employment Insurance Plan be reformed so as to provide adequate coverage for all unemployed workers in an amount and for a duration which fully guarantees their right to social security.

421. The Committee recommends that the federal, provincial and territorial governments address homelessness and inadequate housing as a national emergency by reinstating or increasing, as the case may be, social housing programmes for those in need, improving and properly enforcing anti-discrimination legislation in the field of housing, increasing shelter allowances and social assistance rates to realistic levels, providing adequate support services for persons with disabilities, improving protection of security of tenure for tenants and improving protection of affordable rental housing stock from conversion to other uses. The Committee urges the State party to implement a national strategy for the reduction of homelessness and poverty.

422. The Committee calls upon the State party, in consultation with the communities concerned, to address the situation described in paragraph 404 above with a view to ensuring full respect for human rights.

423. The Committee recommends that the Government of Canada take additional steps to ensure the enjoyment of economic and social rights for people with disabilities, in accordance with the Committee's General Comment No. 5 (1990) concerning persons with disabilities. / E/1995/22, annex IV./

424. The Committee urges the Government to develop and expand adequate programmes to address the financial obstacles to post-secondary education for low-income students, without any discrimination on the basis of citizenship status.

425. The Committee urges the federal, provincial and territorial governments to adopt positions in litigation which are consistent with their obligation to uphold the rights recognized in the Covenant.

426. The Committee again urges federal, provincial and territorial governments to expand protection in human rights legislation to include social and economic rights and to protect poor people in all jurisdictions from discrimination because of social or economic status. Moreover, enforcement mechanisms provided in human rights legislation need to be reinforced to ensure that all human rights claims not settled through mediation are promptly determined before a competent human rights tribunal, with the provision of legal aid to vulnerable groups.

427. The Committee, as in its review of the second periodic report of Canada, reiterates that economic and social rights should not be downgraded to "principles and objectives" in the ongoing

discussions between the federal government and the provinces and territories regarding social programmes. The Committee consequently urges the Federal Government to take concrete steps to ensure that the provinces and territories are made aware of their legal obligations under the Covenant and that the Covenant rights are enforceable within the provinces and territories through legislation or policy measures and the establishment of independent and appropriate monitoring and adjudication mechanisms.

428. The Committee encourages the State party to adopt the necessary measures to ensure the realization of women's economic, social and cultural rights, including the right to equal remuneration for work of equal value.

429. The Committee also recommends that a greater proportion of federal, provincial and territorial budgets be directed specifically to measures to address women's poverty and the poverty of their children, affordable day care, and legal aid for family matters. Measures that will establish adequate support for shelters for battered women, care-giving services and women's non-governmental organizations should also be implemented.

430. The Committee urges the federal, provincial and territorial governments to review their respective "workfare" legislation in order to ensure that none of the provisions violate the right to work freely chosen and other labour standards, including the minimum wage, rights which are not only guaranteed by the Covenant but also by the relevant ILO conventions on fundamental labour rights and labour standards.

431. The Committee calls upon the federal, provincial and territorial governments to give even higher priority to measures to reduce the rate of functional illiteracy in Canada.

432. The Committee recommends that the State party request the Canadian Judicial Council to provide all judges with copies of the Committee's concluding observations and encourage training for judges on Canada's obligations under the Covenant.

433. The Committee also recommends that since there is generally in Canada a lack of public awareness about human rights treaty obligations, the general public, public institutions and officers at all levels of Government should be made aware by the State party of Canada's human rights obligations under the Covenant. In this regard, the Committee wishes to make specific reference to its General Comment No. 9 (1998) on the domestic application of the Covenant (see annex IV below).

434. The Committee recommends that the federal government extend the Court Challenges Programme to include challenges to provincial legislation and policies which may violate the provisions of the Covenant.

435. Finally, the Committee requests the State Party to ensure the wide dissemination in Canada of the present concluding observations and to inform the Committee of steps taken to implement these recommendations in its next periodic report.