



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Committee on the Elimination of Racial Discrimination
Eightieth session

Summary record of the 2136th meeting

Held at the Palais Wilson, Geneva, on Monday, 20 February 2012, at 10 a.m.

Chairperson: Mr. Avtonomov

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The meeting was called to order at 10.10 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention *(continued)*

Informal meeting with NGOs

Discussion concerning the tenth to fourteenth periodic reports of Viet Nam

1. **Mr. Kok Ksor** (Montagnard Foundation, Inc.) said that the indigenous Degar people, also referred to as Montagnards, had been living in the central highlands of South Indochina for thousands of years. They had suffered greatly during the first and second Indochina wars in their ancestral homeland. Although the Vietnamese people had prospered and enjoyed freedom since the end of the fighting in 1975, the Degar people continued to be persecuted. The Vietnamese Government had pursued policies of oppression and ethnic cleansing against them because of an inherently discriminatory mentality against people of a different ethnicity. Vietnamese officials disdained their tribal lifestyle and perceived them as savages.
2. The Government was seeking to exterminate the Degar people in order to obtain their ancestral homeland. Degar men had been falsely accused, sent to prison and tortured to death. Degar women had undergone forced sterilization and many of them had died because of unskilled surgery. For instance, on 28 April 2008 the Vietnamese security police had murdered a Degar Christian named Y Ben Hdok by tying a rope around his neck and dragging him behind their jeep until he died. On 14 April 2008, two Degar Christians, Y Song Nie and Y Huang Nie, had been brutally tortured to death by the security police, who had paid their families compensation of US\$ 66, a bag of rice, a coffin and a grave.
3. The Degar people were systematically losing their right to earn a sustainable livelihood. Their land was taken away without explanation or compensation and given to other Vietnamese or ethnic Kinh people. Their purpose in building churches was not to oppose the Government but to become better human beings according to the teachings of the Bible and to preserve their mother tongue. Similarly, they were not opposed to living alongside the Vietnamese people on their ancestral homeland. They merely called for an end to inhuman treatment and to violations of the right to use their land and other basic rights.
4. He also drew attention to Government action against the indigenous Khmer Kampuchea-Krom people in the Mekong Delta and the indigenous Tai Dam people in Dien Bien. The Vietnamese Government and people needed to change their attitude so that they could live together in peace and prosper as one nation.
5. **Mr. Thach Ngoc Thach** (Khmers Kampuchea-Krom Federation) said that the indigenous Khmer-Krom people of the Mekong Delta were being subjected to racial discrimination. The Vietnamese Government continued to erase their identity, labelling them as ethnic minority Khmer rather than Khmer-Krom. Students were not allowed freely to learn and use the Khmer language or to study their people's true history in public schools. Villages, districts and provinces could not be called by their Khmer names.
6. The Khmer-Krom people were living in fear in their ancestral land and were treated as second-class citizens. Their voices were silenced when they attempted to use the legal system. For example, on 2 September 2010 a young man called Chau Net had been beheaded with a Samurai sword by a Vietnamese mob in Tay Ninh Province because he had told them that he was Khmer-Krom. The Vietnamese authorities had taken no serious action to bring the killers to justice and Chau Net's parents had been warned by the Government to stop seeking justice for their son.

7. When members of the Khmer-Krom community sought to exercise their rights, they were detained on politically motivated charges and faced imprisonment without a fair trial. For example, Tran Thi Chau, who had been involved in a land dispute with the local authorities in Tra Vinh Province, had been arrested on her way to a wedding on 22 April 2010 and later sentenced by the Tra Vinh court to two and half years' imprisonment for the alleged crime of retaking her land. Chau Hen had been sentenced to 2 years' imprisonment by the Tri Ton district court, An Giang Province, on 13 March 2011 for organizing peaceful demonstrations to demand the return of Khmer-Krom farmlands in that district that had been confiscated in 2007 and 2008. He had been tortured following his arrest and imprisonment and had not been allowed to speak to his wife when she had visited the prison.

8. With regard to religious freedom, the Vietnamese authorities had successfully forced most Khmer-Krom Buddhist monks to join the Patriotic United Buddhist Association. Monks who refused to join were punished. On 11 December 2011, for example, the Vietnamese authorities had ordered Thach Hou, a Khmer-Krom Buddhist monk who was the Vice-President of the Patriotic United Buddhist Association of Soc Trang Province, to defrock Venerable Ly Sol for allegedly attempting to rape a woman as old as his grandmother at Tra Set temple in that province, despite statements to the contrary by the abbot and other Buddhist monks at the temple. The authorities persecuted the Buddhist monks at that temple because they refused to join the Patriotic United Buddhist Association.

9. The Khmer-Krom people lived in poverty and fear as second-class citizens, and faced retaliation and repression for standing up for their fundamental rights. He called on the Committee to urge the Vietnamese authorities to respect the Khmer-Krom identity and culture. People should be allowed to refer to themselves as Khmer-Krom; the Khmer language and Khmer-Krom history should be taught in public schools; and the original names of Khmer-Krom villages, districts and provinces should be restored.

10. The Khmer-Krom people should be allowed to defend themselves freely under the Vietnamese judicial system. The Government should stop accusing them of "disturbing Vietnamese society", invoking article 87 of the Criminal Code to imprison them whenever they stood up for their fundamental rights.

11. Khmer-Krom Buddhist monks should be allowed to create an independent religious organization free from Government interference, and the people should be free to practise Theravada Buddhism. Religious freedom was a right, not a privilege granted by the Government.

12. **Ms. Brañez** (Unrepresented Nations and Peoples Organization) said that her organization affirmed the ethnic, cultural, linguistic and religious distinctions of the Degar Montagnards, the Khmer Kampuchea-Krom and the Hmong peoples of Viet Nam, who had been marginalized owing to the Government's failure to implement the provisions of the Convention. All three groups had been disenfranchised and experienced systematic political, social and economic discrimination on account of their ethnicity.

13. Viet Nam had not ratified any convention relating to the status of refugees, and its legal system failed to protect persons seeking refuge or asylum. The State's forced extradition and repatriation of members of indigenous peoples and ethnic minorities constituted a serious violation of the principles of non-refoulement and non-expulsion protected by article 5 of the Convention. Action taken by the Vietnamese authorities to arrest members of indigenous peoples and ethnic minorities who wished to leave Viet Nam had included the deployment of elite police units and active State-level collaboration with Laos and Cambodia to forcefully return those seeking to defend their fundamental rights. They invoked politically charged legal provisions such as "opposing the Government" or

“harming solidarity” between Cambodia and Viet Nam. According to the Special Rapporteur on the situation of human rights in Cambodia, persons who were forcibly repatriated to Viet Nam had a justified fear of persecution by the Vietnamese Government.

14. The Government’s policy of land confiscation without free, prior and informed consent and fair compensation prevented indigenous peoples and ethnic minorities from earning a sustainable livelihood. While Vietnamese law essentially prohibited private ownership of land for all citizens, indigenous peoples and ethnic minorities were allocated the smallest and least fertile plots after having their ancestral lands reallocated to the Kinh ethnic majority. Their forced relocation was compounded by a lack of adequate assistance for the move to new areas, which often lacked basic infrastructure and were remote from services such as hospitals and schools, leading to greater food insecurity and poverty.

15. Indigenous peoples and ethnic minorities reported that the Vietnamese Government continued to ban independent publications and to restrict education in minority languages. Degar, Hmong and Khmer children were unable to receive early education in their native languages and faced language barriers because of their poor understanding of Vietnamese. Teachers and officials also accused them, using racially disparaging terms, of being “unable to learn” or “having a poor learning capacity”. Although free public education was legally mandatory, indigenous and ethnic minority families reported being charged prohibitive tuition fees. Vietnamese officials also reportedly used classrooms to interrogate children about their family’s religious affiliations and had threatened to expel students if they refused to sign documents recanting their beliefs.

16. **Mr. Vo Van Ai** (Vietnam Committee on Human Rights) said that his organization was deeply concerned about the grave violations of the rights of ethnic and religious minorities in Viet Nam. Although Viet Nam had ratified the Convention three decades previously, it had submitted only four periodic reports to date.

17. The latest periodic report (CERD/C/VNM/10-14) outlined extensive legislation enacted to guarantee minority rights. However, many laws were never implemented and others seriously undermined minority rights by making them dependent on compliance with Communist Party doctrines.

18. The five-year plan adopted by the Communist Party in Gia Lai and other minority areas contained explicit directives requiring, for instance, that all heretical religions should be resolutely eliminated and that actions which abused democracy, human rights, ethnicity and religion to sabotage national solidarity should be suppressed. Far from safeguarding minority rights, Viet Nam’s alleged efforts to combat racial discrimination amounted to an attempt to eradicate cultural, religious and political plurality among the population.

19. Viet Nam should urgently reform its legal system to effectively combat racial discrimination. As noted by the Special Rapporteur on extreme poverty and human rights following her visit to Viet Nam (A/HRC/17/34/Add.1), “being party to international treaties is not enough: international standards must be incorporated into domestic legislation”.

20. Ethnic and religious minorities suffered serious violations of their political and economic rights, including expropriation of ancestral lands, forced population displacement, religious persecution, arbitrary arrests and disappearances. Negative stereotypes depicting ethnic minorities as “uncivilized” were profoundly embedded in Government policies. Poverty reduction programmes often included campaigns to eradicate the culture, traditional lifestyle, religious beliefs and practices of minority peoples to help them “catch up” with the Kinh.

21. There were no privately run media or free trade unions and no civil society or independent judiciary in the one-party system. Without such safeguards, ethnic minorities had no means of claiming or defending their rights. As a result of the policy of *doi moi*

(economic liberalization under one-party control), wealth disparities between ethnic minorities and the majority Kinh had increased at an alarming rate. While ethnic minorities had accounted for 18 per cent of those living in poverty in 1990, they now averaged 56 per cent, or nine times the percentage recorded for the Kinh. Such inequalities were exacerbated by the system of family registration permits, which was the basis of all discrimination against ethnic and religious minorities. His organization urged Viet Nam to abolish that discriminatory mechanism once and for all.

22. Religious discrimination in Viet Nam was a deliberate policy, orchestrated at the highest levels of the Communist Party and State. Ethnic Christian Hmongs and Montagnards, members of the Unified Buddhist Church of Vietnam (UBCV), Hoa Hao Buddhists, members of the Cao Dai religion and Khmer-Krom Buddhists were subjected to imprisonment, torture, house arrest, police surveillance, intimidation and harassment. The UBCV leader, Thich Quang Do, had spent 30 years under different forms of detention for his peaceful advocacy of religious freedom. His organization urged the Vietnamese authorities to cease religious persecution and to release all members of ethnic and religious minorities who had been detained for the peaceful exercise of the rights to freedom of expression, opinion, conscience and belief. Viet Nam should also recognize the competence of the Committee to receive individual complaints under article 14 of the Convention.

23. **Ms. Faulkner** (Vietnam Committee on Human Rights) said that Viet Nam had failed to integrate the provisions of the Convention into domestic legislation. Members of ethnic minorities were being arrested, detained and tortured on the basis of what were vaguely defined as national security laws. For instance, people were serving 20-year prison sentences for “sabotaging national unity”. A major reform of the legal system was essential to ensure respect for the rights of ethnic minorities. The report contained a list of laws that had ostensibly been enacted to guarantee minority rights. However, a whole arsenal of directives issued by the Communist Party severely restricted the rights enshrined in the Constitution and other legislation.

24. **Mr. Rong Nay** (Montagnard Human Rights Organization) said that torture in Vietnamese prisons was an everyday occurrence and indigenous Montagnard detainees suffered terrible discrimination. According to Human Rights Watch, more than 350 Montagnards had been sentenced to long prison terms since 2001 on charges of being a threat to national security.

25. Ancestral Montagnard land had been seized by the Government and many people had lost their farms. Many traditional villages had been “Vietnamized” or exploited by the Government as tourist sites. Even burial grounds were stolen by the Government, so that Montagnard graves had to be moved elsewhere.

26. He urged United Nations bodies to investigate why poverty and malnutrition levels were so much higher for the indigenous peoples of northern Viet Nam and the Montagnard tribal peoples of the central highlands. International NGOs worked throughout Viet Nam, but almost none of them served the indigenous Montagnards. Government policies, many of which were based on racism and discrimination, cause hardship to the Montagnard people. They restricted the development and education of tribal peoples. For instance, although 15,000 Vietnamese students were studying in the United States of America, not one scholarship or study opportunity had been offered to an indigenous Montagnard.

27. Montagnard Christians were persecuted for their faith and worship in their homes or churches. Those who peacefully defended their religion or land rights were beaten and imprisoned.

28. He urged the Committee to call on the Vietnamese Government to halt the policies of discrimination and ethnic cleansing that had resulted in extreme poverty and untold suffering for indigenous peoples, to restore land rights to the Montagnard people, and to

grant them access to educational opportunities and development. The United Nations should also negotiate the immediate release of over 400 Montagnard prisoners who had been unjustly imprisoned for their Christian faith and for exercising their right to peaceful assembly.

29. **Mr. Alles** (Montagnard Human Rights Organization) said that the policies of ethnic discrimination and persecution that the Committee had condemned more than 10 years previously had worsened in the central and northern highlands of Viet Nam. The Special Rapporteur on human rights and extreme poverty had urged the Government to ratify and implement major human rights treaties, including the Convention against Torture. The Independent Expert on minority issues (A/HRC/16/45/Add.2) had raised concerns about the potential denial of religious freedom and other serious violations of civil rights, adding that obstacles had impeded her ability to obtain perspectives other than those in consonance with official Government positions.

30. In a detailed report on the abuse of Montagnard Christians in the central highlands issued in 2011, Human Rights Watch referred to a series of Government crackdowns over the past 10 years to suppress political and religious activities. Elite security units had hunted down and arrested Montagnard activists and sealed the border with Cambodia to prevent asylum-seekers from fleeing the country. According to the same report, more than 350 Montagnards had been sentenced to long prison terms on vaguely defined national security charges for their involvement in public protests or unregistered house-based churches, or for trying to seek asylum in Cambodia.

31. His organization urged the Vietnamese Government to show compassion and fairness to Montagnard prisoners, who had experienced torture, brutality and discrimination. It should immediately implement policies through the Ministry of the Interior aimed at halting the practice of torture at every level of the security system.

32. **Mr. Tandara Thach** (Supreme National Council of Kampuchea-Krom) said that Kampuchea-Krom had been part of the Khmer Empire until the end of French colonization in June 1949. The French National Assembly had then ceded the territory to the southern Vietnamese warlord Bao Dai, who had continued the process of colonization.

33. The territory had been flooded by illegal population transfers during French colonial rule and that was where racial discrimination had originated. A society based on double standards had been created, with the Khmer-Krom as the underdogs. Gross discrimination was still being practised by the Vietnamese Government with the intention of intimidating, suppressing and terminating the advancement of the Khmer-Krom and other indigenous peoples. The Khmer-Krom were denied access to senior public positions for national security reasons, because they were “not sufficiently educated”, because they did not hold high office in the Communist Party or simply because they were not Vietnamese. Almost none of the tens of thousands of Vietnamese studying abroad were Khmer-Krom.

34. The Government should translate the United Nations Declaration on the Rights of Indigenous Peoples into all indigenous languages, publish the translation officially and distribute it throughout the country, including among the Vietnamese themselves. Awareness training on the Declaration should also be provided for indigenous people. Furthermore, the Government should start implementing some of the articles of the Declaration and recognize all the indigenous peoples of Viet Nam.

35. **Mr. Saidou** asked whether the Montagnard people were allowed to use ancestral names on civil status documents.

36. **Mr. de Gouttes** asked whether any of the NGOs present at the meeting had been consulted by the Government during the preparation of its periodic report. He wished to know whether they had any information on Government plans to establish a national human

rights institution in accordance with the Paris Principles. NGO reports suggested that, in the case of the Montagnard minorities, religious discrimination was linked to racial discrimination; it should therefore perhaps be taken into account.

37. **Mr. Huang Yong'an** (Country Rapporteur) asked whether it was the case that the Khmer-Krom preferred to describe themselves as an indigenous people rather than as an ethnic minority, the term used by the Vietnamese Government. Noting that the Supreme National Council of Kampuchea-Krom had stated in its shadow report that the Government had planned to exterminate the Khmer-Krom, he asked whether the situation was in fact that serious.

38. **Ms. Faulkner** (Vietnam Committee on Human Rights) said there had been no consultations with independent NGOs during the drafting of the State party report because no such organizations existed within Viet Nam. Although organizations outside the country would welcome the opportunity to enter into a dialogue with the Government, all proposals in that regard had been turned down. The establishment of a national human rights institution had been discussed, but she expressed concern that, in the absence of a free press, an independent civil society and freedom of expression, it would in effect be controlled by the Government. There was a link between religious and racial discrimination in Viet Nam; the Montagnard people were repressed not only because they were an indigenous people but also because the Government sought to impede the development of Christianity.

39. **Mr. Thach Ngoc Thach** (Khmers Kampuchea-Krom Federation) said that the Khmer-Krom people had been forced to take family names assigned by the Vietnamese authorities over 200 years previously so that their origin could be easily identified. It was a form of cultural genocide that continued today. The Khmer-Krom defined themselves as an indigenous people because they were the original inhabitants of the country and not immigrants, but they were classed as ethnic minorities by the Government. Referring to the statement by the Supreme National Council of Kampuchea-Krom, he said that the destruction of their religion, which was the cornerstone of their culture, would lead to the death of the Khmer-Krom as a people.

40. **Mr. Kok Ksor** (Montagnard Foundation, Inc.) said the Government was committing acts of racial discrimination against the Montagnard people by seeking to control their church and forcing them to give their allegiance to the Government party.

Discussion concerning the nineteenth and twentieth periodic reports of Canada

41. **Ms. Teklu** (African-Canadian Legal Clinic) said that the practice of racially biased policing persisted, even though the Government had been urged on numerous occasions to take action against it. Racial profiling sent a clear message to African-Canadians that they were viewed by society as "others" and criminals. The police service's continuing refusal to collect data on policing practices made it impossible to determine the effect of any Government programmes to combat the phenomenon.

42. African-Canadians continued to be overrepresented in the criminal justice system. Figures from 2011 revealed that, while African-Canadians made up only 2.5 per cent of Canada's population, they accounted for almost 10 per cent of the federal prison population. The situation would probably only get worse with the introduction of Bill C-10 (the Safe Streets and Communities Act), which imposed tougher sentences for certain offences and increased the likelihood of custodial and adult sentences for young offenders. In 2007, in its concluding observations (CERD/C/CAN/CO/18), the Committee had drawn attention to the disproportionately high rate of incarceration of aboriginal peoples compared with the general population and had urged Canada to increase its efforts to address socio-economic marginalization and discriminatory approaches to law enforcement and to

consider introducing a specific programme to facilitate reintegration of aboriginal offenders into society. She called on the Committee to make the same recommendations with respect to the African-Canadian population.

43. African-Canadians were being denied meaningful access to education. The dropout rate among African-Canadian students was 40 per cent compared to an overall average of 25 per cent. African-Canadians also continued to experience disproportionately high rates of suspension and expulsion. Reports suggesting that African-Canadian underachievement was linked to systemic racism in education had led the Toronto District School Board to establish an Afrocentric school. The successful results achieved by the school suggested that the mainstream school system was in need of serious review. School curricula must become more inclusive, and school staff more racially and culturally representative.

44. The Canadian Government had stated in its report that it used a number of surveys to collect information on the Canadian population that could be cross-tabulated with other socio-economic data. Her organization questioned the completeness of such data and urged the Committee to ask the Government to elaborate on the surveys and statistics to which it referred, particularly with respect to race and ethnic origin. The Committee should also investigate why Canada had abolished the mandatory long-form census which had contained questions relating to race or ethnicity. The Government could not address racial disparities if it did not know where they existed.

45. **Ms. Preston** (Canadian Friends Service Committee) said that, although Canada had belatedly endorsed the United Nations Declaration on the Rights of Indigenous Peoples, her organization was concerned that it continued to devalue that instrument both domestically and internationally. United Nations treaty bodies were increasingly using the Declaration to interpret indigenous rights and State obligations in existing human rights treaties, but Canada claimed that none of its provisions reflected customary international law. Canada should cease to devalue the Declaration, ensure that its laws and policies were consistent with the Declaration, indigenous people's rights and Canada's related obligations, and establish a process, in conjunction with indigenous peoples, to ensure the effective implementation of the Declaration domestically and internationally.

46. Speaking on behalf of Kontinóhstas – The Mohawk Language Custodians, she said that it was important for indigenous peoples to revitalize their languages and cultures in order to overcome racial discrimination. Consequently, Canada should enact legislation that protected, promoted and perpetuated indigenous languages and cultures, developed in consultation and equal partnership with indigenous peoples.

47. **Mr. Joffe** (Grand Council of the Crees) said the Nagoya Protocol was a new international agreement on access and benefit-sharing arising from the use of genetic resources. Those resources and associated traditional knowledge were crucial for indigenous peoples and their cultures, health, well-being and livelihoods. However, under the Protocol, only established rights — not other rights based on customary use — appeared to receive some protection under domestic legislation. Furthermore, third parties might gain access to and use of genetic resources in the territories of indigenous peoples, without their free, prior and informed consent. In the Convention on Biological Diversity, the central objective of fair and equitable sharing of benefits required that all rights to genetic resources should be taken into account. Yet Canada had failed to consult indigenous peoples and accommodate their concerns. It should fully respect indigenous people's customary rights to genetic resources, incorporate a human rights-based approach in international environmental processes and use domestic legislation to support indigenous people's rights under the Convention.

48. **Ms. Edwards** (Native Women's Association of Canada) said that aboriginal women in Canada continued to suffer from violations of the human rights and fundamental

freedoms contained in the International Convention on the Elimination of All Forms of Racial Discrimination. The extreme marginalization and inequalities experienced by all aboriginal women led to their being subjected to racial and sexual violence. It was essential for the Committee to visit Canada in order to be fully informed about the social, historical and geographical context in which disappearances and murders of aboriginal women and girls were taking place.

49. The Canadian Government should follow recommendations made by its own Auditor General with respect to the national aboriginal child welfare system and take immediate steps to remedy jurisdictional barriers and funding problems. Similarly, it should take action to remedy the shortfalls in First Nations schools. It must also implement policy and legislative changes to remove residual gender discrimination against First Nations women and their descendants. Lastly, she expressed concern about the lack of access to justice and the high rates of incarceration of aboriginal peoples and the potential impact of Bill C-10 in that regard.

50. **Mr. Benjamin** (Amnesty International) said that indigenous peoples in Canada did not have equal access to fundamental human rights. Those inequalities were the result of colonial history and current Government policies. In crucial areas such as child safety or access to safe drinking water, the funds allocated by the federal Government and the services offered were not equally distributed between indigenous and non-indigenous communities.

51. Despite its acknowledgement of the disproportionately high levels of violence against indigenous women, the Government had failed to respond with a comprehensive and coordinated plan of action. Existing procedures to resolve land disputes were inadequate, and the State had failed to properly protect indigenous land rights from further violations pending the resolution of such disputes. There were also serious concerns relating to policies on refugees, migrants and persons targeted by antiterrorism legislation and Canadian trade and investment abroad.

52. His organization recommended that the Canadian Government should be called upon to withdraw its proposed human trafficking legislation, and amend the Immigration and Refugee Protection Act so as to ban the deportation or extradition of persons facing a risk of torture. It should review all foreign-worker programmes to prevent discrimination and remove restrictions on foreign workers living with their employers. It should be called upon to appoint an independent commissioner to review claims for redress for alleged human rights violations associated with national security issues and to implement the recommended model for a comprehensive review of departments involved in national security activities. It should introduce measures to hold Canadian corporations accountable for their activities in or near indigenous territories in other countries, and ensure that compliance with the United Nations Declaration on the Rights of Indigenous Peoples was a criterion used in the forthcoming review of the Canada-Colombia Free Trade Agreement.

53. **Ms. Littlechild** (International Indian Treaty Council) said that, as indicated in the consolidated alternative report prepared by a number of Canadian NGOs as well as her organization, discrimination against indigenous peoples was entrenched in the political, social and economic conditions in which many of them lived. For example, indigenous communities experienced higher rates of childhood abuse, domestic violence, disease, mortality, suicide, substance abuse and a range of chronic health conditions. They were provided with inadequate housing and substandard sanitation, lacked clean water and adequate nutrition, had lower levels of education and employment, and faced poverty and racism. The situation was described at length in the alternative report.

54. The alternative report also outlined a range of indigenous perspectives and raised a number of concerns relating to Canada's failure to implement the United Nations

Declaration on the Rights of Indigenous Peoples in good faith and in collaboration with indigenous communities. Indigenous lands had been developed without the free, prior and informed consent of indigenous communities, and the Government had refuted the applicability in Canada of international standards relating to consent. A related problem, namely that of indigenous children in State care or custody, had worsened as a result of, inter alia, pervasive racism and discrimination against indigenous communities and inequalities in funding for indigenous child and family services.

55. The Canadian Government's discriminatory practices extended beyond national borders and had an impact on indigenous rights as a result of a number of international treaties. They reflected a lack of respect for the human rights of indigenous peoples in other countries where Canadian companies operated.

56. She stressed that the failure to follow up or implement the Committee's previous recommendations (CERD/C/CAN/CO/18) was a cause for concern, and drew attention to the list of recommendations contained in the alternative report.

57. Speaking on behalf of the Indigenous Bar Association on the issue of systemic racism and the overrepresentation of indigenous peoples in the justice system, she said that the situation was deteriorating. Following several inquiries in the 1990s which had acknowledged that systemic racism had led to the overrepresentation of those peoples in the justice system, the Criminal Code had been amended to take the circumstances of aboriginal offenders into consideration. The relevant provision, namely section 718.2 (e) of the Code, had subsequently been interpreted by the Supreme Court in the Gladue case as a remedial measure to reduce the disproportionate incarceration of indigenous peoples. However, the Government had failed to effectively implement the provision, and members of indigenous peoples were still more likely to receive custodial sentences, be denied bail and serve longer sentences.

58. Indigenous women, who constituted the fastest growing prison population in Canada, faced an even worse situation, and the criteria used to determine risk had a disproportionate impact on that group. Moreover, many actors in the justice system did not understand the requirement to consider alternatives to incarceration and failed to take account of the Gladue principles or section 718.2 (e) of the Criminal Code. There was no real commitment on the part of the federal Government to allocate adequate resources to alternatives to incarceration, or to properly fund programmes in that field. A 2009 report by the Office of the Correctional Investigator indicated that several of the Government's measures in that respect had never been implemented or were severely underfunded.

59. In spite of its recognition of the fact that systemic racism had led to the overrepresentation of indigenous peoples in the justice system, the Government's strategy included amendments to increase the number of crimes carrying a mandatory minimum sentence and harsher penalties for other crimes. The Indigenous Bar Association's recommendations included doing away with mandatory minimum sentences and introducing training programmes, drawn up in consultation with indigenous peoples and aimed at judges and prosecutors, on the scope of section 718.2 (e) of the Criminal Code and the Gladue principles.

60. **Ms. Carmen** (International Indian Treaty Council), noting the Committee's earlier concerns and recommendations relating to the impact of transnational corporations registered in Canada, said that Canada had not provided the requested information on Canadian corporations or steps taken to address the problem. Updates submitted by indigenous people in the United States, Guatemala and Mexico indicated that the Government had failed to implement the recommendation.

61. A number of examples indicated that the situation continued to deteriorate. The Western Shoshone in Nevada continued to suffer the impact of gold mining by the Toronto-

based Barrick Gold Corporation. Indigenous peoples in Guatemala and Oaxaca, Mexico, were also suffering as a result of the activities of Canada-based corporations. Those examples reflected the Government's failure to implement the Committee's previous recommendations to hold Canadian mining corporations, operating with impunity outside Canada, accountable for human rights violations against indigenous peoples. She called on the Committee to once again ask Canada to provide information on the steps it had taken, or intended to take, to fully implement the Committee's recommendations.

62. **Mr. Lameman** (International Indian Treaty Council and the Dene Nation) said that glaring abuses of indigenous rights were occurring as a result of the regional government's support for, and licensing of, corporations working to extract oil from tar sands in Alberta. The extraction process, usually involving strip or open-pit mining, caused great environmental harm. Although the Assembly of Treaty Chiefs had called for a moratorium on further expansion of the mines, the government of Alberta continued to grant mining leases, licences and permits, while the federal authorities failed to support the Indigenous Treaty Nations, which, as a result of the extraction activities, were suffering increased rates of disease and a total disregard of their right to fish, hunt and trap in the area. Extraction activities were continuing without the free, prior and informed consent of the Treaty Nations concerned.

63. Together with other First Nations, the Dene Nation had signed the Mother Earth Accord, opposing the proposed Keystone XL pipeline and calling for a moratorium on tar sands development, full consultation under the principles of free, prior and informed consent, and the refusal of the presidential permit required to construct the pipeline.

64. Documents recently obtained by Greenpeace Canada suggested that, in an internal document, the federal Government had labelled indigenous peoples and environmental groups as its "adversaries" in the matter of the tar sands development, in violation of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the United Nations Declaration on the Rights of Indigenous Peoples.

65. Given that the above-mentioned examples demonstrated the Government's failure to implement the Committee's recommendations, he called upon the Committee to reiterate its previous requests.

66. **Mr. Alexis** (Confederacy of Treaty Six First Nations) said it was vital to ensure that the Canadian Government upheld international instruments such as the ICERD and Treaty No. 6 of 1876, including their original spirit and intent. No consultations had taken place between the Government and the Treaty Nations, and his organization's forthcoming meeting with the Canadian delegation would in no way constitute a consultation.

67. The alternative report provided a balanced and accurate picture of the treatment of the indigenous nations. The planning process for all collective or individual initiatives, as well as their implementation and outcome, created important opportunities to put into practice the provisions of the United Nations Declaration on the Rights of Indigenous Peoples, particularly the provisions affirming the right to participate in decision-making processes. Merely being present in the meeting room was not the same thing as genuine participation. While he fully supported the important role played by United Nations agencies, such participation should involve indigenous peoples, nations and organizations.

68. He drew attention to the important standards set out in articles 18 and 19 of the Declaration regarding the right of indigenous peoples to participate in decision-making in accordance with their own procedures and the requirement of States to consult indigenous peoples in order to obtain their free, prior and informed consent before the implementation of measures affecting them.

69. His organization respectfully recommended that the Committee should call upon the Government of Canada to honour the sacred treaty relationship entered into by the Treaty 6 Nations and the Queen through Treaty No. 6 of 1876, and should question the validity of Canada's and Alberta's legislative initiatives on water taken without the consent of the indigenous peoples. The Committee should also call upon Canada and Alberta to discontinue its expansion of the destructive tar sands project, and to respect the sacred sites of the Treaty 6 Nations and the final resting place of their ancestors.

70. **Mr. Bellegarde** (Treaty 4 First Nations) said that, as representative of the 34 Treaty 4 chiefs, neither he nor any other chiefs had been consulted by any Canadian authorities during the drafting of the State party's periodic report. Treaty No. 4 had been entered into between the Crown and the Nahkawe, Nakota and Plains Cree Indigenous Nations in 1874, when it had been agreed to share 75,000 square miles of traditional territory to "the depth of a plow". The Treaty 4 First Nations still retained their rights and title to the land and resources throughout Treaty 4 territory.

71. Some 52 per cent of the world's potash — an essential ingredient in the production of fertilizer, which was necessary for growing food — was located in the province of Saskatchewan, including a large amount in Treaty 4 territory. The government of Saskatchewan continued to grant licences and permits for industry without the free, prior and informed consent of the Treaty 4 Nations, and without following Canada's legal precedents requiring governments to consult First Nations about specific resource development issues and projects. The Treaty 4 Nations had not been consulted on, and had not given consent to, any of the existing or planned mines and pipelines throughout Treaty 4 territory.

72. Since 1874, Treaty 4 First Nations and Peoples had never directly benefited from the vast revenue deriving from the sale of potash and other natural resources. It was therefore necessary to establish formal resource revenue sharing agreements, which would alleviate poverty and improve the third-world conditions in which the people of the Treaty 4 Nations lived. There was a large socio-economic gap between First Nations people in Canada and the rest of Canadian society, as demonstrated by the fact that while Canada was rated sixth on the United Nations Human Development Index, when First Nations statistics were applied indigenous people in Canada were rated sixty-third. That gap must be bridged through direct and full meaningful participation with governments and industry in all resource development.

73. In order to bring about full implementation of Treaty 4, Canada should establish a treaty commissioner, appointed by and accountable to both indigenous peoples and the Crown. In that way, Canada could implement section 35 of the Constitution, which recognized and affirmed existing aboriginal and treaty rights, and uphold the United Nations Declaration on the Rights of Indigenous Peoples.

74. The Treaty 4 First Nations had made a number of recommendations in the alternative report, inter alia that the Committee call upon the Crown in right of Canada and the provinces to ensure that indigenous peoples' right to free, prior and informed consent was recognized and respected in the context of proposed development of the territories or resources of indigenous peoples. In particular, the Crown in right of Canada should ensure that provincial governments ceased to issue licences to authorize industrial development, including mining, prior to seeking to obtain the consent of indigenous peoples.

75. **Mr. Wuttke** (Assembly of First Nations) said that systematic discrimination prevailed in Canada's criminal justice system, where indigenous offenders continued to be overrepresented. While they accounted for 4 per cent of the general population, they made up almost a quarter of Canada's prison population. Those prisoners, many of whom were young, had largely grown up in poverty, were poorly educated and were suffering the

multigenerational effects of residential schools, dislocation caused by forced adoptions, and cultural and socio-economic marginalization. Statistics showed that indigenous persons were more likely to be denied bail, spent more time in pretrial detention and were more than twice as likely to be incarcerated than other offenders. Between 1998 and 2008, federally incarcerated indigenous persons had increased by 19.7 per cent and the number of indigenous women in federal prisons had increased by 131 per cent.

76. The introduction of the proposed Safe Streets and Communities Act (Bill C-10), which provided for mandatory minimum sentences, would result in arbitrary and inflexible sentences that were sometimes disproportionate to the offence, and would increase indigenous overrepresentation in prison. It would also weaken the requirement under the Criminal Code for the specific situation of indigenous offenders to be considered at sentencing. The proposed amendments to Bill C-10 would have serious consequences for indigenous young persons.

77. The Bill did nothing to alleviate the problem of widespread discrimination against indigenous peoples. In 2007, the Assembly of First Nations and the First Nations Child and Family Caring Society had filed a complaint to the Canadian Human Rights Commission alleging that Canada's failure to provide funding equity for First Nations children was discriminatory. The Government had relied on arguments of provincial jurisdiction, despite the fact that it had chosen to exercise jurisdiction over indigenous peoples' affairs at federal level. The complaint had been dismissed, and a judicial review of the decision was pending. If the case were again dismissed, the First Nations people would be the only group of Canadians to be denied full implementation of the Canadian Human Rights Act and would be barred from making further claims against the federal Government.

78. **Mr. Thornberry** said that the issue of proof of title in cases of outstanding land and resource claims had been raised several times in the documentation provided by the NGOs, and was clearly a matter of considerable concern. While the Canadian report had stressed the importance of negotiation, there had been many complaints about the adversarial approach on the part of the authorities. He wondered to what extent that discrepancy could be explained by differing structural and cultural approaches, and how they could be reconciled. Directing his question at the representative of the Grand Council of the Crees, he asked how established rights differed from customary rights. He also wished to know the reasons for the high number of indigenous women in prison.

79. **Mr. Lindgren Alves** said he had been shocked to hear that persons of African descent and indigenous persons in Canada suffered from similar problems to those of their counterparts in Latin America, even though Canada had one of the highest Human Development Indexes in the world. He asked whether NGOs believed that Canada's multicultural policies, which were looked on as an international benchmark, had been successful in terms of the integration of indigenous persons.

80. **Mr. de Gouttes** said he would appreciate more information on Bill C-10, including what stage it had reached, what criminal provisions it contained, and if and how it would affect minors.

81. **Mr. Kemal** (Country Rapporteur) asked why, in the view of NGOs, the valuable resources extracted from indigenous peoples' land, such as potash, were not shared with the indigenous peoples themselves. He wondered to what extent the Criminal Code requirement that the specific situation of indigenous offenders be considered at sentencing could be interpreted as discrimination against non-indigenous offenders, and what could be done to prevent that.

82. **Mr. Calí Tzay** said he would welcome more information about indigenous women in Canada, including whether indigenous status was given to a woman's children if she was not married to an indigenous person. He also wished to know the position of NGOs with

regard to the distribution of profits from power-generation and mining projects. He would appreciate more information about the education provided to indigenous persons by the State of Canada. Also, what was the scope and purpose of the reconciliation process under way with indigenous peoples in Canada, how was it being implemented, and what was the level of involvement of the State in the process?

83. **Mr. Saidou** said it was not clear to him whether the criminal justice system was applied to all persons equally throughout Canada. He wished to know whether the Criminal Code contained provisions that were specifically designed to criminalize persons of African descent and indigenous persons.

84. **Mr. Joffe** (Grand Council of the Crees), referring to genetic resource rights, said that there were three categories of established rights: rights based on a judicial decision; rights based on an agreement or treaty; and rights based on legislation. With regard to customary use of genetic resources, under the Canadian legal system those rights would be based on traditional use and occupation. Litigation and negotiation in Canada had generally been on land and resource rights, and had not focused on genetic resource rights. Consequently, even if strong prima facie rights existed, in terms of traditional knowledge and related genetic resources they would not be established rights. As a result, indigenous peoples could face massive dispossession, not only in Canada but elsewhere in the world.

85. **Ms. Teklu** (African-Canadian Legal Clinic) said that one of the problems in ascertaining the socio-economic situation of persons of African descent and indigenous peoples in Canada was that the Government amalgamated all minorities into one group. Their dire situation was masked by Canada's overall Human Development Index ranking. A policy of anti-racism was necessary, rather than the policy of multiculturalism as practised in Canada, which amounted to little more than a parading of different cultures and races and had failed African-Canadians.

86. While the criminal justice system was fundamentally racist in that it penalized African-Canadians and indigenous persons at every level, the Criminal Code did not contain specific provisions that criminalized acts by specific minority groups. However, it was clear that certain provisions on gangs and firearms had been prompted by circumstances specific to the African-Canadian community.

87. **Mr. Bellegarde** (Treaty 4 First Nations) said the issue of proof of title to land and resources arose from the fact that indigenous peoples, on the one hand, and the federal and provincial authorities, on the other, each believed that they had title. The latter continued to issue licences and permits without regard to the inherent rights of indigenous peoples. That was the root of the conflict and the reason why a treaty commissioner should be established.

The meeting rose at 1 p.m.