



**International Covenant on Civil and
Political Rights**

Distr.: General
26 May 2000

Original: English

Human Rights Committee
Sixty-fifth session

Summary record of the 1737th meeting

Held at Headquarters, New York, on Friday, 26 March 1999, at 10 a.m.

Chairperson: Ms. Medina Quiroga

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant
(*continued*)

Fourth periodic report of Canada

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Chief, Official Records Editing Section, room DC2-750, 2 United Nations Plaza.

Any corrections to the record of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

00-44439 (E)

*** 0044439 ***

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

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fourth periodic report of Canada (CCPR/C/103/Add.5)

1. *At the invitation of the Chairperson, Ms. Beckton, Mr. Deslauriers, Ms. Fry, Mr. Hynes, Mr. Thérien, Mr. Tsai and Mr. Watts (Canada) took places at the Committee table.*

2. **Ms. Fry** (Canada) said that Canada was a diverse society with two official languages, 100 ethnic groups and a significant aboriginal population. A federation with 10 provinces and 2 territories, it had a constitutionally enshrined division of powers. Every jurisdiction had enforceable human rights charters or codes which applied to both the private and public sectors and provided effective, enforceable remedies for victims of discrimination, while federal and provincial agreements formed the basis of a common social and economic framework designed to meet the needs of a rapidly evolving society. However, since legislation did not guarantee de facto enjoyment of civil and political rights, it must be combined with a supportive infrastructure of public policies and programmes and partnerships with civil society, non-governmental organizations (NGOs), the private sector and institutions. For example, governmental measures to combat hate crimes included the establishment of the Canadian Race Relations Foundation, the convening of a national round table to develop a comprehensive strategy on that issue, improved police training, educational campaigns, support for community action and the strengthening of legislation in consultation with the provinces and territories. The rapid spread of hate propaganda on the Internet was a challenge which called for creative domestic and international solutions.

3. The Government had recently adopted a National Strategy on Community Safety and Crime Prevention based on the philosophy that crime could be prevented by addressing its root causes. The strategy funded partnerships in the search for local solutions and included women's safety and aboriginal and youth issues among its priorities. The issue of violence against women had been addressed through increased sentencing for stalking, strengthened gun control, criminalization of female genital mutilation, limitation

of the use of medical records as evidence against the plaintiffs in sexual assault cases and the exclusion of drunkenness as a defence in such cases. The Government had launched a renewed family violence initiative, and culturally sensitive programmes were being developed for cultural and ethnic communities where the issue of violence might be difficult to address.

Right of self-determination and the right of persons belonging to minorities (articles 1 and 27 of the Covenant)

4. **The Chairperson** read out the questions relating to articles 1 and 27 of the Covenant: implementation of the right to self-determination in respect of indigenous peoples; the outcome of appeals to the Supreme Court on the interpretation of section 35 of the Constitution Act; the negotiation at the federal level of a policy framework for implementing the right to self-government, including treaties with constitutional status; the work of the Indian Specific Claims Commission; disputes brought before the Commission, including the Lubicon Lake Band case; implementation of the recommendations contained in the final report of the Royal Commission on Aboriginal Peoples; and recommendations and policy changes in the justice system as a result of the Aboriginal Justice Inquiry.

5. **Ms. Fry** (Canada) said that the Government had affirmed that self-determination applied equally to all collectivities, both indigenous and non-indigenous, which qualified as peoples under international law. In the case of indigenous peoples living within existing democratic States, the Government acknowledged the right to self-determination founded on respect for the political, constitutional and territorial integrity of the States concerned. Government policy in that area was based on the premise that aboriginal peoples had the right to govern themselves and to decide on matters affecting their communities. That policy could be implemented through aboriginal self-government arrangements or through public government arrangements, as in the case of the new territory of Nunavut, which would have an open, representative Government where all residents could vote and run for office and where the Inuit language, Inuktitut, would be a working language of the Government.

6. The Royal Commission on Aboriginal Peoples had submitted its final report in November 1996. The Government's response, *Gathering Strength: Canada's*

Aboriginal Action Plan, had begun with a statement of reconciliation that acknowledged the mistakes and injustices of the past, expressed a vision of a shared future for aboriginal and non-aboriginal people and provided a framework for concerted action.

7. **Mr. Watts** (Canada) said that the Government no longer delegated legislative authority to aboriginal groups. The provinces and territories were seen as necessary parties to negotiations, and self-government agreements could be constitutionally protected. Such arrangements were based on a series of principles: the inherent right to self-government was an existing aboriginal right recognized under the Constitution; self-government was to be exercised within the existing Canadian Constitution; recognition of self-government did not imply sovereignty in the international sense and aboriginal people remained citizens of Canada and of the province or territory in which they lived; the Canadian Charter of Rights and Freedoms continued to apply; federal, provincial, territorial and aboriginal laws must work in harmony; certain federal legislation, such as the Criminal Code, took precedence over self-government arrangements; the interests of all Canadians were to be taken into account in negotiating such arrangements; and the Government was prepared to tailor agreements to the needs of individual aboriginal groups. Aboriginal jurisdiction covered matters relating to the group's distinct culture, government and institutions. In areas which were not strictly internal, primary lawmaking authority remained with the federal or provincial Government, and its laws prevailed in the event of conflict with aboriginal law. Examples of such areas included divorce, the administration of justice, environmental protection, fisheries management, defence and external relations. Self-government arrangements could be given effect through a variety of mechanisms, including new treaties, additions to existing treaties and land claim agreements.

8. The Indian Specific Claims Commission had two major functions: to conduct inquiries and to serve as a mediator. The Ministry of Indian Affairs was responsible for acting on the Commission's report. The Specific Claims Branch of the Department of Indian Affairs was the only branch of Government which was under constant scrutiny by a commission of inquiry. The Commission, at the request of a First Nation, conducted inquiries into claims which had been determined by the Government to disclose no

outstanding legal obligation. It also conducted public inquiries into compensation criteria that would apply should the parties not agree. It provided mediation and dispute resolution services and could serve as a third party to negotiations.

9. The Commission had not been involved in the settlement of the Lubicon Lake Band case. The Lubicon had indicated that their current priority was to proceed with a settlement agreement. The Government had committed itself to entering into negotiations on a self-government agreement at a later date.

10. Gathering Strength, the Government's response to the recommendations contained in the final report of the Royal Commission on Aboriginal Peoples, was a long-term approach that would produce targeted, measurable benefits in the short term and provided a framework for concerted action by federal, aboriginal, territorial and provincial Governments, the private sector and Canadians in general. The programme had four key objectives: renewing the partnerships between the Government and aboriginal people, strengthening aboriginal governance, developing a new fiscal relationship and supporting strong communities, people and economies. The Government had apologized to the victims of physical and sexual abuse in residential schools and had committed 350 million dollars to the development of a healing strategy. To that end, the Aboriginal Healing Foundation had been established as an aboriginal-run non-profit corporation which would assist and fund eligible community-based healing projects that complemented, but did not duplicate, existing programmes.

11. Other Gathering Strength initiatives included accelerated implementation of the new housing policy, allocation of additional resources to water and sewage facilities in First Nation communities and improvement of the lives of aboriginal children. The Government was focusing on health, public safety and education, economic development, respect for aboriginal languages, heritage and culture and the problems faced by Métis, off-reservation and urban aboriginal populations.

12. **Ms. Beckton** (Canada) said that the Supreme Court had handed down several important decisions that had clarified section 35 of the Constitution Act, which recognized the existing aboriginal and treaty rights of aboriginal people. In three 1996 cases, the Court had ruled that in order to establish an aboriginal

right, an aboriginal group must establish that, at the time of first contact with Europeans, the activity claimed as a right had been integral to its distinctive culture. The Court had also ruled that, if an aboriginal group could establish that at the time of sovereignty it had exclusively occupied a territory to which a substantial connection had been maintained, it had a right to the exclusive use and occupation of such land. Although section 35 did not provide for derogations from existing aboriginal treaty rights, the Court had confirmed that the State could interfere with aboriginal rights, including aboriginal title, provided that such interference could be justified in furtherance of a legislative objective that was compelling and substantive.

13. Manitoba had conducted an in-depth review of the Aboriginal Justice Inquiry report. The possibility of establishing a native justice system with a separate charter and possibly a separate criminal code appeared to exceed Manitoba's legislative authority. The authorities had therefore concentrated on ways of making the existing system more responsive to the needs of the aboriginal population. Through negotiations with various tribal councils and aboriginal groups, justice issues had been identified as a key element in the process and efforts had been made to increase aboriginal control through a series of programmes that included the northern aboriginal justice strategy consisting of an aboriginal magistrate's court and community justice workers; an aboriginal court workers' programme; and an aboriginal youth justice committee. At the federal level, an aboriginal justice strategy had been established as a community-based programme of 51 agreements serving 69 communities.

Rights of aliens (article 13 of the Covenant)

14. **The Chairperson** read out the questions relating to article 13 of the Covenant: asylum-seekers' right to counsel; implementation of the right to judicial review of expulsion orders; and protection against torture and inhuman treatment under the proposed new extradition act (bill C-40).

15. **Mr. Thérien** (Canada) said that under Canadian immigration law, asylum-seekers had the right to avail themselves of the services of a lawyer or other counsellor at their own expense. In practice, although they had no right to free legal assistance, it was nevertheless provided to them out of federal funds

earmarked for post-secondary education and health programmes.

16. **Mr. Tsai** (Canada) said that the federal courts could review expulsion orders only if they were granted permission to do so in cases where the claimant had an arguable case. Nevertheless, the Government considered that claimants had full access to the Canadian courts. Many of the cases heard by the federal courts concerned immigrants or asylum-seekers, the majority of whom were, in fact, able to exercise their right to contest an expulsion order. Expulsion orders could not be carried out until action on the appeal had been taken, and the cases were often heard during evenings and weekends. Although the courts' decisions were limited to matters of law and jurisdiction, the grounds for reversing an expulsion order were broad and included clear factual error.

17. **Ms. Beckton** (Canada) said that the proposed new extradition act (bill C-40) would amend Canada's extradition legislation. The extradition process had two stages: a Canadian judge first considered the evidence and determined whether the act for which extradition was sought would constitute an offence in Canada. If the judge decided that the individual should be committed for extradition, the case proceeded to the Minister of Justice, who determined whether he would be surrendered in light of the relevant legislation, any applicable treaties, and the Canadian Charter of Rights and Freedoms. The person in question had the right to make submissions to the Minister with respect to that decision.

18. Unlike existing legislation, bill C-40 contained detailed provisions regarding the reasons for refusing an extradition request. In particular, extradition could be denied if surrendering the individual would be unjust or oppressive or if the request had been made for the purpose of prosecuting or punishing a person on the basis of race, religion, nationality, ethnic origin, language, colour, political opinion, sex, sexual orientation, age, mental or physical disability or status. The Supreme Court had ruled that it would be unconstitutional for the Minister of Justice to order surrender if the circumstances which the person would face in the other State were unacceptable or would shock the conscience of Canadians. The decision of the Minister of Justice remained subject to judicial review by the relevant court of appeal and, potentially, the Supreme Court.

Constitutional and legal framework within which the Covenant is implemented (article 2 of the Covenant)

19. **The Chairperson** read out the questions relating to article 2 of the Covenant: effects of the 1997 constitutional revision on the status of the Covenant in Canadian law; application of the Covenant and the Committee's Views by the Supreme Court and lower courts; preparation of reports under the Covenant and follow-up to the Committee's concluding observations under article 40 and Views under the Optional Protocol, particularly by the provincial Governments; proposed amendments to the Canadian Human Rights Act; and the outcome of those proposals.

20. **Ms. Fry** (Canada) said that Canada's reports under international human rights instruments, including the Covenant, were prepared in close cooperation with the provincial and territorial authorities. Each level of government (federal, provincial and territorial) prepared its own submission. Since 1976, the Continuing Committee of Officials on Human Rights, composed of representatives of all Canadian jurisdictions, had met twice a year to review Canada's reports to human rights bodies and discuss follow-up to the relevant committees' concluding observations, which were also disseminated to the provincial and territorial governments.

21. In preparing the country's fourth periodic report, over 250 Canadian non-governmental organizations had been invited to submit comments on Canada's compliance with the Covenant to both the Government and the Human Rights Committee. In 1986, the Continuing Committee had adopted guidelines for provincial responses to communications under the First Optional Protocol to the Covenant. Those guidelines stated that provinces, in consultation with the federal Government, were responsible for the preparation of submissions related to communications concerning their respective jurisdictions.

22. Turning to questions 11 and 12, she said that recent amendments to the Human Rights Act had improved the Tribunal structure. The Human Rights Commission could submit its report directly to Parliament, thereby emphasizing its independence from the Government. In turn, the Human Rights Tribunal also submitted a direct report to Parliament independent from that of the Commission. The system ensured that Tribunal decisions would be independent, as the Commission was often named as a party to

complaints. Finally, the Human Rights Act had been amended in 1996 to prohibit discrimination based on sexual orientation.

23. **Ms. Beckton** (Canada) said regarding questions 8 and 9 that denominational schooling in Quebec and Manitoba could be financed only through private funding. International law was not self-executing in Canada and the courts had affirmed that treaty obligations came under the Canadian Charter of Rights and Freedoms. The Covenant played an increasing role, however, in guiding court decisions.

24. **Ms. Fry** (Canada) in reply to question 13 said that the Government of Canada Web site contained the text of all periodic reports and the Committee's concluding observations. The current report had also been distributed to non-governmental organizations, libraries, the Human Rights Commission and office of the Ombudsman. Instruction with regard to the Covenant was provided through general human rights education and education on specific Canadian legislation. Special human rights training was provided to police officers, judges and lawyers. Consultation with non-governmental organizations in the preparation of the report had also helped to disseminate information on the Covenant.

25. Turning to questions 14 and 15, she said that gender equality was enshrined in the Charter of Rights and Freedoms, along with prevention of discrimination. In that context, equality was interpreted to mean equality of results and, therefore, positive measures had been taken to compensate for historical advantages. In developing policies, the differing impact of decisions on women and on men must be accounted for, and thus policy development was linked to the implementation of the Beijing Platform for Action. Much remained to be done, and gender-based analysis was, unfortunately, not yet automatic. Canada had sought to involve women in political life and improve their access to elected office, through such measures as providing equal access to campaign funds at the nomination stage. Because of those difficulties, steps had been taken to appoint women to government service. Currently, 60 women served in the House of Commons and 31 women had been appointed to the Senate. Nevertheless, women were still under-represented. Targets had been set in federal employment equity legislation to achieve gender balance.

26. With regard to wage discrimination, at the Federal level the policy required equal pay for work of equal value. The Government had already paid out Can\$ 1 billion to settle claims of wage discrimination, although it would prefer to negotiate settlements. The laws on equal pay needed to be clarified.

27. Regarding question 16, the original purpose of exempting the Indian Act from the requirements of the Canadian Human Rights Act had been to ensure that the Human Rights Commission did not encroach on the internal jurisdiction of aboriginal bands. Since the exemption had been first introduced, however, the Commission had found grounds to accept challenges to band activities. During the forthcoming review of the Human Rights Act, an independent panel would review all exemptions from the Act, including the Indian Act exemption. Given the new powers being devolved to First Nation peoples through the aboriginal self-government process, it was very important to determine whether human rights legislation should apply to that form of government.

28. **Ms. Beckton** (Canada), in reply to question 17, said that the primary instrument to protect individual freedom of opinion was the Canadian Charter of Rights and Freedoms. The protection of dissenting views was clearly laid down in the Charter, which protected all acts of expression, including the expression of hatred and the use of obscenity. The Act also provided for the free flow of information, but courts had set a high standard for determining whether information interfered with other rights.

29. **Ms. Fry** (Canada) said, in reply to question 19, that the Charter of Rights and Freedoms protected official language rights. Those protections were further complemented by the federal Official Languages Act, which also supported minority-language communities. Under the Constitution, provinces and territories were given certain responsibilities regarding official languages. For example, they were responsible for providing minority-language education where numbers warranted. Furthermore, everyone had the right to use English and French in the legislature and courts of Quebec, New Brunswick and Manitoba, and laws must be enacted in both languages in those provinces as well.

30. **Mr. Deslauriers** (Canada) said, with regard to the Quebec language law, that in Quebec, all citizens had equal rights under the *Charte Quebécoise* and the

Canadian Charter of Rights and Freedoms. Language discrimination was prohibited, and all ethnic minorities had the right to enjoy their culture. Laws and regulations were issued in both French and English, which had equal status and could be used in court proceedings. The anglophone community of Quebec had the right to a full public education system and to receive social services and health care in the English language. Communities where English was the majority language could choose to be bilingual and thus could use English in the municipal government. The anglophone community had its own television and radio networks and cultural institutions, which had equal rights to government funding.

31. **Mr. Hynes** (Canada) said, in reply to question 18, that the report of the Ontario Commission on Human Rights on systematic racism in the criminal justice system had been sent to over 500 judges for their input. As of 1 January 1999, new regulations had been established regarding the Special Investigations Unit. Failure to comply with those regulations was considered misconduct. Under the new regulations, police chiefs must notify the Special Investigations Unit if incidents took place, and segregation of the officers involved was required. The officers could have counsel and must be interviewed within 24 hours after an incident. In addition, the budget for investigations had been tripled. A review of the Crown Training and Policy Manual had also been conducted. Its main recommendations, which were almost ready for implementation, concerned the exercise of prosecutorial discretion, for example, in the awarding of bail.

32. **Ms. Evatt** said that, although the report did not deal with article 1 of the Covenant in detail, Ms. Fry had discussed the aboriginal right to self-government within a context of self-determination. She would be interested to learn how Canada distinguished between self-determination and self-government. The Royal Commission on Aboriginal Peoples had recommended that the Government should recognize that the right of self-determination was vested in aboriginal peoples and should ensure that they had land title and sufficient resources for self-government. She would like to know which of the specific recommendations of the Royal Commission had been implemented.

33. With regard to aliens and refugees, it was still unclear whether a possible violation of Covenant rights must be taken into account when deciding to return an

applicant for refugee status. Similarly, she wondered if persons to be deported could claim that their rights under the Covenant would be violated and how long it took for refugees to be granted the right of permanent residence and travel documents and to be reunited with their families.

34. With regard to international obligations, she enquired if Parliament had a role in the international reporting process and if the legislative and executive branches had responsibility for ensuring compliance with the Covenant. The Committee was interested in learning where gaps arose between the Charter of Rights and Freedoms and Covenant protections, and what the role of the Human Rights Commission in securing compliance with international treaties was.

35. On the subject of women's rights, she wondered to what extent the disparities in economic resources between men and women affected their equal enjoyment of rights and if the "Court Challenge" programme applied to women. The Committee would like to know what actions had been taken to ensure equality for aboriginal women, whether sex discrimination occurring under the Indian Act was subject to review, and whether the Royal Commission had made any specific recommendations in that area. Finally, she enquired about the number of women and aboriginal members of the Senate.

36. **Mr. Scheinin** said that Canada could be a model for other countries in its approach to reconciling the right to self-determination of all peoples with the territorial integrity of States. The Royal Commission on Aboriginal Peoples had correctly stressed that both the issue of self-determination and the issue of self-government arose in Canada, but the report referred only to self-government, and did not address the question of article 1 of the Covenant at all. He asked whether it was the Canadian Government's policy that aboriginal peoples should abandon their rights to land and resources in order to enter into treaty arrangements, since even new treaties contained an extinguishment clause or a conversion clause.

37. The slow progress in resolving land and resource issues was cause for concern, and there was a danger that many aboriginal peoples might become extinct if solutions were not reached. He asked whether progress was being made in implementing the recommendations of the Royal Commission on Aboriginal Peoples for resolving those issues as the basis for self-

determination and self-government. One example where the issue of extinction arose was the case of the Lubicon Lake Band. He asked whether that group had succeeded in gaining broader rights. Indigenous citizenship was an important part of self-determination. Since the Indian Act still governed citizenship in various aboriginal territories, he enquired what steps were being taken to eliminate any elements of gender discrimination in that act.

38. In the light of information that the Canadian Government had argued in the courts that national security interests or crime prevention could prevail over well-documented fears of torture or ill-treatment as a consequence of deportation, he asked whether the Canadian Government was fulfilling its international law obligations in respect of the deportation of aliens, or whether it left that responsibility to the judicial authorities. He also wished to know whether in future the Canadian Government would respect requests for interim measures of protection in relation to deportation or extradition cases. Information from the Inter-American Commission on Human Rights and the Committee against Torture gave cause for concern.

39. **Mr. Wieruszewski** said that the report provided very little information about article 1. He requested information on the main difficulties faced by the Canadian Government in respect of the self-determination of the aboriginal peoples and asked what specific steps were being taken to improve the situation. The Committee wished to know why the recommendations of the Royal Commission on Aboriginal Rights had not been implemented in a manner that would improve the situation of the aboriginal population and what impact the Statement of Political Relationship (para. 607) had had in Ontario on economic development and resources management in the aboriginal community. He also asked about the extent to which the Canadian Human Rights Commission provided an effective and meaningful remedy for human rights violations and how often it used its discretionary powers to stop further proceedings on complaints.

40. **Mr. Klein** said that the statement by the Canadian Human Rights Commission in paragraph 279 of the report that "the situation of the native peoples remains the most pressing human rights issue facing Canadians" seemed to be a realistic assessment of the situation with regard to the indigenous peoples. It was encouraging that Canada was prepared to deal with the

issue within the framework of self-determination; however, there was a need to develop the elements of that concept and to put it into practice. He asked for further information on decisions by the Supreme Court citing compelling reasons for limiting the rights of indigenous peoples, and the extent to which articles 1 and 27 of the Covenant had been taken into account in formulating such reasons.

41. From the information provided, it seemed that the Canada Health and Social Transfer plan was not a real equivalent to the Canadian assistance plan which it had replaced. He asked whether the repeal of the plan had had adverse effects on the enjoyment of civil and political rights such as those set forth in articles 23 and 24 of the Covenant. On the question of remedies, although article 2, paragraph 3, of the Covenant did not require a judicial remedy for complaints of human rights violations, and the Canadian Human Rights Commission could be considered a “competent authority” under that article, he asked what advantage there was to having such complaints handled by the Commission, and what the Canadian Government planned to do in terms of developing the possibilities of a judicial remedy.

42. Paragraph 53 of the report referred to comments made *in obiter* by the courts that the removal of a person to another country in which he might face torture would violate the Canadian Charter of Rights and Freedoms. He asked whether it was true that the Canadian Government expelled or extradited persons despite that risk if a national security interest was involved. Recent Supreme Court decisions suggested that that might be the case. Lastly, the Committee would like to know whether State complicity was a prerequisite for determining the existence of a risk of persecution or torture in another country.

43. **Lord Colville** said that it appeared that, under the Nunavut Act, the inhabitants would have mineral and fishing rights in their territory and that the First Nation Final Agreement would include land and resource rights for the Yukon Indians. He asked what was being done about the older territories which had achieved self-determination earlier and, in a number of cases, had not been accorded rights to natural resources, so that their ability to survive had been greatly diminished. In the case of Quebec, although it would be possible for indigenous aboriginal groups to enter into separate negotiations if the question of secession

were to arise, they would not be able to do so on equal terms unless they had economic competence.

44. He did not feel that the Canadian Human Rights Commission and the provincial human rights commissions provided an effective remedy as required by article 2, paragraph 3, of the Covenant because of the backlog of cases, and since private complaints could not be taken to court without the support of the relevant commission.

45. **Ms. Chanet** said that, since the report was concerned with the application of the Canadian Charter of Rights and Freedoms rather than the Covenant and even referred to the Covenant as an aid to interpreting the Canadian Charter, it did not conform with the Committee’s guidelines. She agreed that the Canadian Human Rights Commission did not provide an effective remedy because it acted as a filtering mechanism for complaints. The situation was different in Quebec, where individuals could go directly to the courts to invoke human rights violations.

46. There was not full equality in Canada in terms of the level of guarantees, especially for indigenous peoples, aliens and refugees. In respect of indigenous peoples, it seemed that in the agreements signed with the peoples of the Northwest Territories and the Inuit, the rights of those peoples to their land and resources were being steadily eroded, which was a way of disposing of the question of self-determination. She sought clarification on that issue.

47. It seemed that refugees and aliens could be detained for indefinite periods, since the Immigration Act made no provision for length of detention or recourse to a judge, and in some cases the detention took place in prisons. She asked what the role of the adjudicator was and what guarantees were given to detained persons. She also enquired whether there were cases in which the Canadian Government extradited or expelled persons to countries where they might be subjected to torture and whether it planned to grant requests for interim measures of protection.

48. **Ms. Gaitan de Pombo** requested more information on the new relationship between the Canadian Government and the aboriginal peoples and on the progress made by the aboriginal peoples in their territorial claims since the publication of the report of the Royal Commission on Aboriginal Peoples in 1996.

49. **Mr. Ando**, referring to the issue of self-determination, said that when an individual communication came from Canada, such as the case of the Lubicon Lake Band, there was a question as to whether it fell under article 1 or article 27 of the Covenant. Since the Optional Protocol did not allow groups to submit claims, the Committee had decided to deal with it under article 27, on minorities. He wished to know exactly what Canada understood by self-determination as, according to the report, it seemed to have a particular nuance. It would be useful to know the position of the federal and provincial governments when the traditional law of aboriginal groups was contrary to the provisions of the Covenant.

50. Paragraph 197 of the report, referred to the problem of ritual abuse of women and children in Canada. Additional information on that question would be welcome. With regard to Quebec language legislation, the report mentioned restrictions on advertising in languages other than French and the obligatory use of French on school grounds (paras. 497 and 498). As the report was dated April 1997, it would be useful to know how the situation had developed. In her presentation, Ms. Fry had mentioned a recent amendment to the Canadian Human Rights Act through the creation of a small, permanent Human Rights Tribunal. It was unclear whether it was the same Tribunal mentioned in paragraph 270 of the report and, if not, the Committee would be grateful for information on its jurisdictional competence and relationship with other courts.

51. **Mr. Amor** said that the notion of self-determination was currently a matter of considerable discussion at the international level and appeared to have a special connotation in Canada. In the report, it seemed to be dynamic and functional and its content and scope could vary under different circumstances. A further clarification would be appreciated in that regard. It appeared that, in Canada, self-determination did not include sovereignty over natural resources, which deprived the groups concerned of sufficient negotiating power to have full self-determination. On the issue of land, it appeared that aboriginals were able to obtain title to land if they could establish proof of ancient ownership. There should, however, be a presumption of aboriginal ownership unless there was proof to the contrary. The question of proof was important because it was not particularly simple to

establish and because reversibility could be a way of evading that fundamental issue.

52. The Committee would appreciate information on whether jurisprudence had established precise criteria for granting or refusing asylum, and whether such criteria were interpreted in a flexible or rigid manner. On the issue of religious freedom in relation to certain new religions or groups, it would be interesting to know what the judicial follow-up to the affair of the Order of the Solar Temple had been. Moreover, with regard to media coverage of the matter, when freedom of the press was used to group together all types of minority groups and religions as sects in the pejorative sense, there could be a risk of religious persecution. On the other hand, while Canada ensured the right to religious education, certain minorities might misuse that right for political indoctrination or to disseminate religious obscurantism. It would be useful to learn whether the authorities could supervise such education to ensure that religious freedom was not abused.

53. Lastly, women's rights were sometimes restricted in the name of religious freedom and it would be useful to know if the Canadian authorities envisaged taking steps to protect women from certain religious excesses. Furthermore, in the case of some religious minorities living in Canada, it was unclear whether the personal status of women was defined by her religion or by Canadian law, especially as regards rights of succession.

54. **Mr. Zakhia** said that countries with real equality between women and men, such as the Scandinavian countries, formally recognized the principle of parity. He wished to know if Canada had a policy on gender parity. It would be useful to learn whether non-governmental organizations could intervene in the courts in cases of human rights violations as they often provided a very effective resource.

55. The Committee had heard that the Ontario Government had cut the budget for basic social services. As a consequence, several public hospitals had been closed and hospitals of the Catholic Church were providing certain services. He was concerned about the effect of the measure on certain women's rights. Lastly, it was unclear why the Ontario Government had not held a public enquiry into the death of Dudley George, although both the courts and national and international organizations had called for one.

56. **Mr. Solari Yrigoyen** reiterated the concern that the report seemed to be based on the Canadian Charter of Human Rights instead of the Covenant. It would be useful to know the Government's position regarding the death of Dudley George since there were fears that it had been a summary execution and it appeared that the aboriginals concerned had been unarmed. The Committee had been informed that an aboriginal witness had been arrested less than an hour before making his statement, which had intimidated other witnesses. There had also been threats to George's family. The Committee would like to know to what extent that information was true.

57. The Committee would also appreciate information on the Federal Government's position on the Quebec referendum on independence; specifically, whether it was neutral or took the position that Quebec should remain within Canada. Lastly, the Committee would welcome information on the outcome of the investigation into the involvement of Canadian soldiers in abuses during a UNOSOM II mission in Somalia in 1993. It was known that the regiment in question had been abolished, but information should be provided on what had happened to the individual soldiers involved.

58. **Mr. Lallah** said that he supported previous comments on self-determination in the context of article 27 of the Covenant and underlined that, in the case of the aboriginals' right to self-determination, it was very important to view article 27 of the Covenant in relation to article 1 since the aboriginal way of life was part of their culture and was intimately linked to use of the land and resources. With regard to the Kindler case, referred to in paragraph 41 of the report, it was unclear whether Canada would change its extradition policy in order not to extradite people who were subject to capital punishment in their own country. Further clarification would be welcome.

59. According to Ms. Fry, both the Federal and the Provincial Human Rights Commissions submitted reports to Parliament. Further information would be useful on the success of such a filtering measure and whether it promoted human rights or, to the contrary, was detrimental to them. The report provided statistics on complaints in the case of the province of Quebec but did not mention results. The Committee would welcome further details.

60. **Mr. Pocar** said that he agreed that the report had not sufficiently referred to the Covenant, but rather

showed how rights were implemented in terms of the Canadian Charter. There were important differences between the Charter and the Covenant, for example, with regard to the definition of torture. The reporting State should explain whether Canadian standards were compatible with international standards on torture.

61. **Mr. Kretzmer** said that, owing to the report's emphasis on the Canadian Charter rather than the Covenant, it was unclear how seriously the State party took into account its specific obligations under the Covenant, especially in relation to articles 2, 26 and 18. There was discrimination between religious denominations in education because special privileges were granted under the Canadian Charter to two religions, Roman Catholic and Protestant. Canada was a multi-ethnic society now and it was possible that such a position was inconsistent with its obligations under the Covenant.

The meeting rose at 1 p.m.