



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

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Eightieth session

Summary record of the 2141st meeting

Held at the Palais Wilson, Geneva, on Wednesday, 22 February 2012, at 3 p.m.

Chairperson: Mr. Avtonomov

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Combined nineteenth and twentieth periodic reports of Canada

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The meeting was called to order at 3 p.m.

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

Combined nineteenth and twentieth periodic reports of Canada (CERD/C/CAN/19-20; CERD/C/CAN/Q/19-20; HRI/CORE/1/Add.91)

1. *At the invitation of the Chairperson, the delegation of Canada took places at the Committee table.*

2. **Ms. Tapley** (Canada) said that Canada was a multicultural and multi-ethnic society in which more than 200 ethnic origins were represented. According to the 2006 national census, more than one million people had identified themselves as indigenous and more than five million as belonging to a racial minority group. The three largest being South Asian, Chinese and people of African-descendants. The Constitution guaranteed all persons equal protection of the law irrespective of race, colour or ethnic origin. Every year, Canada received some 250,000 permanent residents and more than 200,000 seasonal workers and foreign students. It had a proud history of welcoming large numbers of people denied fundamental freedoms in their home country. The equity and generosity of the Canadian asylum system was recognized the world over, despite problems of long waiting periods for decisions and a significant backlog of cases. Canada expected to receive around 14,500 refugees in 2013. In 2010, it had decided to streamline the asylum system by adopting the Balanced Refugee Reform Act. In 2011, it had taken the decision to strengthen those reforms in order to increase the integrity of its asylum system and to address the problem of human smuggling. Canada was a leader in integration, and approximately 85 per cent of new arrivals eventually became Canadian citizens. The country valued the traditions of new Canadians, but insisted that they respect Canada's core values. Every year, Canada allocated \$900 million to providing services to help immigrants and refugees participate fully in the life of Canadian society. Partnerships were in place, involving municipal, provincial and federal partners, to meet the needs of newcomers in the areas of employment, housing and education.

3. In the employment sphere, Canada ensured that newcomers could exercise their fundamental rights. The Government recognized that immigrants found it more difficult than Canadian citizens to find a job. It had sought to remedy the situation through the Pan-Canadian Framework for the Assessment and Recognition of Foreign Qualifications, designed to ensure recognition of applicants' skills and credentials. The federal Employment Equity Act was designed to remove the barriers to employment facing four designated groups: women, aboriginal peoples, persons with disabilities and, "visible minorities" who, together, accounted for at least 60 per cent of the Canadian workforce. The term "visible minorities" was specific to the federal Employment Equity Act and designated specific groups that had received special treatment in securing access to the labour market. In its 2007 concluding observations, the Committee had expressed concern at the use of that term but, having reviewed the issue, the Government had concluded that it was still appropriate in the context.

4. In Canada, federal, provincial and territorial laws prohibited discrimination based on race, national or ethnic origin, colour or other grounds, and all Canadians enjoyed access to justice via a full range of initiatives, programmes and special measures, such as legal and civil and criminal matters, special legal assistance programmes for aboriginal people, and State-funded legal representation. The First Nations, Métis and Inuit peoples were fundamental to Canadian history, although there had been low points in the State's relationship with the aboriginal peoples. A series of harmful and misguided Government policies had shaken the confidence of aboriginal peoples, but Canada had decided to remedy the situation by means of several measures, including the repeal of the law that had

barred registered Indians from voting in federal elections. In June 2008, the Prime Minister had delivered a formal apology on behalf of the Canadian Government to the former students who had been placed in Indian residential schools and to their families. The victims had later been offered financial compensation, and a Truth and Reconciliation Commission had been set up. In August 2010, the Government had apologized for relocating the Inuit people to the High Arctic in the 1950s. While that had been a dark chapter in Canadian history, the Government remained committed to rebuilding its relationship with the Inuit people. Canada had endorsed the United Nations Declaration on the Rights of Indigenous Peoples in November 2010. In June 2011, the Government and the Assembly of First Nations had announced the implementation of the Canada-First Nations Joint Action Plan to enhance the long-term prosperity of First Nations peoples. In January 2012, the Crown – First Nations Gathering had discussed ways of aboriginal peoples' increasing social and economic participation and improving living conditions in the communities. In order to monitor advances, the Government and the Assembly of First Nations had agreed to publish a progress report within a year and to adopt urgent measures to remove barriers to First Nations governance, advance land claims settlement and accelerate education reform. The Government allocated more than \$10 billion per year to programmes to assist aboriginal peoples in economic, educational, health, housing, employment and governance-related matters, which were overseen by 34 ministries/federal bodies.

5. The Government believed that increasing participation in the Canadian labour market and economy was fundamental to addressing the socioeconomic conditions of many aboriginal people, especially the young, and to promoting the country's economic prosperity. Canada recognized that the large number of indigenous children currently in care was a cause for concern, and was working with the First Nations and provincial partners to formulate a prevention-based approach to the child welfare services on reserves.

6. Canada continued to support the land claims of aboriginal peoples and to implement self-government agreements with aboriginal communities to enable them to move towards self-determination. To date, 25 such agreements had been concluded with 96 communities. The Government was currently also negotiating approximately 60 land claims. In January 2012, the Government had posted progress on the administration First Nations lands. The addition of 18 communities to the First Nations land management scheme meant that more than 50 of them now enjoyed more independence and more freedom to manage the lands located on reserves.

7. The Canadian Human Rights Act had been amended to empower the Canadian Human Rights Commission to receive complaints related to the Indian Act. The Gender Equity in Indian Registration Act, which had entered into force in 2011, granted the descendants of a woman who had lost her First Nations woman status after marrying a non-Indian man the right to register as an Indian, involving around 45,000 people. The Family Homes on Reserves and Matrimonial Interests or Rights Act should bridge the legislative "gaps" in that area for those living on reserves, particularly women and children. The Act to amend the Canada Elections Act and the First Nations Financial Transparency Act were designed to strengthen democratic institutions and increase transparency in the election of First Nation leaders.

8. **Mr. Kemal** (Country Rapporteur) said that, although the report under consideration referred to numerous tables of statistics that could be consulted on the Government website, the fact remained that Internet access was difficult to come by in some regions and that statistics should feature in the country's next periodic report. He commended the State party's provision of detailed information on the interprovincial mechanisms for exchanging information on laws and policies concerning the fight against racism. He invited the delegation to return to the question of the use of the term "visible minorities", pointing out

that, following her mission to Canada in 2009, the Independent Expert on minority issues had reported that certain Canadian minorities, notably of African-Canadians, believed that the term “visible minorities” denied their identity.

9. In response to a Committee recommendation on racial profiling, the State party had indicated that it did not wish to amend its antiterrorism law to include a clause expressly prohibiting discrimination, that its legislation on national security was not discriminatory and that it did not practise racial profiling. Nonetheless, according to NGOs, the First Nations and people of African descent fell victim to racial profiling and discrimination, particularly within the legal system. He would therefore like the delegation to state its views on the matter. According to aboriginal representatives, the question of the discriminatory effects of the Indian Act on the rights of indigenous women and children to marry, to choose their spouse, to own property and to inherit had not yet been resolved. The delegation could perhaps provide information on that subject. Since the report contained no information on the Committee’s recommendation to prevent transnational companies registered in Canada from operating in a way that prevented the aboriginal people living in territories situated outside Canada from exercising their rights, what measures had been taken to prevent companies such as Goldcorp and Barrick Gold from carrying out activities on tribal lands without the agreement of the aboriginal peoples concerned?

10. As to prevention of racial discrimination within the administration and the criminal justice system, and of discrimination against non-Canadians, the State party had adopted measures to combat any discriminatory approach by law enforcement officials. He wished to know whether those measures had been effectively implemented and whether they led to achievement of the objectives. He was concerned at the high number of aboriginals imprisoned in provinces such as Saskatchewan, where they accounted for 70 to 80 per cent of all prisoners. Similarly, the African-Canadian population represented only 2.5 per cent of the population but accounted for 10 per cent of all prisoners. What was the reason for that overrepresentation, and what alternatives to imprisonment did the State party offer? He would be interested to learn whether the State party had earmarked sufficient funds for the programme to combat sexual and gender-based violence and whether that programme was effective. He also stressed the need to increase shelters for victims of such abuses and to strengthen training and awareness raising for law enforcement officials.

11. He was concerned by the budget cuts affecting the level of assistance for aboriginal peoples, especially when some of them faced serious problems of access to drinking water, housing, education and social protection. Although Canada had invested more than \$2.5 billion in improving water quality, more than half of its drinking water systems on aboriginal reserves posed health risks. As to the negotiations between the Federal Government and indigenous communities, a number of those communities claimed that the agreements were not respected. He would like more information on that subject, including on the aboriginal communities, ability to assert their rights before the courts. The greatest challenge facing Canada was that of bridging the gap between rich and poor, the latter including many aboriginal people and members of “visible minorities”.

12. **Mr. Murillo Martínez** said that the State party’s core document dated back to 1998 and should be updated. Since 2012 would mark the bicentenary of the arrival of people of African descent in Canada, he requested the delegation to return to that chapter of history, to the participation of people of African descent in the bicentenary activities and to the budgetary and policy measures adopted by the Government on that occasion. The delegation might also say which groups fell under the category of “visible minorities”. Concerned by the disproportionate number of people of African-Canadian in prison, he asked whether the State party possessed relevant figures, whether it had examined its causes and whether racial profiling might be one cause, as ventured by certain NGOs.

13. He would like additional information on the possible repeal or amendment of article 13 of the Canadian Human Rights Act, and wished to know what proportion of the budget was allocated to training and raising the awareness of judges and prosecutors in problems facing African-Canadians. Additional information on reports of immigrant children being separated from their parents following the latter's repatriation would be welcome. Lastly, did the State party envisage introducing a self-regulatory mechanism or drawing up a code of conduct for multinational companies, the activities of which could affect the rights of aboriginal peoples and other vulnerable groups?

14. **Mr. Amir** requested additional information on article 35 (1) of the Indian Act. He believed the State party to consider itself the legal owner of lands occupied by the aboriginal peoples, and reserved the right to expropriate them in the general interest. He would be interested to learn the legal basis of that situation, since the constitutional rights of Indian nations were apparently not duly reflected in the treaties governing the use of aboriginal lands. He encouraged the State party to strengthen the rights of aboriginal peoples inhabiting lands they legitimately owned, so as not to compromise their territorial sovereignty.

15. **Mr. Diaconu**, while commending multiculturalism, pointed to the tradition of structural discrimination against aboriginal peoples, which should be urgently addressed through the adoption of further corrective measures. Aboriginal peoples and use of their lands also posed a problem since the "treaty rights" set out in article 35 of the Constitution Act, 1982 could be abused by local governors. The State party should spare no effort to strengthen the protection of aboriginal peoples and promote dialogue with their representatives. The Federal Government should become more involved in managing provincial affairs so as to ensure respect for the rights of aboriginal populations by adopting the necessary legislative and administrative measures.

16. It was worrying that the children of poor aboriginal families were sometimes removed from their parents' guardianship and institutionalized. He urged the State party to replace that practice with other measures, including educational measures, and to provide those families with the funds needed for their children's schooling. Why was Canada resisting visits from the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance? The delegation might also explain why the Roma would be denied refugee status from now on. He also wished to know whether bilingual education was guaranteed in the languages of allophone populations and the precise nature of the special treatment of "visible minorities". What did inciting hatred "likely to lead to a *breach of the peace* or *wilfully* promoting hatred" (para. 81 of the report) and "to communicate [...] repeatedly" article 13 of the Canadian Human Rights Act actually mean?

17. Referring to paragraph 90 of the report, he asked why the "guilty mind" (*mens rea*) of a person participating in the activities of a racist organization had to be proven if the organization's aims were ostensibly reprehensible. Lastly, since knowledge that Canada had promoted the adoption of the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Protection and Promotion of the Diversity of Cultural Expressions, the State party should do more to protect the genetic resources and traditional knowledge of its aboriginal peoples against multinational companies, mindful of the obligations of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity.

18. **Mr. Thornberry**, recalling that Canada had endorsed the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, asked whether it had devised a plan of action to give effect to the rights recognized therein and whether the Declaration could form the basis of a legal decision. He wished to know whether the State party had

introduced a monitoring mechanism to ensure respect for the rights of aboriginal peoples enshrined in article 35 of the Constitution Act, 1982. Had the State party borne in mind the patent correlation between the poverty of indigenous peoples and the dispossession of their ancestral lands and loss of their culture when devising its poverty reduction strategies? He welcomed the fact that the State party had abandoned its “cede, release and surrender” approach to indigenous land titles in favour of more respectful approaches, but found the situation still a cause for concern, as illustrated by the example of British Columbia, where the conclusion of a final agreement on the Comprehensive Land Claims policy was contingent on indigenous peoples waiving their land rights. He would appreciate the delegation’s views on that subject. He was concerned at the potential impact on aboriginal peoples of the free-trade mining agreement between Canada and Colombia, and invited the delegation to provide additional information on the matter.

19. He would welcome the delegation’s views on the reasons behind the high-school drop-out rate and the lack of schooling among African-Canadians, and additional information on the setting up of an Afrocentric school to black pupils with learning difficulties in Toronto. Some sources claimed that the measure was proof of a dysfunctional traditional school system. He would also like to know whether Muslim women must now remove their niqab during the oath-taking ceremony in order to obtain Canadian citizenship. Lastly, he would like up-to-date information on the amendment of article 13 of Canadian Human Rights Act, particularly on the definition of “hatred” and “contempt” mentioned in paragraph 85 of the report.

20. **Ms. Crickley**, remarking on the large number of Amerindian women in prison, asked for more detailed information on the nature of their crimes and the length of their sentences, particularly as compared with other female prisoners. She would also like to know whether the Government assisted indigenous communities seeking justice for the murder or disappearance of women from their community. She was concerned at the situation of female migrant minority workers and asked whether Canada intended to ratify International Labour Organization (ILO) Convention concerning decent work for domestic workers (No. 189).

21. With regard to Amerindian or aboriginal children taken away from their families and put up for adoption, she wished to know what measures Canada had taken to ensure that it did not recur. Alarmed by politicians’ discriminatory remarks about the Roma, wondered whether they had had any impact on the asylum procedures applied by that community. The anti-racism plan of action having ended in 2010, when would the next one come into effect? The term “visible minorities” did not distinguish among the different communities, and specific measures should be applied to certain minorities, such as people of African descent, who encountered a particular type of discrimination.

22. **Mr. Calí Tzay** said that, given the hidden phenomenon of discrimination by omission, which affected women, aboriginal peoples and other groups, he was surprised at the country’s systematic refusal to recognize the rights of aboriginal peoples at the General Assembly. He, however, commended Canada’s adoption of the United Nations Declaration on the Rights of Indigenous Peoples. He was also concerned by the inequalities faced in Canada by aboriginal peoples, who, if considered separately, would be placed sixty-sixth in the human development index, whereas Canada itself occupied sixth place. While Canadian legislation had an impact on the rights of aboriginal peoples, they apparently did not participate in its preparation. In that connection, he would like more detailed information on the Family Homes on Reserves and Matrimonial Interests or Rights Act, on the legislation concerning women, and on the legislation concerning landowner rights and the right to water, on which aboriginal peoples had not been consulted. First Nations representatives claimed that the Government did not negotiate with them but, instead, acted unilaterally, especially with regard to the recognition of land rights and the right to self-determination.

He wished to know what impact the action of the Truth and Reconciliation Commission had had on Canadian society. It was enough for the State to apologize; it should also make economic, psychological and social reparation to the victims and for future generations, who would suffer as a direct result of that policy.

23. **Mr. Saidou** said that the report revealed many initiatives to help aboriginal and African-Canadian women. However they were too few and were not part of a federal umbrella programme to covering all actions undertaken to reduce discrimination against them. He would like to hear about legislative and administrative measures Canada had taken to compel Canadian companies and their foreign branches to respect human rights, including the right to the environmental, social and economic rights and their employees' rights.

24. While nearly all provinces offered training to law enforcement officials, he wondered whether their content was the same for everyone. He welcomed the existence of different courts for dealing with human rights issues, but did they undercut the Canadian Human Rights Commission. Lastly, he wished to know whether Canada envisaged making the declaration to recognize the Committee's competence to receive and examine individual complaints, as provided for in article 14 of the Convention.

25. **Mr. Vázquez** said that Government's apology to the communities who had been the victims of past policies did not exempt it from financial compensation. With regard to the grievances of the Amerindian and aboriginal communities, one of the options put forward by the First Nations, namely the setting-up of a national treaty commission tasked with settling land disputes between indigenous communities and the Canadian Government, might be a feasible solution. He would be grateful for additional information on the Specific Claims Tribunal set up by virtue of a law enacted in 2007 and would like to know whether that tribunal could serve as a model for the aforementioned national treaty commission. Expressing concern at the forthcoming amendment to the Balanced Refugee Reform Act, he requested more detailed information on the list of safe countries to be drawn up, which could give rise to numerous forms of discrimination. The amendment would also allow legal action to be brought against illegal immigrants on their arrival, even though some of them were refugees and needed protection.

26. **Mr. Kut** asked what difficulties the Canadian authorities encountered in implementing treaties, given the country's federal composition, what tools would permit them to overcome those difficulties. He would like to know whether there was some corrective mechanism within the Canadian legal system that placed indigenous communities and the State on an equal footing before the courts. With regard to the amendment to the Balanced Refugee Reform Act, what plans were in place to ensure that the new provisions did not give rise to outright discrimination?

27. **Mr. Lindgren Alves**, recalling the numerous complaints echoed by NGOs, asked whether the delegation deemed multiculturalism to have been an important anti-discrimination tool or whether an integration policy would have achieved the same end.

The meeting rose at 6 p.m.