



**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 2142nd meeting

Held at the Palais Wilson, Geneva, on Thursday, 23 February 2012, at 10 a.m.

Chairperson: Mr. Avtonomov

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The meeting was called to order at 10 a.m.

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

Nineteenth and twentieth periodic reports of Canada (continued)
(CERD/C/CAN/19-20; CERD/C/CAN/Q/19-20)

1. *At the invitation of the Chairperson, the delegation of Canada took places at the Committee table.*
2. **Ms. Dah** said that while she did not have a problem with the expression “visible minorities”, there were some areas of concern she wished to address. The lack of disaggregated data had made analysis of the periodic report difficult, and the Committee required more detailed data concerning the ethnic composition of the State party. She asked how the new census legislation would provide improved data on ethnic composition and make it easier to compare the socio-economic situations of the different population groups.
3. The ethnic composition of Canada was complex, with 200 ethnic groups each having their own language and culture, and had not been sufficiently described and analysed in the report. That made it difficult for the Committee to understand the problems experienced by the State party in implementing the Convention.
4. While the Government had a range of policies and programmes for the protection and promotion of its minority groups, such as indigenous women, they were scattered and would benefit from being consolidated. It would therefore be useful to draw up a comprehensive plan of action, in cooperation with the indigenous women themselves.
5. The Federal Government had sole responsibility for the implementation of the Convention. It therefore fell to the Government to bring pressure to bear on individual provinces to adopt policies in the area of racial discrimination in order to ensure that there were no disparities between action taken at the federal and provincial levels.
6. The Committee took pride in the fact that over the past 15 years it had developed a doctrine in the area of the rights of indigenous persons and, since the Durban Review Conference, persons of African descent. That work would not have been possible without the efforts of the indigenous peoples themselves over the past 20 years, especially in the Americas, to raise awareness of the issues affecting them. The Committee had issued general recommendation No. 23 on indigenous peoples and had followed the principles of the United Nations Declaration on the Rights of Indigenous Peoples.
7. Notwithstanding the Government’s range of policies for indigenous peoples in Canada, a number of concerns remained. She would welcome the delegation’s views on why there had not been greater convergence over the centuries between the indigenous peoples and the majority population in terms of economic and social development and respect for human rights. While the Government was working to bridge the gap, much remained to be done in a number of areas, including issues affecting indigenous women, the socio-economic sphere, education and health.
8. She welcomed the truth and reconciliation commission that had been established by the Government in order to address the violations of the rights of indigenous children committed in the past. As had been shown by the reconciliation processes in Africa following apartheid or civil wars, it was important to pardon but also not to forget. Adequate policies could ensure that the mistakes of the past were not repeated. To that end, education played a vital role, and the role played by women in education in indigenous communities was very important. She asked how the history of the country was portrayed in school textbooks, particularly with regard to persons of African descent. She had heard the delegation talk of the presence of persons of African descent in Canada since 1832, but

in fact their presence dated back to the period of slavery following the discovery of Canada. That period should be described in textbooks.

9. She would be interested to know how the royalties from mining operations on the lands of indigenous peoples were distributed. Self-government was difficult if indigenous peoples did not have sufficient resources.

10. She had been concerned to read that in some provinces special schools had been built for persons of African descent. That was not a satisfactory solution: the only way to ensure progress was intermingling between different ethnic groups. Some progress had been made, but much remained to be done.

11. **Mr. Ewomsan** said that while Canada had built up a solid culture of democracy and respect for human rights and fundamental freedoms, the State party's multi-ethnic and multicultural society, which encompassed more than 200 ethnic groups, represented a crucial challenge. He asked the delegation to indicate the exact percentage of indigenous peoples in Canada, since the figures in the periodic report were not consistent with those given by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. Canada was a veritable demographic mosaic, where a number of different minorities, including persons of African descent, were recognized. The Government's policy of multiculturalism did not fully address the complex situation, which was characterized by considerable socio-economic disparities and inequalities between minority groups and the majority population. While the cultures and religions of the different communities were acknowledged, the majority culture was dominant and enjoyed vast resources, which could be said to constitute a source of discrimination.

12. The State party must make increased efforts to reduce the socio-economic disparities between indigenous peoples and the mainstream population in the areas of education, employment and housing. He asked whether the State party intended to adopt, in cooperation with the indigenous peoples concerned, an action plan to improve their living conditions, and what it intended to do to improve their access to drinking water, their ancestral lands and natural resources.

13. He enquired how Canada intended to address the overrepresentation of, and discrimination against, indigenous people in prisons, and to improve their situation. Persons of African descent were the most vulnerable of the minority groups in Canada and were victims of structural discrimination and different forms of racism. How did the Government intend to combat the discrimination against them in the areas of employment, education and housing?

14. **Mr. de Gouttes** said he had noted the commitment of the Government of Canada to the enjoyment of human rights and equal opportunities by all Canadians, including indigenous peoples.

15. He had learned with concern that there was no specific definition of racial violence in Canada's legislation, notwithstanding the provision regarding aggravating circumstances, including motivation by hate based on race, which applied to all offences. Bearing in mind article 4 of the Convention concerning racial hatred and racial violence, did the Government intend to amend legislation in order to make acts of racial violence a specific offence?

16. With regard to the information contained in paragraph 76 of the periodic report, he had been concerned to read that in 2008 the majority of victims of hate crimes had been African-Canadians and people of the Jewish faith. He would be interested to hear the delegation's views on that statement. With regard to the measures taken to prohibit dissemination of hate propaganda, including via the Internet, he would appreciate more information about the amendments made to the Criminal Code to that end, as described in

paragraphs 79 and 82 of the report, and about any convictions and penalties handed down under those provisions. He would also be interested to hear about the alternative/restorative community justice programmes for indigenous offenders described in the report and whether they were applied by judges.

17. He enquired whether the use of traditional and customary justice systems was provided for in indigenous communities, as called for in the Committee's general recommendation No. 31. One important issue raised in the general recommendation was the need to prevent racial profiling of indigenous persons at all stages of the criminal justice system. What action had the State party taken in that regard? Lastly, he would appreciate information on any culturally-sensitive training given to police officers, judges and prison staff.

18. **Mr. Lindgren Alves** said that while he did not consider the State party's expression "visible minorities" to be a problem, he had been surprised to find it used in a country that was so concerned with political correctness, to the point that it equated "non-white" with "non-Caucasian", which was a clear semantic error. He shared some of the concerns raised by Canada with regard to the Committee's methods of work. The issue of multiculturalism, and the different meanings the expression had acquired, had long been a source of concern to him, and he would have liked the Committee to work on a general recommendation on the question.

19. Canada had been the first country in the world to adopt a law on multiculturalism in the 1960s. Since then, the Canadian model of a mosaic of cultures had fitted in very well with the academic concept of "post-modernity" and had become a benchmark throughout the world.

20. He was concerned that multiculturalism amounted to a hegemonic ideology of the post-Cold War world, adopted not only in many countries, but also by the United Nations human rights treaty bodies and Secretariat. Such postmodern multiculturalism appeared to have erased other notions, such as the universal struggle against poverty, the continuing gap between rich and poor – nationally and internationally, and the abandonment of universal economic challenges in favour of segmented concerns with specific communities.

21. Information received from Canadian NGOs appeared to indicate that multiculturalism had failed to deliver on its promise of equality for all elements of the cultural mosaic. He wondered whether the delegation still believed that separate treatment worked better than integration. By integration he did not mean assimilation, of course; diversity was today widely acknowledged as a source of wealth. He strongly believed that mutual acknowledgement, reciprocity of influences and miscegenation constituted the best, and maybe the only, solution to racial discrimination.

22. **Ms. Tapley** (Canada), referring to a request by the Country Rapporteur for statistics, said that a range of statistical data would be forwarded to the Committee in due course. According to initial data from the 2011 census, the total population of Canada was now 33.5 million.

23. The core document was currently being updated and should be submitted to the treaty bodies within a few months.

24. The term "visible minority" was used in just one piece of legislation, namely the Employment Equity Act, which identified four groups: women, visible minorities, aboriginal people and persons with disabilities. Visible minorities referred to persons other than aboriginal people who were non-Caucasian in terms of race or non-white in terms of colour. Measures to reconsider the term had been taken in response to the Committee's concluding observations on the previous periodic report (CERD/C/CAN/CO/18). A Canadian academic had consulted a variety of stakeholders, including community groups,

employers and experts in the field and had concluded that “visible minorities” was currently the best term available to address labour market discrepancies and disadvantages experienced by the identified groups.

25. Her Government had carefully considered the possibility of recognizing the Committee’s competence under article 14 of the Convention and concluded that existing domestic and international remedies available to persons alleging racial discrimination were sufficient.

26. All three levels of government in Canada took the issue of racial discrimination seriously and were aware of their international obligations. As policies and programmes were often tailored to local realities, she contended that federalism strengthened rather than hindered implementation of the Convention.

27. The Government was aware that underrepresented groups were more likely to experience unemployment and was taking steps to address that challenge. For instance, a total of roughly Can\$ 1.68 billion had been allocated to the Aboriginal Skills and Employment Training Strategy for a five-year period. About Can\$ 800 million was allocated each year to assist recent immigrants in finding jobs through language training and skills development. The Government also channelled funds to the provinces and territories for the design and delivery of employment programmes and services adapted to labour market needs in their jurisdictions. About Can\$ 2.5 billion dollars was earmarked annually for labour market agreements, which focused on finding jobs for underrepresented and low-skilled workers. In addition, some Can\$ 300 million was allocated annually for the employment of disadvantaged youth.

28. **Ms. Tromp** (Canada) said that the issues facing aboriginal peoples in Canada were serious and complex. Canada was committed to building a new and positive relationship with them, based on awareness of a shared past and a desire to move forward in partnership. Canada was also committed to eliminating the socio-economic gap between aboriginal and non-aboriginal people, but it recognized that a great deal remained to be done. However, there was a strong constitutional and legal framework on which to build.

29. Section 91 (24) of the Constitution gave the Federal Government legislative authority over “Indians, and lands reserved for the Indians”. The Indian Act was the principal instrument through which federal jurisdiction over First Nations had been exercised for well over 100 years. As it had sometimes led to outcomes that were less than desirable, action was being taken to improve it. The Prime Minister had assured First Nations leaders in January 2012 that the Government did not intend to repeal or unilaterally rewrite the Indian Act. However, consultations would be held between the Government, the provinces and the First Nations on options for practical and incremental change.

30. The Gender Equity in Indian Registration Act, which had entered into force in January 2011, had amended the Indian Act. The amendments ensured that eligible grandchildren of women who had lost their Indian status by marrying non-Indian men were entitled to registration. It was estimated that some 45,000 individuals would be entitled to benefit as a result of programmes and services available to registered Indians.

31. In September 2011, the Government had introduced the Family Homes on Reserves and Matrimonial Interests or Rights Bill in Parliament. The Bill, which had been developed in collaboration with First Nations people, communities and groups, offered a balanced and effective solution to the long-standing legislative gap that affected people living on reserves, particularly women and children. The Government would continue to actively support the passage of the legislation and its subsequent implementation.

32. Section 35 of the Constitution provided aboriginal peoples with special rights known as aboriginal and treaty rights. All levels of government were obliged to respect such rights

and could be held accountable by the courts for failure to do so. They were not “one size fits all” rights but group- and site-specific. Some aboriginal groups had secured recognition for aboriginal rights in court. Others had claimed such rights but failed to secure court recognition.

33. A treaty right stemmed from a historic or modern treaty negotiated between the Government and an aboriginal group. Canadian courts and governments were consistently seeking to strike the right balance between the rights of aboriginal and non-aboriginal peoples. The Supreme Court had stated in 2005 in the *Mikisew Cree* case that the fundamental objective of the modern law of aboriginal and treaty rights was the reconciliation of aboriginal peoples and non-aboriginal peoples and their respective claims, interests and ambitions. The Government and the courts perceived the treaties as solemn agreements setting out promises, obligations and benefits for both parties.

34. The Specific Claims Policy had recognized since 1973 that Canada had sometimes failed to uphold its lawful obligations under historic treaties. The Policy provided an avenue to resolve historic grievances through negotiations. In 2007, the Government had reformed the specific claims process through its “Justice at Last: Specific Claims Action Plan”, which was strongly supported by the Assembly of First Nations. It included the establishment of an independent adjudicative body, the Specific Claims Tribunal. A First Nation could file a claim with the Tribunal if its claim had not been accepted for negotiation by Canada; if Canada failed to meet the three-year time frame set out in the legislation for assessing claims; if all parties agreed at any stage in the negotiation process; or if three years of negotiation failed to lead to a final settlement. The Tribunal could make a maximum monetary award of Can\$ 150 million per claim. In addition, First Nations could bring legal proceedings if they felt that the Government had failed to respect treaty obligations guaranteed under the Constitution.

35. Her Government remained committed to resolving specific claims through negotiation wherever possible. Negotiated settlements helped to build and reinforce mutual trust and respect. Since 2007 approximately 70 specific claims had been settled, totalling Can\$ 1.03 billion. Twenty-three comprehensive land claim agreements, or modern treaties, and two stand-alone self-government agreements had been ratified and brought into effect since the inception of the Comprehensive Land Claims policies in 1973 and the Inherent Right Policy in 1995. The agreements covered approximately 40 per cent of Canada’s land mass, 96 aboriginal communities and more than 100,000 aboriginal people.

36. The British Columbia Treaty Commission was an independent body established in 1992 to facilitate treaty negotiations among the governments of Canada, British Columbia and First Nations.

37. Certainty with respect to ownership and use of lands and resources was a primary goal of land claims negotiations. A clear definition of the respective rights and obligations of aboriginal groups and other citizens was required. In the past, the Government had required aboriginal groups to cede their undefined aboriginal rights in exchange for a set of defined treaty rights. As many groups now considered that approach to be unacceptable, new approaches had been developed as a result of comprehensive land claims negotiations. A basic aim of the alternative approaches was to provide certainty to all parties regarding their rights and the use, management and ownership of lands and resources.

38. Under the “modified rights model” pioneered in the Nisga’a negotiations, aboriginal rights were converted into the rights defined in the treaty. Under the “non-assertion model”, the aboriginal group agreed to exercise only the rights defined in the treaty and to assert no other rights. The “orderly process” provision envisaged the addition of new non-land rights (self-government rights) to be added to an agreement in certain circumstances. A variation

of the modified rights model modified rights only “where necessary”. Where aboriginal rights were identical to the rights set out in the agreement, they would not be modified.

39. On 12 November 2010, her Government had issued a statement endorsing the United Nations Declaration on the Rights of Indigenous Peoples. The Declaration was a non-legally-binding document that did not reflect customary international law. While it had no direct legal effect in Canada, Canadian courts could consult international law sources when interpreting Canadian laws, including the Constitution. The Government was working in partnership with aboriginal peoples on many of the issues reflected in the Declaration. For instance, Canada had taken concrete action in important areas such as education, skills development and economic development.

40. Federal departments and provincial and territorial ministries consulted aboriginal organizations on matters that might affect their interests or rights. The courts had reinforced the need for such processes as a matter of law. On average, the legal duty to consult was triggered for some provinces over 100,000 times a year and for the Federal Government over 5,000 times a year.

41. To ensure a consistent and comprehensive approach to consultation at the federal level, prior to the release of updated guidelines on consultation in March 2011, Canada had consulted 68 First Nations, Inuit and Métis communities on a federal policy approach to consultation and accommodation. The guidelines reflected lessons learned and best practices. Canada was also strengthening consultation partnerships with provinces, territories and aboriginal groups. One example of such a partnership was the Consultation Process Interim Measures Agreement between Canada, the Province of Ontario and the Algonquins of Ontario in 2009.

42. In the Canadian context, free, prior and informed consent was a process of reconciliation through which the rights and interests of indigenous peoples were taken into account. The Special Rapporteur on the rights of indigenous peoples had noted in 2009 that such consent did not provide indigenous peoples with a “veto power”, but rather established the need to frame consultation procedures in such a way as to build consensus. Canada shared that perspective and Canadian courts had made it clear that indigenous peoples did not have the right to veto legitimate government decisions made in the public interest. The concept of free, prior and informed consent should focus, in practice, on fostering partnerships to ensure that indigenous peoples were more fully involved, consulted and, where appropriate, accommodated in decision-making on development and other matters that directly affected their rights and interests.

43. Aboriginal people faced lower health outcomes, decreased socio-economic outcomes, lower life expectancy and overall lower well-being than the broader Canadian population. While progress was being made on many fronts, challenging socio-economic gaps persisted. Her Government had established a practical and results-driven framework for action on aboriginal issues with a mutually reinforcing focus on education, reconciliation, governance and self-government, economic development, empowerment and protection of the vulnerable, and resolution of land issues.

44. The theme of the recent Crown-First Nations Gathering was “Strengthening our Relationship – Unlocking our Potential”. Following the meeting, Prime Minister Harper and National Chief Atleo had agreed to collaborate on a renewed relationship, removing barriers to First Nations governance, advancing claims resolution and treaty implementation, promoting educational reform and capitalizing on economic development. A working group was being established to look into the tripartite agreements that had emerged in a number of provinces and sectors to deal with matters such as education, health, and child and family services.

45. With regard to housing in reserve communities, the Government recognized that access to safe and affordable housing was essential for supporting healthy and sustainable First Nations communities. It invested in such housing through Aboriginal Affairs and Northern Development Canada (AANDC), which invested an average of Can\$ 155 million a year in First Nations' housing, and the Canada Mortgage and Housing Corporation. In 2009, the Economic Action Plan had provided an additional Can\$ 400 million over two years to support the construction of new on-reserve housing and the renovation of existing social housing. In response to the recommendations of a 2010 evaluation, an action plan that would strengthen accountability for housing and support capacity-building initiatives for First Nations was being implemented. In addition to Government funding, First Nations were expected to identify funding from other sources for their housing needs.

46. The Government was proceeding with its action plan to address the urgent health and safety needs of the people of Attawapiskat. It was actively working with the Attawapiskat First Nation to ensure greater effectiveness and accountability in housing management. The Nation was responsible for managing its on-reserve housing programme, and significant funds had been provided to it since 2007. With a view to addressing the current serious situation in the community, the Government had provided Can\$ 2.29 million in funding for 22 modular homes to provide adequate housing for families living in tents and sheds. The 25 families living in temporary shelters had been given access to safe and warm shelter at the community's healing lodge, which had been retrofitted on a priority basis using public funds.

47. Safe, clean and reliable drinking water and the effective treatment of wastewater were important health and safety issues. The Government was committed to ensuring that significant progress was made in improving water conditions on all reserves. Its investments in support of water and wastewater facilities for First Nations communities during the period between 2006 and 2013 would total approximately Can\$ 2.5 billion. In 2009, AANDC had commissioned Neegan Burnside Ltd. to conduct a national assessment of First Nations water and wastewater systems.

48. All children were protected by provincial and territorial welfare legislation. However, the Federal Government provided funding for child welfare services delivered to First Nations children and families living on reserves. Following the lead of several provinces, and in partnership with First Nations leaders, the Government had introduced a new approach to funding in 2007, focusing on prevention and allowing for more family and community-oriented care arrangements. Increased resources for prevention activities enabled child and family service staff to work more closely with families at risk of having their children removed from home and, in cases where a child had been removed, to reintegrate the child more speedily into the family. The Government had provided an additional Can\$ 100 million a year under tripartite agreements to support the new approach. The goal was to have tripartite agreements in all provinces by 2015. While some of the early results of the approach had been positive and encouraging, it would take many years to assess its impact fully and fairly.

49. On 11 June 2008, the Prime Minister, speaking on behalf of all Canadians, had offered a formal apology to former students of Indian residential schools and asked for forgiveness for the damaging impact of the schools on students and their families and communities. The Government now recognized the lasting and damaging impact of the residential school policy on aboriginal culture, heritage and language. The apology reinforced numerous other initiatives designed to address the tragic legacy of Indian residential schools, including the ongoing implementation of the "Settlement Agreement", the largest class action settlement in Canadian history, comprising a "Common Experience Payment" to be paid to all eligible former students, an "Independent Assessment Process", which was a claimant-centred, non-adversarial out-of-court process for the resolution of

claims of sexual abuse, serious physical abuse and other wrongful acts suffered at Indian residential schools, and the truth and reconciliation commission, which was mandated to hold seven national events, create a public historical record, and promote awareness of the system and its impact.

50. Eligible Common Experience Payment recipients received Can\$ 10,000 in compensation for the first school year and Can\$ 3,000 for each subsequent school year. As of 31 December 2011, 97 per cent of the 80,000 originally estimated former students had been paid a total of Can\$ 1.6 billion. A total of 22,617 applications had been admitted for the Independent Assessment Process and almost 13,000 claims had been heard or resettled through negotiations. Decisions had been rendered on over 10,000 claims and Can\$ 1.3 billion had been paid to claimants and their counsel.

51. The truth and reconciliation process would guide aboriginal peoples and Canadians through a process of reconciliation and promote relations based on mutual trust, understanding and respect.

52. **Mr. Linder** (Canada) said that public safety agencies were guided by clear policies that addressed the unacceptable nature of racial discrimination and profiling. A full description of training provided in that regard within the Royal Canadian Mounted Police (RCMP) was contained in the periodic report. The Montreal city police had also recently adopted a plan aimed, inter alia, at detecting any inappropriate behaviour by officers. In response to fears expressed by minority groups about being victimized by any backlash following a terrorist incident, the RCMP had established an outreach programme intended to engage all ethnic, cultural and religious communities in the protection of national security through understanding of mutual goals and appropriate communications in times of crisis. Efforts had also been made to ensure that the police workforce better reflected the population it served. To that end, the RCMP had introduced employment equity initiatives designed to improve staffing, recruitment, and retention of aboriginal and visible minority groups. All allegations of acts of discrimination by law enforcement officials were investigated.

53. The reasons for aboriginal peoples' high rates of contact with the justice system were complex. Contributing factors included poor socio-economic conditions, a lack of education and employment opportunities, and higher population growth. That growth had resulted in a demographic bulge in the youth segment of the aboriginal population, which had exacerbated the problem because young people, regardless of race or ethnicity, committed more offences than people in other demographic ranges.

54. The Government had addressed the issue in a number of ways. It had implemented programmes to work with at-risk populations in order to address the root causes of crime and violence within communities, and launched the Federal Framework for Aboriginal Economic Development aimed at increasing aboriginal participation in the labour market. Courts were required to consider sentencing alternatives to imprisonment whenever consistent with public safety. In addition, specific aboriginal programmes had been implemented within the correctional system to reduce the risk of reoffending.

55. A number of provinces had initiatives to address the overrepresentation of aboriginal people in correctional facilities under their jurisdiction. As to the overrepresentation of African-Canadians, the Correctional Service of Canada had policies aimed at addressing the needs of ethno-cultural minority offenders, including African-Canadians. The Office of the Correctional Investigator was planning to study the underlying causes of the phenomenon.

56. The RCMP had confirmed that all the names of missing aboriginal women in the Sisters in Spirit database were also in police databases.

57. **Mr. Zaluski** (Canada), replying to concerns raised by the Committee about the lack of a specific offence of racist violence in criminal law, said his Government remained convinced that its approach was appropriate. The effect of the regime detailed in the periodic report (paras. 73–77) ensured full compliance with article 4 (a) of the Convention.

58. The Government recognized the Committee's concern that, under the Criminal Code, criminal liability could not be established on the basis of the racist nature of an organization. However, by focusing on the activities of individuals and organizations rather than on the fact of membership, the Government remained true to its criminal law principles and ensured protection of other human rights such as freedom of association, while denying the ability of those organizations and their members to engage in racist activities.

59. One of the legacies of Canada's Action Plan Against Racism had been the establishment of a system for standardized reporting and monitoring of hate crimes by the police. The availability of those data had raised community and police awareness of hate crime and improved understanding of its nature and extent. In 2009, the total number of hate crimes reported had accounted for less than 1 per cent of all crimes; African-Canadians had been the most commonly targeted racial group, accounting for 40 per cent of racially motivated incidents reported. Between 2006 and 2010, there had been 59 prosecutions and 13 convictions under section 319 of the Criminal Code, which prohibited incitement to hatred and wilful promotion of hatred. During the same period, there had been 3 prosecutions and 2 convictions under section 318, which prohibited advocating or promoting genocide. The Attorney-General's consent to prosecution was still required as it provided an appropriate safeguard for freedom of expression.

60. Hate speech was combated through a combination of measures that included the application of criminal law and special programmes. The Government had introduced a bill designed to strengthen the Criminal Code's hate speech provisions by extending the offence of advocating genocide to cover groups identifiable on the basis of national origin and extending the offences of inciting hatred and wilfully promoting hatred to include groups identifiable on the basis of national origin, age, sex and mental or physical disability.

61. The Criminal Code provided for the seizure and forfeiture of hate propaganda intended for distribution or sale and authorized the deletion of publicly available online hate propaganda. The Customs Tariff prohibited the importation of publications that constituted hate propaganda under the Code and the Broadcasting Act prohibited the broadcasting of abusive comments.

62. Although the Supreme Court had ruled in 1990 that section 13 of the Canadian Human Rights Act was a reasonable limit on freedom of expression, the constitutionality of those provisions was again being considered by the courts in two cases and Parliament was currently debating a private member's bill to repeal section 13. The Government would inform the Committee of developments in that regard in its next periodic report.

63. The Government's 2007 decision to repeal section 67 of the Human Rights Act, which had shielded from scrutiny many actions taken by First Nations governments or the Federal Government under the Indian Act, was another step towards empowering First Nations individuals by ensuring that the rights of all aboriginal people were protected on the same basis as those of other Canadians.

64. There was no contradiction between the decision to repeal section 67 and the Government's position as to the jurisdiction of the Canadian Human Rights Tribunal to consider the complaint filed by the Assembly of First Nations and the First Nations Child and Family Caring Society. Under the Constitution, provincial governments had jurisdiction over the provision of child welfare services within a particular province. The Federal Government provided funding to First Nations organizations authorized by the

relevant provincial government to provide those services on-reserve. The essence of the complaint was that funding provided by the Federal Government to First Nations organizations for services on-reserve was less than funding provided by provincial governments to organizations serving individuals who lived off-reserve. The Human Rights Act was a federal statute prohibiting certain types of discriminatory practices by entities regulated under federal law. The Tribunal had accepted the Government's argument that discrimination in the provision of a service under the Act required comparison of the experience of the complainant with that of someone else receiving the same services from the same service provider. The Tribunal's decision was subject to review by the courts and, if upheld, would affect only a limited category of cases. It would not prevent complaints about services where the Federal Government and/or band council was the sole service provider for individuals on and off-reserve, nor would it prevent complaints where, for example, the allegation concerned a denial of social service or education benefits or employment on the basis of grounds such as race, sex or ethnicity.

65. **Ms. Tapley** (Canada) said it was unlikely that the Government would be in a position to ratify the ILO Domestic Workers Convention, 2011 (No. 189) without undertaking legislative change in many Canadian jurisdictions because domestic work was primarily regulated by provincial and territorial governments. Nevertheless, Canada would review the new Convention thoroughly, in consultation with those governments, and give careful consideration to its ratification.

66. Migrants' rights were fully protected by the provisions of the various human rights instruments to which Canada was a party, as well as the Canadian Charter of Rights and Freedoms. The Migrant Workers Convention had been designed to deal with situations where migrant workers became de facto residents with only limited rights and limited possibility of changing status. Ratification of the Convention would have only a limited impact on long-term workers since they were generally permanent residents and could acquire citizenship within three years if they complied with Canadian laws. Temporary foreign workers had the status of temporary residents and were admitted for a limited period linked to their terms of employment. That limitation could conflict with article 52 of the Convention, which stated that migrant workers must have the right freely to choose their remunerated activities.

67. The Government was concerned that accession to the 1954 Convention relating to the Status of Stateless Persons could be misused by people seeking to remain in Canada by any means. Stateless persons requiring protection had access to the refugee determination system and those not requiring protection could apply to remain on humanitarian and compassionate grounds. Given existing avenues to regularize their status, creating a separate stream for stateless persons was not necessary.

68. Parents facing removal with a Canadian-born child could apply for permanent residence on humanitarian and compassionate grounds. Factors taken into account included the best interests of children when applicable.

69. Turning to the issue of the Roma population in Canada, she said all refugee claimants had access to a full and fair hearing consistent with Canada's international obligations, and the Government was committed to fulfilling its obligations under the 1951 Refugee Convention. However, the Government was concerned at the large number of refugee claims received from people from democracies that respected human rights, such as those in the European Union, and at the high rate of abandoned and withdrawn claims. Hungary had become the leading source country for refugee claims; according to a report in the local media, Hungarians were encouraged to travel to Canada by news of the various benefits available to them.

70. Under provisions of Bill C-31, designated countries of origin were countries that did not normally produce refugees, respected human rights and offered State protection. The ability to designate such countries and accelerate the processing of refugee claimants from those countries provided the Government with a tool to respond to sharp increases in claims from countries not normally producing refugees. The aim of the policy was to deter abuse of the refugee system by people from countries generally considered safe and to restore the integrity of its asylum system.

71. Canada was party to the Protocol against the Smuggling of Migrants by Land, Sea, and Air, which defined and criminalized human smuggling. In order to combat the threat posed by human smuggling, the Government took specific measures including designating certain arrivals by groups of people as “irregular arrivals”. Those reaching Canada through “irregular arrivals” would have access to Canada’s asylum system and, if deemed eligible to make a refugee claim, would receive a hearing on the merits of their claim before the independent Immigration and Refugee Board.

72. **Ms. Goldberg** (Canada), responding to a question relating to the extraterritorial activities of Canadian corporations, said that her Government was of the view that Canadian obligations under the Convention did not extend beyond its borders, and it had not addressed the issue of corporate social responsibility in its report. There were other human rights mechanisms to deal with such matters, such as the Human Rights Council’s Working Group on human rights and transnational corporations, whose mandate Canada supported.

73. Primary responsibility for social and environmental issues rested with the foreign State in which Canadian multinationals operated. Her Government encouraged corporations to comply with standards, to ensure transparency and cooperation with host Governments and local communities, and to operate in line with the principles of social and environmental corporate responsibility.

74. In 2009, the Government had enacted the Corporate Social Responsibility Strategy to foster engagement and a proactive approach to managing social and environmental risks in the extraction sector. It was of the opinion that voluntary initiatives, such as those contained in the OECD guidelines, constituted recognized standards and were the most effective means of promoting best practices.

75. Responding to a comment by one Committee member concerning allegations that Canada had not permitted a visit from United Nations Special Procedures experts, she stressed that Canada had issued an open invitation to all Special Procedures experts to visit the country as early as 1999, and had been one of the first countries to do so. It viewed United Nations Special Procedures as essential for monitoring and reporting on situations of concern.

76. **The Chairperson** said that there were three categories of aboriginal peoples in Canada, namely the First Nation, Inuit and Métis communities, whose status was regulated by provincial legislation. However, no questions had thus far been raised regarding the Métis, and he suggested that the matter might be of interest.

77. He had duly noted the complex balance between federal and provincial government powers in Canada.

78. **Mr. Kemal** (Country Rapporteur) requested clarification regarding hate crimes as no mention had been made of hate crimes on grounds of religion. Although the Convention did not cover religion per se, in view of the intersection of race and religion, especially in the multicultural context of Canadian society, multiple discrimination was a possible problem. He asked whether hate crimes also included hate speech against religious minorities.

79. He drew attention to efforts to enable indigenous communities to follow their own way of life, which included attracting tourism.

80. He asked about the impact of the global economic crisis on State services responsible for combating racial discrimination. Would it affect the availability of resources?

81. **Mr. Diaconu** said he had been taken aback by the fact that different services were offered on and off-reserve, a situation which was incompatible with the provisions of articles 1 and 2 of the Convention. Such a situation was only justified if there were logical and objective grounds for it and he referred the delegation to the jurisprudence of the Human Rights Committee in that respect.

82. With regard to compliance with article 4, he wished to know — with reference to “gaps” in legislative provisions — how many cases had been rejected by the courts owing to imprecise wording of Canadian legislation. He had not been satisfied with the answers given about the removal of indigenous children from their families, as they had been theoretical and legalistic and had not reflected a human rights-based approach, which was vitally important.

83. On the question of indigenous women who divorced non-indigenous husbands, if the relevant Views of the Human Rights Committee had been taken into account in the *Lovelace* case, the matter would have been resolved 20 years before. The examination of individual communications by that Committee and other human rights bodies was of vital importance.

84. **Mr. Murillo Martínez** asked, in view of the Canadian delegation’s acknowledgement that persons of African descent were the main victims of hate crimes, whether the State party had analysed the reasons for that phenomenon and what specific measures it was taking in that regard.

85. **Ms. Crickley** asked how Canada’s commitment to partnership and inclusion translated into specific measures and enquired about the Government’s plans in that area. The Government’s efforts relating to ILO Convention No. 189 were laudable as it was important to adopt measures to improve the protection afforded to domestic workers.

86. She expressed concern regarding the asylum process: the reporting methods used could lead to discrimination against people with refugee status.

87. **Mr. Vázquez**, following up on the question about the possibility of establishing a treaty commission to settle aboriginal land disputes, observed that while the Specific Claims Tribunal Act of 2007 had been a step forward, it contained a number of exemptions. Moreover, the decisions of the independent tribunal were not binding and provided the basis for further negotiations. He wished to know whether there were any impediments in Canadian constitutional law to the establishment of a treaty commission and what the State party’s opinion was of the desirability of that concept.

88. He supported Ms. Dah’s comments on a new approach to census data collection, as a failure to collect disaggregated data could cause problems.

89. **Mr. Calí Tzay**, expressing his appreciation for the information provided on the Canadian Truth and Reconciliation Commission, requested further information regarding the process of compensation for abuse suffered by children in the education system. As far as he understood it, compensation was only available in cases of sexual or physical abuse, and sexual abuse had to be verified through interviews involving questions on where, how and how many times the abuse took place, and mentioning perpetrators by name. That information was then used to calculate the scale of the compensation awarded. The process seemed traumatic from the point of view of the victims.

90. **Ms. Tapley** (Canada), responding to a question from Mr. Kemal, said that her country had weathered the global crisis better than most. The Government was committed to a rapid return to a balanced budget, and had introduced a strategic review exercise to examine its resource base. The results would be known when the forthcoming federal budget was made public, but she was confident that there would be sufficient resources to combat racism.

91. **Mr. Zaluski** (Canada) said that the Criminal Code covered religious hatred in its provisions on hate crimes: under section 318 (4), “identifiable groups” included sections of the public who could be distinguished on the basis of religion. Section 430 (4.1) of the Code made it an offence to vandalize or damage property used for the purposes of religious worship.

92. Canadian jurisprudence on discrimination recognized the effect of intersecting grounds for discrimination, including the intersection of race and religion.

93. **Ms. Tapley** (Canada), responding to the question about the “long-form census”, said that socio-economic information continued to be collected in the form of a new, voluntary household survey. Although the effect of the voluntary nature of the survey on the quality of data concerning certain groups would only be known once data collection had been completed, there had been a good response to the survey in the 2011 census.

94. **Ms. Tromp** (Canada) said that, according to the 2006 census, 3.8 per cent of the population were aboriginal, while 5.4 per cent were of aboriginal ancestry (i.e. those with at least one aboriginal ancestor).

95. With regard to mining and extraction activities, the sector did bring social and economic benefits to aboriginal communities and was a major source of employment. A significant percentage of the labour force in that sector came from aboriginal communities. Collaboration with local communities was essential to resource development. Early consultation — leading to contractual agreements with communities in the vicinity of mines — was important and was becoming the norm. The Government supported the involvement of aboriginal communities in mineral and metal extraction activities and encouraged dialogue and partnership between the industry, aboriginal communities and government authorities. In recent decades, aboriginal industrial relations had improved as a result of various agreements which benefited both aboriginal communities and mining corporations.

96. While all Canadians had access to programmes and services, the reason for the differences in the services provided on and off-reserve was that the delivery of those programmes depended on the person’s location in a given community or province. Therefore, aboriginal persons moving off-reserve would enjoy the benefits of the services provided in the relevant province or municipality. The Government also had an urban aboriginal strategy, implemented in city centres and focusing on the needs and interests of aboriginal communities. There were partnerships with local governments and aboriginal service providers to address their needs, as well as efforts to combine funding from various federal and provincial programmes, to meet the needs of the aboriginal communities.

97. As to child welfare, steps were being taken to move towards a preventive approach. However, it was of paramount importance that any measures taken must be in the best interests of the child, and efforts at both provincial and federal levels took that important principle into account.

98. Concerning the proposal to establish a specific treaty commission, she did not know whether the provisions of the Constitution permitted such a measure and would need to investigate further. However, she stressed that the decisions of the Specific Claims Tribunal were binding throughout Canadian territory and could relate to failures to implement treaties.

99. Compensation measures were subject to an independent assessment process, to which indigenous communities were able to contribute. They in fact participated in consultations. She did not have additional information to hand on how decisions were taken, but was confident that such matters were handled with sensitivity and care. If the Committee required further information, the Government would endeavour to obtain it.

100. **Mr. Kemal** (Country Rapporteur) said that his preliminary findings, which would be submitted for detailed examination by the Committee, related to matters such as the importance of disaggregated data, the lack of which was the only shortcoming in the report. The absence of such data could make it difficult to see the full picture. The Committee was likely to revisit the issue of visible minorities. It supported the Government's efforts in the field of truth and reconciliation. A particular concern was the growing disparity between the haves and the have-nots – a group which included persons of African descent, indigenous communities, and certain categories of immigrants. Standard paragraphs were likely to focus on the conventions which Canada had not yet ratified, such as the 1954 Convention relating to the Status of Stateless Persons, the matter of article 14, and comments relating to the Durban Declaration, especially those concerning racial discrimination.

101. **Ms. Tapley** (Canada) said that her Government took its responsibilities under the Convention extremely seriously. Canada was a multicultural State, but multiculturalism did not imply assimilation or preclude integration. Newcomers were expected to respect Canada's core values, laws, identity and shared traditions. However, the concept of multiculturalism was more than an aspirational idea or a series of platitudes. Approaches to meeting the challenge of diversity in order to help all Canadians achieve their full potential, as well as promoting citizenship and enhancing integration, were embedded in Canadian legislation, including the Multiculturalism Act. The Constitution guaranteed equal rights and access to law. However, Governments could not combat racism on their own. Cooperation with First Nations, institutions, minorities, local governments and NGOs, civil society and community groups in that field was vital in order to ensure the realization of human rights.

102. Canada was evolving, and recognized the need for a national context for the promotion of human rights and the rule of law.

103. She acknowledged Mr. Kemal's comments regarding the Durban Declaration, and stressed that, while her Government's views on that score were well known, it was determined to continue with its commitments and efforts to combat discrimination.

104. **The Chairperson** thanked the delegation for their cooperation.

The meeting rose at 1 p.m.