



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Eightieth session

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Consideration of reports submitted by States parties under article 9 of the convention

Concluding observations of the Committee on the Elimination of Racial Discrimination

Canada

1. The Committee considered the nineteenth to twentieth periodic reports of Canada (CERD/C/CAN/19-20), submitted in one document, at its 2141st and 2142nd meetings (CERD/C/SR. 2141 and 2142), held on 22 and 23 February 2012. At its 2161st and 2162nd meetings (CERD/C/SR. 2161 and 2162), held on 7 and 8 March 2012, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the timely submission by the State party of its nineteenth to twentieth periodic reports drafted in accordance with the Committee's revised guidelines for the preparation of reports. The Committee also welcomes the open dialogue with the high-level delegation of the State party as well as its efforts to provide comprehensive responses to issues raised by Committee members during the dialogue and the supplementary replies provided.

B. Positive aspects

3. The Committee notes with appreciation the various legislative and policy developments which have taken place in the State party to combat racial discrimination, including:

(a) New law amending the Citizenship Act which came to effect on 17 April 2009 and gives Canadian citizenship to former Canadians who had lost it due to outdated provisions in earlier citizenship legislation, and to children born outside Canada to a Canadian parent in the first generation who had never acquired citizenship;

(b) Amendment to Section 67 of the Canadian Human Rights Act, which allows, as of July 2011, the Canadian Human Rights Commission to accept complaints regarding actions or decisions under the Indian Act;

(c) Gender Equity in Indian Registration Act, which came into effect in January 2011 and ensures that eligible grand-children of women who lost Status as a result of marrying non-Indian men can become entitled to registration (Indian status);

(d) Various programmes, strategies and other initiatives aimed at raising the awareness of the population with regard to racial discrimination, integration, tolerance and multiculturalism.

4. The Committee notes with appreciation the formal apology delivered, in June 2008, by the Prime Minister of Canada, on behalf of the Government of Canada, to former students, their families and communities for Canada's role in the operation of the Indian Residential School System. It also notes with appreciation the apology by the Government of Canada for relocating Inuit from Inukjuak and Pond Inlet to the High Arctic in the 1950's and for the hardship, suffering and loss they experienced.

5. The Committee also notes with appreciation the endorsement by Canada of the United Nations Declaration on the rights of indigenous peoples.

6. The Committee welcomes the active engagement and contributions of the Canadian Human Rights Commission and numerous non-governmental organizations in the consideration of the State party's report.

C. Concerns and recommendations

7. The Committee remains concerned at the absence in the State party's report of recent reliable and comprehensive statistical data on the composition of its population including economic and social indicators disaggregated by ethnicity, including Aboriginal (indigenous) peoples, African Canadians and immigrants living in its territory, to enable it to better evaluate their enjoyment of civil and political, economic, social and cultural rights in the State party.

In accordance with paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee reiterates its previous recommendation that the State party collect and, in its next periodic report, provide the Committee, with reliable and comprehensive statistical data on the ethnic composition of its population and its economic and social indicators disaggregated by ethnicity, gender, including on Aboriginal (indigenous) peoples, African Canadians and immigrants, to enable the Committee to better evaluate the enjoyment of civil, political, economic, social and cultural rights of various groups of its population.

8. The Committee, recalling its recommendation to the State party at its seventieth session in February 2007 to reflect on the use of the term "visible minorities", has taken note of the State party's efforts to comply with this request, including the commissioning of scholars to write research papers on this subject, and the organization of an open workshop in 2008 to discuss this issue. While appreciating the State party's efforts, the Committee continues to have residual doubts regarding continuing use of the term "visible minorities". The term is considered objectionable by certain minorities who claim that it is being used at all levels of the Canadian society, homogenizing experiences of different ethnic groups. Its lack of precision may pose a barrier to effectively addressing the socio-economic gaps of different ethnic groups (art. 1).

The Committee reiterates its previous recommendation that the State party continue to keep under review, in line with article 1 of the Convention, the implications of the

use of the term “visible minorities” in referring to “persons, other than Aboriginal peoples, who are non-Caucasian in race and non-white in colour” (Employment Equity Act, 1995), so as to address more precisely the socio-economic gaps between different ethnic groups.

9. The Committee takes note of the various fora and mechanisms in the Canadian government that take part of the State party’s efforts to facilitate exchange of information at the federal, provincial, and territorial levels on legislation, policies, programmes and best practices aimed at coordinating the implementation of the Convention. These cover, inter alia, immigrants, Aboriginal peoples, and issues relating to multiculturalism and anti-racism. In spite of the existence of these mechanisms, however, the Committee is concerned that disparities and discrepancies still exist in the implementation of the Convention among provinces and territories (art. 2).

The Committee recommends that the State party take appropriate measures to strengthen the coordination of all existing federal and provincial mechanisms in order to remove discrepancies and disparities in the implementation of anti-racism legislation, policies, programs and best practices, and to ensure the enjoyment on an equal footing within all provinces and territories of the rights set forth in the Convention, including by adopting, when necessary, new federal laws.

10. The Committee has noted that the various policies, programmes and strategies adopted by the State party at the federal, provincial, and territorial levels do not give a comprehensive and clear picture of the special measures adopted by the State party to address the situation of Aboriginal peoples and African Canadians (arts. 2 and 5).

The Committee recommends that the State party coordinate its various policies, strategies and programmes on Aboriginal peoples and African Canadians by adopting a comprehensive strategy on the situation of Aboriginal people at the federal level, so as to give a coherent picture of its actions and enhance their efficiency, and ensure that any differences of treatment are based on reasonable and objective grounds.

11. The Committee is concerned at reports that African Canadians, in particular in Toronto, are being subjected to racial profiling and harsher treatment by police and judicial officers with respect to arrests, stops, searches, releases, investigations and rates of incarceration than the rest of the population, thereby contributing to the overrepresentation of African Canadians in the system of criminal justice of Canada (arts. 2 and 5).

Recalling its general recommendation No 34 (2011) on racial discrimination against people of African descent and in light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee reminds the State party that racial profiling should be prevented at all stages of criminal procedure. The Committee recommends that the State party:

- (a) Take necessary steps to prevent arrests, stops, searches and investigations and over-incarceration targeting different groups, particularly African Canadians, on the basis of their ethnicity;
- (b) Investigate and punish the practice of racial profiling;
- (c) Train prosecutors, judges, lawyers, other judicial and police officers in the criminal justice system on the principles of the Convention;
- (d) Provide the Committee with statistical data on treatment of African Canadians in the criminal justice system;
- (e) Conduct a study on the root causes of the overrepresentation of Africans Canadians in the system of criminal justice.

12. The Committee is concerned at the disproportionately high rates of incarceration of Aboriginal people including Aboriginal women, in federal and provincial prisons across Canada (arts. 2, 5 and 7).

In light of its general recommendation No. 31 (2005), the Committee recommends that the State party reinforce measures to prevent excessive use of incarceration of indigenous peoples. The Committee also recommends that the State party:

(a) Give preference, wherever possible, to alternatives to imprisonment concerning Aboriginal peoples, as set forth in subsection 717 (1) of the Criminal Code;

(b) Implement, when appropriate, subsection 718.2 (e) of the Criminal Code, as well as section 742.1, to allow Aboriginal convicted offenders to serve their sentences in their communities;

(c) Make adequate use of the Aboriginal Justice Strategy (AJS) in order to prevent Aboriginal overrepresentation in prisons, as a result of the operation of the criminal justice system.

The Committee urges the State party to train its prosecutors, judges, lawyers, police officers on these provisions of the Criminal Code, and to increase its efforts to address socio-economic marginalization of Aboriginal people.

13. The Committee remains concerned: (a) at the refusal by the State party to introduce in its legislation a specific offence criminalizing and punishing acts of racist violence; and (b) at the State party's approach to prohibit racist activities of racist organizations rather than prohibiting and declaring illegal such organizations (art.4).

Recalling its general recommendations Nos. 1 (1972), 7 (1985) and 15 (1993) according to which article 4 is of a preventive and mandatory nature, the Committee reiterates its previous recommendation that the State party amend or adopt relevant legislation in order to ensure full compliance with article 4 of the Convention.

14. While noting that the State party has enacted a Corporate Responsibility Strategy, the Committee is concerned that the State party has not yet adopted measures with regard to transnational corporations registered in Canada whose activities negatively impact the rights of indigenous peoples outside Canada, in particular in mining activities (art. 5).

The Committee recommends that the State party take appropriate legislative measures to prevent transnational corporations registered in Canada from carrying out activities that negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada, and hold them accountable.

15. The Committee is concerned that Bill C-11, The Balanced Refugee Act, which received Royal Assent in 2010, and which proposes to establish a list of "safe countries" and to expedite asylum requests introduced by persons from "safe countries", may not be in full compliance with the Convention, in not providing all required legal procedural guarantees as well as the protection of the non-refoulement principle. The Committee is also concerned that under Bill C-4, any migrant and asylum-seeker designated as an "irregular arrival" would be subject to mandatory detention for a minimum of one year or until the asylum-seeker's status is established (arts. 1 and 5).

The Committee recommends that the State party take appropriate measures to ensure that procedural safeguards will be guaranteed when addressing asylum requests of persons considered coming from "safe countries", without any discrimination based on their national origin. The Committee also recommends that the State party review Bill C-4 in order to repeal the provision on the mandatory detention.

16. While noting different measures taken by the State party to address the socio-economic inequalities faced by African Canadians, such as the Federal Employment Act, the African Nova Scotian Employability Table, as well as policies concerning minority groups in the State party, the Committee is concerned that African Canadians continue to face discrimination in the enjoyment of social, economic and cultural rights, in particular in access to employment, housing, education, wages, and positions in the public service (art. 5).

Recalling its general recommendation No. 34 (2011) and in light of its general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention of All Forms of Racial Discrimination, the Committee recommends that the State party take concrete specific measures to foster the effective integration at federal, provincial and territorial levels of African Canadians into Canadian society by effectively ensuring the implementation of its non-discrimination legislation, in particular the Federal Employment Equity Act, and policies regarding access to employment, non-discriminatory wages, housing, and public service. The Committee also recommends that the State party strengthen its special measures to increase the level of educational attainment of African Canadian children in particular by preventing their marginalization and reducing their dropout rates. The Committee requests that the State party provide it with information on specific measures taken as well as on their concrete results.

17. The Committee takes note of various measures taken by the State party to combat violence against Aboriginal women and girls, such as the Family Violence Initiative, the Urban Aboriginal Strategy, and various initiatives taken at the provincial or territorial level to address murders and disappearances of Aboriginal women. However, the Committee remains concerned that Aboriginal women and girls are disproportionately victims of life-threatening forms of violence, spousal homicides and disappearances (art. 5).

The Committee recommends that the State party:

- (a) Strengthen its efforts to eliminate violence against Aboriginal women in all its forms by implementing its legislation and reinforcing its preventive programmes and strategies of protection, including the Shelter Enhancement Program, the Family Violence Prevention Program, the Policy Centre for Victim Issues and the Aboriginal Justice Strategy and the new National Police Support Centre for missing persons;**
- (b) Facilitate access to justice for Aboriginal women victims of gender-based violence, and investigate, prosecute and punish those responsible;**
- (c) Conduct culturally-sensitive awareness-raising campaigns on this issue, including in affected communities and in consultation with them;**
- (d) Consider adopting a national plan of action on Aboriginal gender-based violence;**
- (e) Consult Aboriginal women and their organizations and support their participation in development, implementation and evaluation of measures taken to combat violence against them.**

The Committee further recommends that the State party support existing databases and establish a national database on murdered and missing Aboriginal women and provide the Committee with statistical data and information on concrete results of its programmes and strategies.

18. The Committee is concerned that the State party has not yet removed all discriminatory effects in matters relating to the Indian Act that affect First Nations women,

in particular relating to band membership and matrimonial real property on reserve lands (arts. 2 and 5).

The Committee urges the State party to adopt and implement the proposed Family Homes on Reserves and Matrimonial Interests or Rights Act presently under consideration before Parliament, without further delay, in order to allow the enjoyment by First Nations women of their rights in the areas of property, marriage and inheritance.

19. While noting measures taken by the State party, such as the Aboriginal Health Transition Fund, Canada Economic Action Plan 2009, the new Federal Framework for Aboriginal Economic Development, and the new Aboriginal Skills and Employment Training Strategy, the Committee remains concerned about the persistent levels of poverty among Aboriginal peoples, and the persistent marginalization and difficulties faced by them in respect of employment, housing, drinking water, health and education, as a result of structural discrimination whose consequences are still present (art. 5).

The Committee recommends that the State party, in consultation with Aboriginal peoples, implement and reinforce its existing programmes and policies to better realize the economic, social and cultural rights of Aboriginal peoples, in particular through:

(a) Speeding up the provision of safe drinking water to Aboriginal communities on reserves;

(b) Intensifying efforts to remove employment-related discriminatory barriers and discrepancies in salaries between Aboriginal and non-Aboriginal people, in particular in Saskatchewan and Manitoba;

(c) Finalizing the construction of homes for the Attawapiskat communities in northern Ontario, and facilitating access to housing by Aboriginal people, by adopting and implementing the plan currently being drafted;

(d) Facilitating their access to health services;

(e) Improving access to education for Aboriginal children including to the post-graduate education, in particular by generalizing the Enhanced Prevention Focus, and providing it with sufficient funding;

(f) Discontinuing the removal of Aboriginal children from their families and providing family and child care services on reserves with sufficient funding;

(g) Providing adequate compensation through an appropriate settlement mechanism, to all students who attended the Indian Residential Schools in order to fully redress the intergenerational effects.

The Committee requests that the State party, in consultation with indigenous peoples, consider elaborating and adopting a national plan of action in order to implement the United Nations Declaration on the Rights of Indigenous Peoples.

The Committee also requests that the State party provide it with information on the progress and concrete results of such programmes and policies, in its next periodic report.

20. The Committee is concerned about reports according to which the right to consultation as provided in legislation and the right to prior, free and informed consent to projects and initiatives concerning Aboriginal peoples, are not fully applied by the State party, and may be subject to limitations. It is also concerned that Aboriginal peoples are not always consulted for projects conducted on their lands or which affect their rights and that treaties with Aboriginal peoples are not fully honoured or implemented. The Committee is

further concerned that Aboriginal peoples incur heavy financial expenditures in litigation to resolve land disputes with the State party owing to rigidly adversarial positions taken by the State party in such disputes. While acknowledging that the Special Claims Tribunal constitutes a positive step, the Committee is concerned at reports that this tribunal does not resolve disputes on treaty rights for all First Nations and does not provide for all guarantees for a fair and equitable settlement (art. 5).

In light of its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party, in consultation with Aboriginal peoples:

(a) Implement in good faith the right to consultation and to free, prior and informed consent of Aboriginal peoples whenever their rights may be affected by projects carried out on their lands, as set forth in international standards and the State party's legislation;

(b) Continue to seek in good faith agreements with Aboriginal peoples with regard to their lands and resources claims under culturally-sensitive judicial procedures, find means and ways to establish titles over their lands, and respect their treaty rights;

(c) Take appropriate measures to guarantee that procedures before the Special Tribunal Claims are fair and equitable and give serious consideration to the establishment of a Treaty Commission with a mandate to resolve treaty rights issues.

21. The Committee is concerned that persons belonging to Aboriginal peoples and African Canadians continue to face obstacles in recourse to justice, despite the existence of some programmes at the provincial and territorial levels. The Committee also draws attention to the lack of information about the mechanism to replace the Court Challenges Programs which were cancelled by the State party (art. 6).

The Committee recommends that the State party strengthen its efforts to promote and facilitate access to justice at all levels by persons belonging to minority groups, in particular by Aboriginal peoples and African Canadians. The Committee also urges the State party to establish without further delay, a mechanism to fill the gap caused by the cancellation of the Court Challenges Programs, as previously recommended by the Committee.

22. While noting that the State party has established a Black History Month, the Committee is concerned at reports according to which the contributions of African Canadians in the State party's history are not fully recognized and that this non-recognition may contribute to the maintenance of discriminatory stereotypes and prejudice against African Canadians (arts. 2 and 7).

The Committee recommends that the State party increase its efforts to fully recognize the achievements and the contributions of the African Canadian community to the history of Canada. The Committee encourages the State party to ensure that the bicentennial celebration of the War of 1812 also reflects the contributions and role of African Canadians.

23. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct relevance to communities that may be the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the ILO Convention 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries and the 1954 Convention relating to the Status of Stateless Persons.

24. The Committee encourages the State party to consider the possibility of making the declaration provided for in article 14 of the Convention.

25. In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

26. The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

27. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

28. Noting that the State party has submitted its core document in 1998, the Committee encourages the State party to submit an updated core document, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN.2/Rev.6, chap. I).

29. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 16, 17, 19 and 21 above.

30. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 12, 18, 20, and 22 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

31. The Committee recommends that the State party submit its twenty-first and twenty-third periodic reports in a single document by 15 November 2015, taking into account the specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1), and addressing all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, chap. I, para. 19).