



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

Distr.
GENERAL

CERD/C/CAN/CO/18
25 May 2007

Original: ENGLISH

**COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION**

Seventieth session
19 February - 9 March 2007

**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 seventeenth and eighteenth periodic reports of Canada, submitted in one document (CERD/C/CAN/18), at its 1790th and 1791st meetings (CERD/C/SR.1790 and CERD/C/SR.1791), held on 20 and 21 February 2007. At its 1808th meeting (CERD/C/SR.1808), held on 5 March 2007, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by the State party which is in conformity with the reporting guidelines, and notes with appreciation the regularity in the submission of reports, in compliance with the requirements of the Convention. Furthermore, the Committee appreciates the extensive and detailed responses provided to the questions asked during the consideration of the report and the open and constructive dialogue with the delegation.

B. Positive aspects

3. The Committee welcomes the adoption, in March 2005, of Canada's Action Plan Against Racism: A Canada for All, including the Racism-Free Workplace Strategy.

4. The Committee also welcomes the enactment of the Human Rights Act in Nunavut, which prohibits racial discrimination.

5. The Committee notes with satisfaction the establishment of the Canadian Coalition of GE.07-42169 against Racism and Discrimination.

6. The Committee welcomes the establishment, in 2005, of the Cross-Cultural Roundtable on Security, designed to provide a forum for dialogue between the Government and community representatives to discuss emerging trends and developments in national security measures.

7. The Committee notes with appreciation the expressed commitment of the State party to address through negotiations the assertion of Aboriginal rights and title to land.

8. The Committee notes with satisfaction: (a) the amendments made in December 2001 to the Canadian Human Rights Act and the Criminal Code, which strengthen domestic legislation against hate crimes on the Internet; (b) the establishment of an "Anti-Hate Team", dealing specifically with hate crimes within the Canadian Human Rights Commission, composed of investigative, legal and policy officers with specialized expertise in the investigation of hate on the Internet; and (c) the establishment of the Hate Crimes Community Working Group in Ontario, with the view to reducing the incidence of hate crimes and to better address the needs of hate crime victims.

9. The Committee also notes with satisfaction the decision taken by the State party to halve the Right of Permanent Residence Fee (RPRF), aimed at lessening the financial burden upon new immigrants arriving in Canada.

10. The Committee notes with satisfaction the reduction achieved in the backlog and the length of time taken to process complaints by the Canadian Human Rights Commission.

C. Concerns and recommendations

11. The Committee regrets the paucity of available disaggregated data that allows for an overall assessment of the socio-economic conditions of various ethnic and racial groups in the population, including African Canadians, particularly in the fields of employment and education. The Committee also notes the absence of general statistical information on hate crimes, racial profiling and policing, disaggregated by ethnic and racial group.

The Committee recommends that the State party consider implementing a nationwide collection of disaggregated data based on racial and ethnic groups, as well as gender, which will allow for a better evaluation of the overall situation of different racial and ethnic groups in the State party.

12. The Committee, while welcoming the information that the Action Plan Against Racism: A Canada for All, together with other initiatives mentioned by the State party, will, inter alia, ensure the coordination of efforts of federal departments and provincial/territorial governments in the fight against racism, is concerned about remaining discrepancies in the level of implementation of the Convention among the provinces.

The Committee underscores once again the responsibility of the Federal Government of Canada for the implementation of the Convention, and urges the State party to ensure that the existing inter-provincial mechanisms for exchange of information concerning their anti-racism legislation and policies, including “good practices”, continue to be strengthened.

13. While noting the position of the State party according to which the use of the term “visible minorities” is specific to the Employment Equity Act and is not used for the purpose of defining racial discrimination, the Committee notes that the term is widely used in official documents of the State party, including the census. The Committee is concerned that the use of the term “visible minorities” may not be in accordance with the aims and objectives of the Convention (art. 1).

The Committee recommends that the State party reflect further, in line with article 1, paragraph 1 of the Convention, on the implications of the use of the term “visible minorities” in referring to “persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour” (Employment Equity Act, 1995).

14. The Committee is concerned about the heightened risks of racial profiling and discrimination on the ground of racial or ethnic origin in the context of increased national security measures in the State party, and in particular, in the application of the Anti-Terrorism Act (2001). The Committee is also concerned about the use by the State party of security certificates under the Immigration and Refugee Protection Act which provides for indefinite detention without charge or trial of non-nationals who are suspected of terrorism-related activities. The Committee notes in this respect the findings of the Supreme Court in the case *Charkaoui v. Canada*, of 23 February 2007 (art. 2).

While acknowledging the State party’s national security concerns, the Committee underlines the obligation of the State party to ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin. The Committee urges the State party to continue to review existing national security measures, and to ensure that individuals are not targeted on the ground of race or ethnicity. The Committee also recommends that the State party undertake sensitisation campaigns to protect persons and groups from stereotypes associating them with terrorism. The Committee further recommends that the State party consider amending the Anti-Terrorism Act to include an explicit anti-discrimination clause.

15. The Committee notes with regret the lack of substantial progress made by the State party in its efforts to address residual discrimination against First Nations women and their

children in matters relating to Indian status, band membership and matrimonial real property on reserve lands, despite its commitment to resolving this issue through a viable legislative solution (arts. 2 and 5 d)).

The Committee urges the State party to take the necessary measures to reach a legislative solution to effectively address the discriminatory effects of the Indian Act on the rights of Aboriginal women and children to marry, to choose one's spouse, to own property and to inherit, in consultation with First Nations organisations and communities, including aboriginal women's organisations, without further delay.

16. While noting that section 718.2 of the Criminal Code establishes racial discrimination as an aggravating circumstance in sentencing offenders, the Committee remains concerned: (a) about the absence of legislation that criminalizes and punishes acts of racist violence, as required by article 4 (a) of the Convention; and (b) that under the Criminal Code, criminal liability cannot be established on the basis of the nature of racist organizations (art. 4).

The Committee recalls its general recommendation no. 15(1993) on article 4, according to which all provisions of this article are of mandatory character, and recommends that the State party amend or adopt relevant legislation in order to ensure full compliance with this article.

17. The Committee notes with concern the reports of adverse effects of economic activities connected with the exploitation of natural resources in countries outside Canada by transnational corporations registered in Canada on the right to land, health, living environment and the way of life of indigenous peoples living in these regions (arts 2. 1(d)d), 4 (a) and 5(e)).

In light of article 2.1 (d) and article 4 (a) and (b) of the Convention and of its general recommendation no. 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada. In particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in Canada accountable. The Committee requests the State party to include in its next periodic report information on the effects of activities of transnational corporations registered in Canada on indigenous peoples abroad and on any measures taken in this regard.

18. The Committee is concerned that under the Immigration and Refugee Protection Act (IRPA), non-citizens, including asylum-seekers, may be remanded in custody when they are not able to produce a valid identity document, or on suspicion of having provided a false identity. Despite assurances by the State party that detention is used as a last resort and kept

to the minimum length of time possible, the Committee remains concerned that there is no maximum time limit for the period of custody, and that detention on grounds of lack of a valid identity document may have an adverse effect on stateless persons and asylum-seekers from countries in which particular conditions make it difficult to obtain identity documents (art. 5 (a)).

The Committee draws the attention of the State party to its general recommendation no. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system and general recommendation no. 30 (2004) on discrimination against non-citizens, and recommends that the State party ensure that detention be imposed only on objective grounds stipulated in law, such as the risk of flight, the risk that the person might destroy evidence or influence witnesses, or the risk of serious disturbance of public order. It further recommends that the State party ensure that the persons detained enjoy all the rights to which they are entitled under the relevant international norms.

19. While welcoming the introduction of the initiative entitled "Addressing Race-Based issues" in the Justice system, as part of the Action Plan Against Racism, the Committee is concerned about the disproportionate use of force by the police against African Canadians and the disproportionately high rate of incarceration of aboriginal peoples compared with the general population (art. 5 (a)).

In the 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 recommends that the State party give preference, wherever possible, to alternatives to imprisonment with respect to aboriginal persons, considering the negative impact of separation from their community that imprisonment may entail. Furthermore, the Committee recommends that the State party increase its efforts to address socio-economic marginalization and discriminatory approaches to law enforcement, and consider introducing a specific programme to facilitate reintegration of aboriginal offenders into society.

20. While acknowledging measures taken by the State party, including the support extended to the Sisters in Spirit Initiative of the Native Women's Association of Canada (NWAC), the Committee remains concerned about serious acts of violence against Aboriginal women, who constitute a disproportionate number of victims of violent death, rape and domestic violence. Furthermore, the Committee is concerned that services for victims of gender-based violence are not always readily available or accessible, particularly in remote areas (art. 5 (b)).

In light of its general recommendation no. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party strengthen and expand existing services, including shelters and counselling, for victims of gender-

based violence, so as to ensure their accessibility. Furthermore, it recommends that the State party take effective measures to provide culturally-sensitive training for all law enforcement officers, taking into consideration the specific vulnerability of aboriginal women and women belonging to racial/ethnic minority groups to gender-based violence.

21. While welcoming the commitments made in 2005 by the Federal Government and provincial/territorial governments under the Kelowna Accord, aimed at closing socio-economic gaps between Aboriginal and non-Aboriginal Canadians, the Committee remains concerned at the extent of the dramatic inequality in living standards still experienced by Aboriginal peoples. In this regard, the Committee, recognising the importance of the right of indigenous peoples to own, develop, control and use their lands, territories and resources in relation to their enjoyment of economic, social and cultural rights, regrets that in its report, the State party did not address the question of limitations imposed on the use by Aboriginal people of their land, as previously requested by the Committee. The Committee also notes that the State party has yet to fully implement the 1996 recommendations of the Royal Commission on Aboriginal Peoples (art. 5 (e)).

In light of article 5 (e) and of general recommendation no. 23 (1997) on the rights of indigenous peoples, the Committee urges the State party to allocate sufficient resources to remove the obstacles that prevent the enjoyment of economic, social and cultural rights by Aboriginal peoples. The Committee also once again requests the State party to provide information on limitations imposed on the use by Aboriginal people of their land, in its next periodic report, and that it fully implement the 1996 recommendations of the Royal Commission on Aboriginal Peoples without further delay.

22. While acknowledging the information that the “cede, release and surrender” approach to Aboriginal land titles has been abandoned by the State party in favour of “modification” and “non-assertion” approaches, the Committee remains concerned about the lack of perceptible difference in results of these new approaches in comparison to the previous approach. The Committee is also concerned that claims of Aboriginal land rights are being settled primarily through litigation, at a disproportionate cost for the Aboriginal communities concerned due to the strongly adversarial positions taken by the federal and provincial governments (art. 5 (d)(v)).

In line with the recognition by the State party of the inherent right of self-government of Aboriginal peoples under section 35 of the Constitution Act, 1982, the Committee recommends that the State party ensure that the new approaches taken to settle aboriginal land claims do not unduly restrict the progressive development of aboriginal rights. Wherever possible, the Committee urges the State party to engage, in good faith, in negotiations based on recognition and reconciliation, and reiterates its previous recommendation that the State party examine ways and means to facilitate the establishment of proof of Aboriginal title over land in procedures before the courts. Treaties concluded with First Nations

should provide for periodic review, including by third parties, where possible.

23. The Committee is concerned that undocumented migrants and stateless persons, particularly those whose application for refugee status is rejected but who cannot be removed from Canada, are excluded from eligibility for social security and health care, as it requires proof of residence in one of the provinces in the State party. The Committee is concerned about allegations that in some of the provinces, stateless children and undocumented migrant children are not eligible for schooling (art. 5 (e)).

The Committee recommends that the State party consider ratifying the 1954 Convention relating to Status of Stateless Persons and the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families. The Committee urges the State party to take necessary legal and policy measures to ensure that undocumented migrants and stateless persons whose asylum applications have been rejected are provided with access to social security, health care and education in all provinces and territories, in line with article 5 (e) of the Convention. The Committee also recommends that the State party consider amending the Immigration and Refugee Protection Act (IRPA) so as to explicitly include statelessness as a factor of humanitarian and compassionate consideration.

24. The Committee, while acknowledging the important role played by the Canadian Human Rights Commission in eradicating racial discrimination in the field of employment, including its audit of federally regulated employers pursuant to the Employment Equity Act (EEA), remains concerned that minority groups within the meaning of article 1 of the Convention, in particular, African Canadians and Aboriginal peoples, continue to face discrimination in recruitment, remuneration, access to benefits, job security, qualification recognition and in the workplace, and are significantly under-represented in public offices and government positions (art. 5 (e) (i)).

The Committee recommends that legislation prohibiting discrimination in employment and all discriminatory practices in the labour market be fully implemented in practice and that further measures be taken to reduce unemployment among the minority groups, particularly among African Canadians and aboriginal peoples. The Committee also encourages the State party to strengthen or adopt, as necessary, specific programmes to ensure appropriate representation of ethnic communities in government and public administration, at federal and provincial/territorial levels. The Committee requests the State party to include information on the measures taken and the results achieved in its next periodic report.

25. The Committee, while welcoming the recent decision of the State party to repeal Section 67 of the Canadian Human Rights Act (CHRA) which effectively shielded the provisions of the Indian Act and decisions made pursuant to it from the protection provided

by the Act, notes that the repeal in itself does not guarantee enjoyment of the right to access to effective remedies by on-reserve Aboriginal individuals (art. 6).

The Committee urges the State party to engage in effective consultations with aboriginal communities so that mechanisms to ensure adequate application of the Canadian Human Rights Act (CHRA) with regard to complaints under the Indian Act are put in place following the repeal.

26. While noting the existence of relevant legal aid mechanisms, the Committee is concerned about the difficulties of access to justice for aboriginal peoples, African Canadians and persons belonging to minority groups within the meaning of article 1 of the Convention, in particular in light of the decision announced by the State party on 25 September 2006 to cancel the Court Challenges Program which had provided funds to support test cases “in order to clarify the rights of official language minority communities and the equality rights of disadvantaged groups” (State party report, para. 80), and that no equivalent support mechanism has been put in place (art. 6).

The Committee recommends that the State party take the necessary measures to ensure access to justice for all persons within its jurisdiction without discrimination. In this connection, the Committee urges the State party to reinstate the Court Challenges Program, or devise a functional replacement mechanism with equivalent effect, as a matter of priority.

27. In view of the positive contributions made and the support given by the State party in the process leading up to the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the Committee regrets the change in the position of the State party in the Human Rights Council and the General Assembly.

The Committee recommends that the State party support the immediate adoption of the United Nations Declaration on the Rights of Indigenous Peoples, and that it consider ratifying the ILO Indigenous and Tribal Peoples Convention No.169.

28. It is noted that the State party has not made the optional declaration provided for in article 14 of the Convention, and the Committee recommends that the possibility of such a declaration be considered.

29. The Committee recommends that the State party continue to take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on further action plans or other measures taken to implement the Declaration and Programme of Action at the national level.

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

31. The Committee invites the State party to update its core document in accordance with the requirements of the Common Core Document in the Harmonised Guidelines on Reporting, recently approved by the international human rights treaty-bodies (HRI/MC/2006/3 and Corr.1).

32. The State party should provide information within one year on the way it has followed up on the Committee's recommendations contained in paragraphs 14, 21, 22 and 26, pursuant to paragraph 1 of rule 65 of the rules of procedure.

33. The Committee recommends that the State party submit its nineteenth periodic report jointly with its twentieth periodic report in a single document on 15 November 2009, and that it address all points raised in the present concluding observations.
