



REFERENCE: CERD/100th session/FU/MJA/ks

13 December 2019

Excellency,

I wish to inform you that the Committee on the Elimination of Racial Discrimination, during its 100th session, considered the follow-up report submitted by the Government of Canada, pursuant to article 9 (1) of the Convention and rule 65 (1) of the Rules of Procedure of the Committee.

The Committee welcomes the submission of the report, in response to its request to receive information within one year on the implementation of the recommendations contained in paragraphs 20 (e) and (f) and 34 (a), (b) and (d) of the Concluding Observations (CERD/C/CAN/CO/21-23), adopted following the consideration of the State party's combined 21st to 23rd periodic reports, at its 93rd session, held in August 2017.

The Committee appreciates the opportunity provided to continue its dialogue with the State party and would like to draw the State party's attention to the observations mentioned below. The Committee requests that comments and responses on actions taken by the State party on these issues be included in its combined 24th and 25th periodic reports, to be submitted in a single document by 15 November 2021.

Paragraph 20(e) of the Concluding Observations

The Committee notes the explanation provided by the State party that, given the similarity of the concerns raised and information requested on the Site C dam under the Committee's follow-up procedure and its Early Warning and Urgent Action Procedure, the Committee should refer to the responses submitted by the State party under the Early Warning and Urgent Action Procedure. The Committee has taken a decision on this issue (Decision 1(100)), at its 100th session.

Her Excellency Ms. Leslie Norton
Permanent Representative of Canada
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Paragraph 20(f) of the Concluding Observations

The Committee notes the release, on 30 January 2015, of a report by the Independent Expert Engineering Investigation and Review Panel on the tailings pond breach, which determined that the breach was due to the design of the tailings storage facility and not to a failure of the regulatory staff to adequately assess the surrounding environment. The Committee also notes that the Chief Inspector of Mines conducted an extensive investigation and submitted a public report on 30 November 2015, in which he did not find any breach of the relevant laws and regulations. The Committee further notes that the British Columbia Auditor General conducted an investigation and issued, in May 2016, a public audit report, in which he criticized the Government of British Columbia for its failures to adequately regulate the activities of the mining company. Moreover, the Committee notes the ongoing investigation of the tailings storage facility breach by the Federal Crown, as well as several civil court proceedings that have been filed in relation to the breach, but observes that all of them have been stayed. The Committee appreciates the information provided by the State party that two bills were introduced at the federal level to improve early and regular engagement with indigenous peoples in undertaking impact assessment of development projects. At the provincial level, British Columbia's new Environmental Assessment Act was enacted on 27 November 2018 and requires the Province to seek consensus with participating indigenous peoples throughout the environmental assessment process. While welcoming the fact that the British Columbia authorities issued three reports examining the technical, administrative and political failures that led to the tailings pond breach, the Committee is concerned at information that these reports did not assign responsibilities nor recommend penalties or charges for such failures. It also regrets that there has been no independent investigation on the health impacts of the Mount Polley disaster on indigenous peoples. Moreover, the Committee is concerned at reports that the results of the criminal investigations into the disaster have not been made public and that no criminal charges were filed by the investigators before the statute of limitations under the relevant provincial acts expired. The Committee considers that this recommendation has not been satisfactorily addressed and requests the State party to include, in its next periodic report, updated information on the measures taken to assess and publicly report on the health impact of the Mount Polley disaster on the indigenous peoples, and to release the results of any criminal investigation and charges filed under the relevant federal acts before the expiration of the statute of limitations.

Paragraph 34(a) of the Concluding Observations

The Committee notes the State party's statement that it only uses immigration detention as a measure of last resort after alternatives to detention have been duly considered. It also notes the information that individuals who are detained for immigration purposes are protected from arbitrary detention and have access to all procedural guarantees and effective remedies, including the ongoing reviews of their detention. It further notes the Supreme Court's view that the absence of a legal time limit on the detention of migrants does not constitute "indefinite detention" because of the meaningful process for ongoing review of detention. Moreover, the Committee notes that, in 2016, Canada launched a new National Immigration Detention Framework, which aims, *inter alia*, to reduce the number of minors, vulnerable persons and long-term detainees in detention and expand alternatives to detention. In this regard, it takes note with appreciation that, in July 2018, the Government of Canada unveiled its Alternatives to Detention Program, which allowed for the establishment of an expanded set of tools and mechanisms

that enable migration officers to more effectively release individuals into the community. While welcoming the steps taken by the State party to undertake planned immigration detention reforms and ensure that immigration detention is only used as a last resort after fully considering alternative non-custodial measures, the Committee regrets that the State party did not take any measures to establish a legal time limit on the detention of migrants. The Committee considers that the response provided by the State party is partially satisfactory and requests the State party to include, in its next periodic report, updated information on further measures taken to fully implement the recommendation.

Paragraph 34(b) of the Concluding Observations

The Committee welcomes the State party's commitment to keep children out of immigration detention as much as possible and to keep families together. It notes that, in November 2017, the Minister of Public Safety issued a Ministerial Direction to the Canada Border Services Agency on how immigration detention decisions involving children should be handled. It further notes the subsequent adoption of the National Directive for the Detention or Housing of Minors for operational use. According to the State party, this National Directive reinforces the principle that detention of children should always be used as a last resort in extremely limited circumstances, and stresses the importance of the principle of the best interests of the child in determining whether a minor may be detained or housed with their detained parent or legal guardian. The Committee also takes note of the information on amendments to the Immigration and Refugee Protection Regulations that came into effect in spring 2019. However, the Committee regrets that the State party does not prohibit the use of immigration detention of children who, in some cases, continue to be held in detention. The Committee considers the response to this recommendation unsatisfactory and requests the State party to provide information, in its next periodic report, on the implementation of amendments to the Immigration and Refugee Protection Regulations, as well as on further steps taken to end the practice of detention of minors.

Paragraph 34(d) of the Concluding Observations

The Committee takes note of the information provided by the State party that, in relation to the Safe Third Country Agreement between Canada and the United States of America, the State party is obliged to monitor the situation of refugees and asylum seekers in the United States of America, in accordance with the Immigration and Refugee Protection Act, in order to ensure that it meets the requirements that led to its designation as safe third country. The Committee also notes the information that reviews conducted by the State party demonstrate that the U.S. continues to satisfy the criteria upon which it was designated as a safe third country and that this is consistent with findings from the United Nations High Commissioner for Refugees. The Committee regrets, however, that the State party has not considered to rescind or suspend the Safe Third Country Agreement, which, according to the State party, remains an important tool for both countries to work together on the orderly handling of refugee claims. The Committee considers the response to this recommendation unsatisfactory and reiterates its recommendation to rescind or at least suspend the Safe Third Country Agreement with the United States of America to ensure that all individuals who attempt to enter the State party through a land border are provided with equal access to asylum proceedings. The Committee requests the State party to include, in its next periodic report, updated and detailed information on this issue.



Rest assured, Excellency, that the Committee looks forward to continuing its constructive dialogue with the Government of Canada, with a view to providing it with assistance in its efforts to ensure the effective implementation of the Convention.

Please accept, Excellency, the assurances of my highest consideration.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Nouredine Amir".

Nouredine Amir
Chair

Committee on the Elimination of Racial Discrimination