

**INTERNATIONAL
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HUMAN RIGHTS COMMITTEE
Thirtieth session
Working Group

DECISIONS

Communication No. 205/1986

Submitted by: Grand Chief Donald Marshall, Grand Captain Alexander Denny and Adviser Simon Marshall, as officers of the Grand Council of the Mikmaq tribal society

Alleged victims: The authors and the Mikmaq tribal society

State party concerned: Canada

Date of communication: 30 January 1986

Documentation references: Prior decision - CCPR/C/28/D/205/1986 (rule 91 decision, 17 July 1986)

Date of present decision: 20 July 1987

Further decision under rule 91

The Working Group of the Human Rights Committee, meeting on 20 July 1987,

Taking note of the State party's observations, dated 9 February 1987, on the question of admissibility of the communication, including the observation that the Mikmaq tribal society has not pursued to completion all the domestic remedies that are available to it,

Noting in that connection the State party's contention that "[i]t is open to the Mikmaq tribal society to bring an application to a Canadian court for an order requiring the Prime Minister to invite the Mikmaq tribal society to participate in the constitutional discussions, or alternatively, for a

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declaration of their right to participate" and that such an action was, in fact, initiated by two "other groups", namely, by the Métis National Council in 1983 and by the Prairie Treaty Nations Alliance in March 1985,

Noting further the information provided by the State party that the action of the Prairie Treaty Nations Alliance was dismissed by the Supreme Court of Ontario on 29 March 1985 and that the Prairie Treaty Nations Alliance chose not to appeal from the judgement of the Supreme Court of Ontario, although it could have done so,

Noting also the authors' comment in their submission of 10 March 1987 that, as the Supreme Court of Ontario has already ruled, in its judgement on the action brought by the Prairie Treaty Nations Alliance, "that the appointment of 'representative' organizations [to the constitutional conference] is a political question for the Prime Minister, and as such is not subject to judicial review", and that since a Canadian court has thus ruled in virtually identical circumstances "that no remedy exists as a matter of law", it would be beyond the requirement of article 5 (2) (b) of the Optional Protocol to expect the Mikmaq tribal society to pursue "the same legal issue again, before a different Canadian judge",

Taking note also of the information provided by the State party that the last constitutional conference was scheduled to take place in March or April 1987 and of the information furnished by the authors on 18 May 1987, confirming that the last conference took place on 26 and 27 March 1987,

Decides:

1. To request the State party to furnish the Human Rights Committee, within six weeks of the transmittal to it of this decision, with the text of the judgement of the Supreme Court of Ontario in the action brought before it by the Prairie Treaty Nations Alliance, seeking a mandatory order "that they be invited by the Prime Minister to the constitutional conference";
2. That this decision be communicated to the State party and the authors.