



SANTE' MAWI'OMI wjit MIKMAQ

foreign affairs

14 February 1988

Ref. No. C/SO 215/51 CANA (42)

Jakob Th. Moller
Chief, Communications Unit
Centre for Human Rights
United Nations Office at Geneva
CH-1211 Geneva 10

Dear Mr Moller:

I have the honour to acknowledge receipt of the State party's further submission regarding Communication No. 205/1986, dated 7 October 1987, and to convey the following observations, which we would request may be brought to the attention of the Human Rights Committee at its March session in New York.

1. We do not intend to respond in detail to the State party's further submission of 7 October 1987 because, in the view of the Mikmaq Grand Council, the arguments raised by the State party have been adequately addressed in our previous submissions. We believe the Committee is in a position to make a determination of admissibility without a further exchange of legal opinion between the parties.

2. We do, however, wish to draw the Committee's particular attention to certain elements of the State party's further submission which, in our view, may be subject to misinterpretation.

3. The fact that no agreement was reached at the final constitutional conference with aboriginal peoples on 26-27 March 1987 does not render our communication moot. The fact remains (and it is undisputed) that we were excluded from participating in every one of these conferences by personal decisions of the Prime Minister of Canada. The Committee is competent to find that a violation of our right to participate in these conferences under, inter alia, Articles 1 and 25 of the Covenant has already occurred. If, instead, we had complained of being denied the right to vote in a national election, the fact that the election had already taken place would not render the matter moot.

4. It moreover remains the case that our present legal status within Canada was established by the Government of Canada, in its Indian Act of 1950 as amended through 1986, without our participation or consent. This violation, which we also incorporated in our original communication, is entirely separate and distinct from the violation related to our exclusion from the constitutional conferences. The Indian Act, which put us on "reserves" and dismantled much of our traditional laws and institutions, was unilaterally imposed upon us by the State party at a time when we did not even enjoy the right to vote in national elections. Our objective in seeking admission to the constitutional conferences was to participate in changing this earlier legislation.

5. The underlying violation continues, because we are still subject to the Indian Act, and we continue to have no opportunity to change it. The Committee will recall that in our further submission of 10 August 1987, paragraph 6, we emphasized our view that Canada is obliged to revise and clarify our legal status in a manner that involves Mikmaq participation and reflects the freely-expressed wishes of the Mikmaq people.

6. In this regard we beg to note that, shortly after the unsuccessful conclusion of the constitutional conferences, the Government of Canada entered into an agreement (the "Meech lake Accord") with the Province of Quebec and the other provinces of Canada, according to which Quebec will henceforth have the status of a "distinct society" with a greater degree of legislative autonomy than the other provinces. The Accord also provides that any future amendments of the constitution of Canada will require the unanimous consent of all ten of the provinces. This will have the practical effect of giving each province a veto over any future proposal to give additional constitutional protection to the aboriginal (indigenous) peoples of Canada.

7. With regard to exhaustion of municipal remedies, we beg to observe that any further efforts on our part would be ineffective or involve unreasonable delays. The State party refers on page 17 of its further submission to a letter dated 10 August 1987, by which the Minister for Indian Affairs and Northern Development offered to discuss our status in a non-constitutional framework. A meeting in fact took place on 17 September 1987 at the Forteresse de Louisbourg in Nova Scotia. The participants included representatives of the State party's Department of Justice and Department of Indian Affairs, the Mikmaq Grand Council, as well as the Union of Nova Scotia Indians, and the Native Council of Nova Scotia. The State party's representatives merely reiterated the position they have consistently taken since 1980, which is that Mikmaq people have no political or territorial rights other than what Canada has accorded them under the Indian Act. A verbatim transcription of this meeting can be provided if the Committee desires.

With great respect, the Grand Council proposes that the Committee at its March 1988 session determine that Communication No. 205/1986 is admissible under, inter alia, Articles 1 and 25 of the Covenant, and proceed to a consideration of the substantive merits of the Communication.

Kindly renew to the Committee, on our behalf, the highest regards and favour of the Mikmaq people and this Council,