

**RESPONSE OF THE GOVERNMENT OF CANADA TO THE COMMUNICATION**  
**DATED FEBRUARY 14, 1988 OF THE MIKMAQ TRIBAL SOCIETY**

The Secretary-General of the United Nations in his Note No. G/SO 215/51 CANA (42) 205/1986, dated October 7, 1988, transmitted to the Government of Canada the further submission of the complainant dated February 14, 1988. The Government of Canada wishes to respond to and clarify a number of points made in that submission.

The nature of the constitutional conferences mandated by section 37.1 of the Constitution Act, 1982 (Appendix 1) was discussed in Part V of the response of the Government of Canada dated October 7, 1987. In paragraph 4 of the communicant's latest submission, it is stated that the communicant's objective in seeking admission to the constitutional conferences was to participate in changing legislation. These constitutional conferences were not intended to deal with changes to federal legislation, such as the Indian Act. Consequently this objective of the communicant could not have been satisfied in these fora. It should be noted however, that there are non-constitutional processes available, as described in Part VII of the October 7, 1987 response of the Government of Canada, as well as in annexes to previous Canadian responses, which may involve legislative changes.

The communicant also makes reference (at paragraph 6) to a Constitutional Accord (the "Meech Lake Accord", attached as Appendix 2) which was reached by federal and provincial First Ministers in 1987. This Accord provides for amendments to the Constitution of Canada, aimed at satisfying various concerns of each of the provinces. The communicant makes specific reference to an amendment, intended to satisfy concerns of the province of Quebec, that would require the Constitution of Canada to be interpreted in a manner consistent with the recognition of Canada's linguistic duality and Quebec's place within Canada as a distinct society. Contrary to the implications contained in the communicant's submission, this amendment does not concern the issues raised by the communicant before the United Nations Human Rights Committee, nor does it give Quebec greater legislative autonomy in respect of matters affecting Indians.

Moreover, aboriginal, treaty and other rights and freedoms pertaining to aboriginal groups in Canada are specifically protected in the Meech Lake Accord. The Accord expressly provides that the amendment concerning Quebec, does not affect existing constitutional provisions in regard to multicultural heritage and aboriginal peoples in sections 25 and 27 of the Canadian Charter of Rights and Freedoms, nor section 35 of the

Constitution Act, 1982, nor federal legislative authority in respect of Indians in section 91(24) of the Constitution Act, 1867 (Appendix 1).

As well, the communicant states that the Meech Lake Accord "... provides that any future amendments of the constitution of Canada will require the unanimous consent of all ten of the provinces." This is not, in fact, correct. Under the Meech Lake Accord, unanimity would only be required in respect of changes to some national institutions, to constitutional provisions concerning the use of the English or French language, to the amending formula, or to the creation or extension of provinces (s.9, Appendix 2). In respect of all other amendments to the Constitution of Canada, including those that relate to Indian matters, the existing general amending formula in section 38 of the Constitution Act, 1982 (Appendix 1) remains in place. It requires the consent of at least two-thirds of the provinces that have, in the aggregate, at least fifty per cent of the population of all of the provinces.

Finally, the Government of Canada wishes to comment on the statement of the communicant (in paragraph 7) concerning the nature of its political and territorial rights. The communicant

indicates that State Party representatives have said that:  
"Mikmaq people have no political or territorial rights other than what Canada has accorded them under the Indian Act."

The Mikmaq and all other Indians in Canada have the same political and legal rights as other Canadians, as well as additional rights protected by the Canadian constitution. Furthermore, there is no prohibition in Canadian law against Indians owning property on off-reserve lands, which they may do on the same basis as other Canadians.

For the reasons given above and in earlier submissions, the Government of Canada submits that the present communication should be deemed inadmissible by the Committee. However, if the Committee should reach a contrary conclusion on any of the above submissions, the Government of Canada reserves the right to make further comments at a later date.