SANTE' MAWI'OMI
wjit MIKMAQ

Mikmaq Grand Council
Foreign Affairs

4 June 1991

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

Marshall (Mikmaq Tribal Society) v. Canada, Case No. 205/1986

Dear Mr Moller:

Please find enclosed the authors' comments on the State Party's 20 February 1991 submission, as per your letter of 17 April. We regret that this is transmitted a few days later than requested, as occasioned by some difficulties surrounding the illness of the principal author, Kji-Sakamou Donald Marshall Sr, and preparation by the Grand Council on the election of a successor. At present, Kji-Sakamou Marshall remains seriously--and, we have been advised terminally--ill, but continues his duties as head of state. You may well imagine his desire to see this case resolved favourably during his lifetime.

May we take this opportunity to renew to you, and the Secretary-General, our previous expressions of highest regard and favour.

Russel Barsh

(on behalf of the authors)

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1 June 1991

COMMENTS OF THE MIKMAQ GRAND COUNCIL ON THE 20 FEBRUARY 1991 SUBMISSION OF THE GOVERNMENT OF CANADA (Communication No. 205/1986)

1. Introduction

In its note of 17 April 1991, the Committee invited the authors, principal officers of the Mikmaq Grand Council representing the Mikmaq people, to comment on the State Party's response to questions posed by the Committee following its July 1990 decision on the admissibility of this communication. These questions concern the meaning of Article 25 of the Covenant, and its applicability to the authors' assertion of a right to be *directly* represented, as a distinct group, in any national political process affecting the rights or constitutional status of the aboriginal peoples of Canada.

The authors will show that (1) Article 25 necessarily applies to questions of the *genuineness* of representation in public affairs; (2) in the context of constitutional conferences on the aboriginal peoples of Canada, participants should represent groups possessing "aboriginal and treaty rights" within the meaning of sec. 35 of the *Constitution Act, 1982*; (3) the Mikmaq people, who constitute such a group, were repeatedly denied a seat at the conferences by the State Party, and by the organizations appointed by the State Party to speak on behalf of aboriginal peoples; (4) the right to petition the government is not a legally sufficient alternative to representation.

The authors also draw the attention of the Committee to the fact that, during the last week of May 1991, the State Party's Minister of Constitutional Affairs, Mr Clark, announced that a "panel" of up to 10 aboriginal leaders would be invited to participate in a fresh round of constitutional deliberations, later this year. If this indeed is the Government's intention, the question of genuine representation raised by this communication is extremely timely.

2. Can "participation" be collective?

The State Party contends that Article 25 of the Covenant, where it refers to "every citizen," expressly restricts the exercise of this right to individuals (page 5). The authors dispute this on a number of grounds: (a) representation implies collective organization on a reasonable and appropriate basis; (b) participation must include the right to form political parties or other representative organizations; (c) minorities, at least, have the right to act "in community," which must include collective political action to defend their rights; and (d) indigenous peoples such as Mi'kmaq are recognized as politically-distinct groups by Canadian laws and treaties as well as international law.

(a) Genuine representation

The State Party contends that virtually all "participation," in a contemporary state, is necessarily representative (page 6 note 4). If this is true, it is also true that the *system* of representation must be "genuine" (General Assembly resolution 45/150 of 18 December 1990) or, to use the State Party's own terms, "real and effective" (page 7). The right to vote cannot reasonably all that is meant by "genuine," or by "real and effective". These words imply, at a minimum, that voting has some *effect* on who is elected, and that the persons elected remain *accountable* to the electorate.

The Sub-Commission's 1962 *Study of Discrimination in the Matter of Political Rights* (E/CN.4/Sub.2/213/Rev.1), at pages 10-12, reviews a number of national measures which have been adopted to ensure, for all segments of the national population, a genuine opportunity to be represented in legislative bodies. It wisely concludes that measures such as proportional representation and specially-designed electoral districts can either *result* in discrimination, or help *combat* it. In other words, such measures may be *prohibited*, or *required*, depending (as the *Study* explains) on "the special circumstances of each case". Moreover, the *Study* observes at page 12,

> Such circumstances must also be borned in mind when assessing extraordinary measures designed to ensure the fair representation of a particular element of the population which has been so long exploited, or subjected to an inferior status, or deliberately hampered in its political development in the past that preferential treatment is necessary to put it on an equal footing with the rest of the population.

Hence, it is not only appropriate but *necessary*, in the present case, to examine whether the Mikmaq people, or aboriginal peoples of Canada generally, have been "genuinely" represented in deliberations on their rights. This is an issue of *fact*, and it is not enough for the State Party to declare that, *in principle*, its parliament, and its provincial legislative assemblies, "represent the whole population of the political and geographical subdivisions which elected" them (page 1). The real question should be whether the electoral process, which includes the boundaries of electoral districts, results in a genuinely representative legislature.

It must be borne in mind that *each* of Canada's ten provinces was *directly* represented at the constitutional conferences in question, while all of the aboriginal peoples of Canada--whose constitutional rights and status were, after all, the sole subject of the meetings--were limited to four "national associations," selected by the Prime Minister. The conferences were designed to reflect fully the modest social, economic and cultural diversity of the provinces (that is, of non-indigenous Canadians), but scarcely began to reflect the diversity of indigenous Canadians, whose future was under discussion. This, in the authors' view, is not "genuine" representation.

(b) The right to organize

Article 22.1 of the Covenant guarantees the right of everyone to freedom of association, "including" (and therefore not limited to) the right to form and join trade unions. The authors construe this right, in conjunction with the rights contained in Article 25, to mean that a group of citizens has the right to form a political party or any other political association it wishes, to represent its views.

The state may establish some freely competitive process, such as periodic elections, to determine *which* parties will be represented in legislative bodies, and how many representatives each will have there. The state is *not* free (we believe) to dissolve a political party, or to forbid it to participate in elections, or to force individuals to join or not to join particular political parties.[1] In such cases the rights of individuals are infringed, *by preventing them from acting freely as a group.* If the State Party's legal arguments (page 5) were accepted, how could the Committee consider a communication alleging the banning of a political party? The State Party here would contend that banning a political party is a collective injury, and therefore incompatible *ratione materiae* with the Covenant.

In the present case, the Prime Minister convened what was, in practical effect, an all-party conference of the ten provinces, and "the aboriginal peoples of Canada". But all of the parties were not present. The Mikmaq people, who chose to speak through their *own*, traditional representative institution, the Grand Council, were not allowed in the room. This is tantamount to forcing all individual Mi'kmaq to join a particular political party--the Assembly of First Nations, in this instance--or lose their right to participate at all.

We wish to reiterate, at this point, that the Mikmaq people have been *recognized* as a distinct people in Canada by treaty, and that the contemporary force and effect of this treaty has twice been upheld by the Canadian courts--by the Supreme Court of Canada in *Simon*, and by the Nova Scotia Court of Appeal in *Denny* (the case to which the State Party refers, at pages 8-9).

(c) The rights of "communities"

In accordance with Article 27 of the Covenant, "minorities" are entitled to exercise their cultural. linguistic and religious rights "in community with the other members of their group". It a "minority" has the right to exercise its rights as a group, it must also have the right to *defend* its rights through some collective form of political representation. If a religious denomination has the right to practise its religion as a group, for example, this must include the right to incorporate, to hold property and adopt policies as a group, and most

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1. Also see Article 20.2 of the Universal Declaration of Human Rights: "No one shall be compelled to belong to an association".

of all to represent the interests of its members whenever their rights as a religious minority are specifically at issue.

If the Government of Canada were about to consider legislation on the right of Muslims to observe the sabbath on Thursday, it would be a violation of Articles 25 *and* 27, we think, for the Government to base its decision on consultations with the Anglican Church, after refusing to discuss it with the country's Muslim leaders.

The Mikmaq people do not consider themselves a "minority," but a "people," and they are classified by the constitution of Canada as an "aboriginal people." However, the rights of aboriginal peoples should be no *less* than the rights of minorities, especially when it comes to decisions about treating them differently than other segments of the national population.

(d) Aboriginal peoples

The Mikmaq people are recognized as a distinct group by the laws and treaties of Canada. This special legal and constitutional status has recently been reaffirmed by Canadian courts, as noted by the State Party in its submission (page 9).

In this regard, it may be relevant to refer to the International Labour Organisation's Convention on Indigenous and Tribal Peoples in Independent Countries, No.169 (1989), which will come into force on 5 September 1991. Article 6.1(a) of Convention No. 169 prescribes that governments shall:

> consult with the peoples concerned, through appropriate procedures and in particular *through their representative institutions*, whenever consideration is being given to legislative or administrative measures which may affect them directly [emphasis supplied.]

See, too, Articles 4.1 ("safeguarding the ... institutions ... of the peoples concerned"), 5(b) ("the integrity of the ... institutions of these peoples shall be respected"), and 6.1(c) ("establish means for the full development of these peoples' own institutions").

The ILO Convention clearly intends to secure indigenous peoples' right to choose their own representatives, through their own forms of association and their own institutions. This is consistent with the principles contained in Article 25 of the Covenant, and in view of the special historical situation of indigenous peoples, it is appropriate to give the Covenant this interpretation in the present case.

3. What is "the conduct of public affairs"?

The State Party emphasizes that *individuals* have no right to be consulted personally before government action is taken (page 6). But this is not a case involving isolated individuals, but rather a *group*

of persons whose rights *as a group* were in negotiation at the highest levels of government.

The Mikmaq people have unique rights as the beneficiaries of the 1752 Halifax Treaty. These rights have been upheld by Canadian courts and, in accordance with section 35 of the *Constitution Act, 1982*, can no longer be modified *except by a constitutional amendment*. Since the constitutional conferences at issue in this case had been organized to consider possible amendments to section 35, there was a direct threat to the future enjoyment of rights which *are specific to Mikmaq people, and to no other Canadians*. The responsible Minister's 2 February 1987 letter to the authors, a copy of which is enclosed, confirms that the constitutional conferences would address "treaty issues". Yet Mikmaq people were not accorded a place at the table.

At least fifteen separate and distinct treaties with indigenous peoples are in force in Canada today, including the 1752 Treaty with the Mikmaq nation. The authors object to the State Party purporting to renegotiate the legal status of these instruments with anyone other than the actual representatives of the specific indigenous peoples who are signatories to those treaties.

Section 35 gives constitutional protection to the "aboriginal and treaty rights of the aboriginal peoples of Canada." Any amendments to section 35 would therefore also affect the Mikmaq people specifically, as one of the "aboriginal peoples of Canada." In other words it would affect them in their capacity as a *distinct group*, with a legal status different from other Canadians. Indeed, the State Party observes that the constitutional conferences *focussed* on aboriginal self-government. Nothing could be more "collective" than the question of *autonomy* for the groups in question.

The State Party suggests that the constitutional conferences did not constitute "the conduct of public affairs" at all, however, since they were only competent to make *proposals* to Parliament for amending the constitution (page 2). Since the conferences were the *only* means of submitting proposals to Parliament for the amendment of section 35, and the Government of Canada refused to discuss constitutional matters with aboriginal groups in other fora, it would be misleading to treat the conferences as merely advisory, or inconsequential.

4. Were Mikmaq people genuinely represented?

The State Party argues that individuals' right to "take part in public affairs" is limited to the right to influence decisions through their "freely chosen representatives." It further alleges that Mikmaq people were in fact able to exercise this right through the "properly elected representatives of national aboriginal associations" (page 7). There were four such associations, one of which, the Assembly of First Nations, was appointed by the Prime Minister to negotiate on behalf of *all* "status Indians" (half a million people, from about forty tribes, and nearly six hundred communities).

(a) the "national associations"

The Mikmaq people were not able to choose which of the "national associations" would represent them, because the associations were each assigned to represent a different group of aboriginal people: "status Indians," "non-status Indians," Inuit and Metis. These categories are not ethnic, cultural, linguistic or religious, but legal and/or racial distinctions which Mikmaq people do not recognize. It would be as if representation in the United Nations was not of states or peoples, but of categories such as "white," "mixed," and "Asian."

According to the State Party, the four "national associations" it chose to invite to the constitutional conferences actually represented "the substantial majority" of Canada's aboriginal people (page 3). It provides no evidence to substantiate this claim, however, nor could it do so. The Assembly of First Nations only accepted "Indian bands" as members, and during the period of time at issue no more than half the "bands" in Canada were participating in the association.[2] How could it represent non-member "bands," and, indeed, how could it represent the Mikmaq Grand Council, which is not a "band" organized under the *Indian Act*, but a traditional council of the Mikmaq people that existed seven centuries before there was a Canada?

(b) Mikmaq efforts to influence AFN

The State Party nonetheless insists that the authors "could have participated [in the constitutional conferences] through the AFN," and could even have been included in AFN delegations to the conferences--as had been arranged for another dissident group, PTNA (page 3). This is mere speculation, and it is contradicted by the historical record. Mikmaq leaders did attend several AFN meetings to voice concerns about the process and demand a larger role in it, without results.

AFN's 1986 annual meeting was convened in Newfoundland, which is part of Mikmakik. A large Mikmaq delegation attended, with the aim of explaining why the Mikmaq people could not accept AFN representation. After circulating a package of Mikmaq constitutional proposals, Alex Christmas, the president of the Union of Nova Scotia Indians, stated:

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2. Indeed, a 1985 Memorandum of Agreement between the State Party and AFN, providing 3 years of financial assistance for AFN's participation in the constitutional process, sprecified (paragraph 6) that AFN only represents "those First Nations which are members of in good standing of the AFN and which are participating in the constitutional process." It further provided for a reduction or termination of funding in case AFN's membership should decrease. ("First Nations" is a euphemism for "Indian bands" which is preferred by most aboriginal people.) Seventy-five percent of this money was to be disbursed to the various "bands," but there is no record that any of it was ever disbursed to any Mikmaq "band" or other organization representing Mikmaq people.

> We were requested to come up with our input, we came with the composite amendments, our input, which is in these packages. We also came up with some treaty principles, which are included in these packages. ... They were in fact things that should have been included by the AFN, or things that should be included by other nations in their deliberations with the federal government. We've felt that these are positions that we are going to go ahead in Micmac territory and present on our own behalf, and that we'd felt it would add to the kinds of guarantees that you were wishing to get... .
>
> We in Nova Scotia have, I guess, a unique position with the government of Canada, and that we were very worried that it would be, I guess, diminished, by our representation in the constitutional discussions with the provincial premiers. We chose to unite among ourselves and perhaps come up with a common position that was in a realm that we could be able to handle more so in ourselves, that's within Micmac territory.

(Transcript of Proceedings, 19 August 1986, pages 166-167). Christmas and other Mikmaq leaders told AFN members that the Mikmaq nation would co-operate with AFN and share information, but could not regard itself represented by AFN or bound by the constitutional negotiations.

In response, the annual meeting adopted AFN resolution 12/86, in which the association states that "First Nations with treaties do not have adequate representation in the current constitutional process". The same resolution authorized the establishment of a "treaty rights unit" within AFN to pursue this issue with the Government of Canada.

(c) AFN admission of non-representivity

At a February 1987 "hearing" conducted jointly by AFN and several Canadian Government departments, Mikmaq leaders submitted a package of constitutional proposals, and a copy of the authors' communication to the Committee. It was stated expressly that this submission "must not be interpreted as providing any form of consent or the conferring of representativity" to the AFN "on matters particular to Micmac people." It was also stated that Mikmaq people "protest in the strongest terms" any discussion of Mikmaq treaties at the constitutional conferences in the absence of direct Mikmaq representation.

All Mikmaq political organizations--including the Grand Council, Union of Nova Scotia Indians, Confederacy of Mainland Micmac Chiefs, and Native Council of Nova Scotia--continued to work together, and to demand direct representation in any deliberation affecting the status of Mikmaq treaty rights. At the same time, they shared copies of all position papers on the constitution with the AFN, which did not submit any of them to the constitutional conferences, or incorporate them in its own positions.

It should be noted that the Assembly of First Nations, which the State Party claims represented the authors, has previously written to the Committee in support of the authors' claims. A copy of their 18 October 1988 letter is enclosed for reference. The Grand Council is curious how the State Party can continue to insist that Mikmaq people were represented by a "national association" which did not pretend to represent us at the constitutional conferences, and supports our claim here that we were not represented by them.

Did this constitute "freely chosen" representation? The authors maintain that the procedure adopted by Canada amounted to the official approval of only four national political parties, and a directive that the Mikmaq people must all join the one assigned to them--and not form a party of their own. This did not give Mi'kmaq a genuine opportunity to participate, *either* directly (through the Grand Council) or through representatives of their own free choosing.

(d) the State Party's justifications

The State Party tries to justify its actions by arguing that it was "impossible" to include representatives of all aboriginal peoples in Canada (pages 2-3, 7). The authors dispute this, both in principle and as a matter of fact. To begin with, the inconvenience or cost of complying with the Covenant should never be accepted as justification. We think this is fundamental and indisputable.

There are about 600 "Indian bands" in Canada, as the State Party contends. These are artificial subdivisions, however, created in the 1870s by the *Indian Act*. The Mikmaq nation, for example, consists of 28 "bands" in Canada and one community in the United States, but they all share a common descent, speak the same language, and respect the same traditional political system, the Grand Council. Like any other nation, Mikmakik has subsidiary governmental bodies (including "band councils"), inter-governmental bodies (several regional "associations" such as the Union of Nova Scotia Indians and Confederacy of Mainland Micmac Chiefs), as well as many non-governmental organizations (Micmac Arts and Cultural Society, Micmac Family and Child Services). Mi'kmaq nonetheless can speak with a single voice in national affairs.

Discussions with other indigenous organizations convince us that there are, in actual fact, roughly forty aboriginal nations in Canada, as they define themselves in accordance with their history, languages, and cultures, and with their treaties with the Crown. The State Party never gave aboriginal peoples the opportunity to organize themselves into representative groupings *of their own choosing*. Instead, Canada used the pretence of "impossibility" to divide all aboriginal peoples into four groups--status Indian, non-status Indian, Inuit, and Metis. (It should be noted that these groupings do not even result in roughly equal representation on the basis of population--there are ten times more status Indians than Inuit, for example.)

The State Party also tries to justify its actions by suggesting that it merely followed the procedure spelled out by its *Constitution*

Act, 1982. Under the *Constitution Act*, according to the State Party, it "*had* to bring the *nationally* representative aboriginal associations together" (page 4, emphasis supplied), rather than organizations that represented individual indigenous nations or peoples. What section 37 of the *Constitution Act* actually says, however, is that with regard to any"constitutional matters that directly affect the aboriginal peoples of Canada[,] the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on those matters."[3]

Thus the operative constitutional language is "*representatives* of those peoples" (emphasis supplied). No reference is made to "national associations." The decision to limit participation in the conferences to these four organzations was the Prime Minister's--and, in the view of the authors, the effect was to exclude a number of the "aboriginal peoples of Canada," including Mi'kmaq, from the process.

5. Is the right to petition an adequate alternative?

The State Party suggests, as an afterthought, that Mikmaq people were never denied their right to political participation under Article 25, because they were never prevented from "submitting their views ... directly to governments" (page 8). This wrongly treats participation in the conduct of public affairs (Article 25) as if it is no different than freedom of expression (Article 19). While freedom of speech may contribute to the quality or "genuineness" of participation, it is not sufficient, by itself, to satisfy Article 25. An absolute monarchy or military dictatorship that tolerates public criticism may be complying with Article 19, but certainly not with Article 25.

It should be stressed that the authors did, in fact, repeatedly contact the Government of Canada, and offer to discuss their concerns *bilaterally*, that is, *outside* of the constitutional conferences. This is consistent with paragraph 6 of the March 1983 Constitutional Accord on Aboriginal Rights, which was signed by the Canada's first ministers and the leaders of the four "national associations":

> Nothing in this Accord is intended to preclude, or substitute for, any bilateral or other discussions or agreements between governments and the various aboriginal peoples.

This part of the 1983 Accord reflects an awareness, on the part of the four "national associations," that they should not claim to represent all aboriginal Canadians, nor stand in the way of parallel discussions initiated by any particular aboriginal group.

As shown by the enclosed 7 February 1984 letter of DIAND Minister (as he then was) John Munro, however, the authors' proposal to engage in such a bilateral discussion was *expressly rejected* by the Canadian Government. The authors contacted Mr Munro's successor, Mr McKnight,

3. The 1983 Constitutional Accord amended this article, but without altering the relevant phrase quoted here.

following the decision of the Supreme Court upholding the validity of the 1752 Halifax Treaty. On 2 February 1987, Mr McKnight replied that he would consider discussing "treaty matters which the Grand Council would like to pursue *in a non-constitutional context*" (emphasis ours). As for any discussion of the *constitutional* status and significance of treaties, Mr McKnight referred the authors back to the constitutional conferences, and to need to "articulate its views" through one of the four "national associations". Our follow-up contacts with his office confirmed that there was no willingness to discuss Mikmaq rights, and as described in greater detail in the previous section, our proposals to the Assembly of First Nations were ignored.

6. Is action by the Committee timely?

As indicated in the introductory section, a new round of national deliberations on the constitution are planned to begin in autumn 1991, with the possible participation of *ten* (as opposed to four) indigenous representatives. Action by the Committee is timely and indeed urgent. The authors intend to request, once again, that the Mikmaq nation and people be represented directly in the process, and they may once again be denied. If the Committee acts favourably on this communication at its next session, it will have an immediate and constructive effect on the structure of the upcoming constititonal talks.

Minister of Indian Affairs
and Northern Development

CANADA

Ministre des Affaires
indiennes et du Nord canadien

FEB - 2 1987

Mr. Russel L. Barsh
4733, 17th Avenue N.E.
SEATTLE, Washington
United States of America, 98105

Dear Mr. Barsh:

Please allow me to apologize for the delay in responding to your letter of October 15, 1986 to which was attached a copy of the Mikmaq Grand Council's proposal to clarify and renew the Treaty of 1752.

The Grand Council's treaty concerns are important to me as Minister of Indian Affairs and Northern Development. In fact, I met recently with the Union of Nova Scotia Indians and the Treaty of 1752 was discussed as well as the Simon decision. As the Grand Council has noted, a number of issues pertaining to the treaty were not resolved by the Simon decision, and remain to be addressed. I recognize the importance which the Mikmaq people attach to clarifying the current application of the Treaty of 1752.

As you are no doubt aware, at the ministerial meeting last October, participants agreed in principle to the establishment of a process to review treaty issues in the context of constitutional discussions. The Grand Council may wish to articulate its views on the Treaty of 1752 through this process.

If, in the meantime, there are treaty matters which the Grand Council would like to pursue in a non-constitutional context, my departmental contact is Mr. Richard Van Loon, Assistant Deputy Minister of the Self-Government Sector. He may be reached at (819)953-3180. I am confident that our ongoing communication can result in an improved understanding of the Treaty of 1752 in contemporary terms.

Yours sincerely,

Bill McKnight

cc: Grand Captain Denny
Mr. Martin Freeman

Minister of Indian Affairs and Northern Development
Ministre des Affaires indiennes et du Nord canadien

Ottawa, Canada
K1A 0H4

FEB - 7 1984

Mr. Russel L. Barsh, Counsel
4155 42nd Avenue, North East
Seattle, Washington 98105
U.S.A.

Dear Mr. Barsh:

Thank you for your letter of September 12, 1983. Further to the interim reply from my Special Assistant of September 26, 1983, I have now had the opportunity to review your letter and proposals. Please accept my apologies for the delay in responding.

The Government of Canada is not prepared to discuss the Grand Council Mikmaq Nation's views of a political relationship with Canada. Given that the Indian people of Canada are represented by their Chiefs and Councils as directed by the Indian Act my responsibility is to that end. We are therefore not willing to discuss proposals of separate status from the Mikmaq Nation or any native group in Canada outside of our current constitutional arrangement.

The relationship of the Government of Canada to its Indian peoples is an internal Canadian responsibility. As you may be aware this position was most recently supported in R v Secretary of State for Foreign and Commonwealth Affairs ex parte Indian Association of Alberta and others (1982) 2 All ER118 (CA) and strongly stated by Lord Diplock at 143 in refusing leave to appeal to the House of Lords:

> "... it simply is not arguable that any obligations of the Crown in respect of the Indian peoples of Canada are still the responsibility of Her Majesty's government in the United Kingdom. They are the responsibility of Her Majesty's government in Canada."

I trust that this letter clarifies our position in this matter.

Yours sincerely,

John C. Munro

Canada

6&5
working travaillons together ensemble
Canada

National Indian Brotherhood

ASSEMBLY OF FIRST NATIONS

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October 18, 1988

TO: Members of the United Nations
Human Rights Committee

Dear Members:

This communication is being written to you on behalf of the Assembly of First Nations (AFN), an organization which represents the rights and interests of a great many of Canada's indigenous peoples. At the outset, we would state that we are encouraged by the increasing recognition being given by the United Nations and its associated bodies to the matter of the ongoing abuse of indigenous peoples' human rights worldwide.

That recognition has led to the development of a number of initiatives intended to promote the investigative and corrective action which is required to ensure that indigenous peoples can enjoy the fundamental rights and freedoms which are due to all peoples. The United Nations Working Group on Indigenous Populations efforts in this connection are worthy of note, and we are of the view that the United Nations Committee on Human Rights also has an important and critical role to play in this process, based on its past and current endeavours.

There are a number of reasons why we are looking to international bodies such as the United Nations to assist indigenous peoples in their struggle. As peoples, it is logical that we should have the right to appeal to the human rights protections and remedies available under international law. Further, the historical record of the past few hundred years clearly shows that "domestic remedies" available within most nation states are not sufficient to resolve the situations which have been created by the ongoing and substantial abuse of indigenous peoples' rights.

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In many cases, the dispossession of indigenous peoples' land and resources, the denial of their means of subsistence, and the destabilization of their political, economic and social institutions have been the cornerstones on which modern nation states have been built. National legal systems and the legislative and policy apparatus of the state have been used to rationalize and legitimize these violations and therefore, cannot be viewed as a proper framework for resolving existing situations on a just or equitable basis.

This is why the role of objective and impartial international bodies, which are not burdened by conflict of interest or by the legacy of a legal system based on racism and discrimination, is crucial to the recognition and advancement of indigenous peoples' rights.

Our membership is convinced that they will only be able to enjoy the full range of fundamental rights and freedoms which are guaranteed to them by International Covenants when their collective right, as peoples, to self-determination is recognized. History has demonstrated that other approaches do not lead to the more equitable sharing of lands and resources which is required, or to the proper recognition of indigenous peoples' political, social and economic institutions.

This leads us to two specific cases which are now being considered by the Committee: the Crees of Lubicon Lake and the Grand Council of the Micmac Nation.

For the record, we would state that the membership of the AFN fully supports the efforts of these First Nations to have their rights recognized, with particular reference to their right, as peoples, to self-determination. Despite the protections afforded by International Covenants and the Canadian Constitution, and despite favourable rulings of the Supreme Court of Canada, the federal government continues to deprive these peoples of their means of subsistence; continues to use every available means to destabilize their traditional political, social and economic institutions; and continues to appropriate their land and resources without compensation or consent.

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Domestic remedies available within Canada cannot and will not rectify the grave situation which confronts these First Nations and therefore, we look to your Committee for assistance in preventing the conscious violation of their rights which is now being carried out. This is not a frivolous request: the survival of these First Nations as peoples is at stake.

In the Maritimes, the Micmac people have been dispossessed of the vast majority of their land and resources, without their consent, and are denied the opportunity to negotiate a more equitable sharing of their traditional lands and resources because of the government of Canada's position that, somehow, their aboriginal rights have been "superseded by law". This discriminatory and arbitrary concept has been applied to many other First Nations who also have unresolved territorial claims, and effectively prevents them from resolving these matters domestically.

At the same time, the constitutionally protected treaty rights of the Micmac people to hunt, fish and engage in commerce have consistently been ignored or undermined by successive federal and provincial governments. Despite the fact that the Micmac peoples' treaty right to hunt was affirmed by the Supreme Court of Canada in the Simon decision, provincial authorities, aided and abetted by the federal government, continue to interfere with Micmacs who are engaged in subsistence activities. Most recently, this has led to the confiscation of equipment required for carrying out subsistence activities, convictions and in some cases, incarceration.

With respect to the case of the Lubicon Lake Crees, federal and provincial authorities have been using their overlapping jurisdictions as an excuse, each blaming the other for the lack of progress. However, at the same time, both levels of government possess the cooperative spirit necessary to accelerate the dispossession and disposition of traditional Lubicon land and resources.

When the Committee last year found Chief Ominiyak's complaint admissible, they requested Canada to "take interim measures to avoid irreparable damage to Chief Ominiyak and other members of the Lubicon Lake Band". Instead of respecting the Committee's request, Canada took conscious steps to accelerate the termination of the Lubicon people by providing millions of dollars in grants to a multinational corporation for the construction of a hardwood pulp mill which is to operate within the Lubicon's traditional territory.

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This and other acts have made the situation much more urgent, and has led the Lubicon people to reject the authority and jurisdiction of the federal and provincial governments, in favour of asserting their own jurisdiction over their traditional territories. These current measures are in self-defence, are born out of a sense of frustration, and have the full support of First Nations in Canada. They are a reasonable and legitimate response to generations of unreasonable and unjust treatment at the hands of federal and provincial authorities.

A point we would stress is that the experience of the Lubicon Lake Cree and the Grand Council of the Micmac Nation is not unique. Most of the First Nations of Canada have been and are being subjected to the same flagrant violations of their rights and freedoms, and do not have recourse to any viable or equitable domestic remedies.

A definitive finding by the Committee would assist not only the Lubicons and the Micmacs, but all of the First Nations in Canada who are seeking to resolve jurisdictional, land and resource issues with the government of Canada.

This is why your efforts are so important, and why we trust the Committee will make every effort to ensure that these cases be dealt with in a timely, equitable and impartial manner. We have included, for your information, documentation related to the Assembly of First Nations' position on Lubicon Lake Cree and the Grand Council of the Micmac Nation. We trust that these will demonstrate to you that the efforts of these peoples have the full support of the Assembly.

In closing, we would thank you for taking our views into consideration, and extend our appreciation for the efforts of the Committee to advance the cause of indigenous peoples' rights.

Yours truly,

ASSEMBLY OF FIRST NATIONS

Harry Allen
For
Georges Erasmus
National Chief