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UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

**Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association;
the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on
the rights of indigenous peoples**

REFERENCE: AL Assembly & Association (2010-1) G/SO 214 (107-9) Indigenous (2001-8)
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolutions 24/5, 16/5, and 24/9.

The Special Rapporteur on the rights of indigenous peoples would like to again thank your Government for its cooperation during his official visit to Canada from 7 to 15 October 2013. As you are aware, he is in the process of developing his report following the visit, which he will be sharing with your Government in the coming months.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the situation of Ms. **Cindy Blackstock**, Executive Director of the First Nations Child and Family Caring Society of Canada.

According to the information received:

In 2007, the First Nations Child and Family Caring Society of Canada, together with the Assembly of First Nations, filed a complaint against the Government of Canada before the Canadian Human Rights Tribunal alleging discrimination in the funding provided to First Nations for child welfare. The case alleges that First Nations children living on reserves receive far less per capita funding than other children. Following six years of unsuccessful challenges by the Government of Canada of the Tribunal's jurisdiction over the case, hearings commenced in February 2013 and are currently ongoing.

According to the information received, since the case was filed in 2007, Ms. Blackstock and the First Nations Child and Family Caring Society of Canada have experienced what they have viewed to be several forms of retaliation by the

Government of Canada. A month after the case was filed, all core funding provided by the Government of Canada to the Caring Society was eliminated and other federal project funding for child welfare services was also reduced. Ms. Blackstock also began to receive reports that Government officials were dissuading First Nations from meeting with Ms. Blackstock and the Caring Society.

On 9 December 2009, Ms. Blackstock was accompanying the Chiefs of Ontario, at their request, to a meeting with a senior official at Aboriginal Affairs and Northern Development Canada (AANDC) to discuss concerns related to child welfare funding in Ontario. After having properly complied with security requirements to enter the AANDC building where the meeting was to take place, it is reported that Ms. Blackstock was informed by a senior official that the meeting could not go forward if she participated. She agreed to sit outside the meeting and was guarded by a government security guard while she waited. This incident and the previous events described led Ms. Blackstock to make a request under the Privacy Act for documents related to her produced by Aboriginal Affairs and Northern Development Canada from 2005 to 2009.

In 2011, Ms. Blackstock received hundreds of pages of documents from the request under the Privacy Act. These allegedly revealed that 1) on numerous occasions, AANDC had accessed Ms. Blackstock's personal Facebook page and had circulated personal and professional information gathered from that page to officials in the Department of Justice and AANDC; 2) Ms. Blackstock's personal Indian Status Registry File, containing sensitive information about her and her family was accessed on two occasions, without her knowledge or authorization; and 3) AANDC and Department of Justice officials were systematically monitoring Ms. Blackstock's professional meetings and presentations, and also took note of meetings related to child welfare issues that she did not attend. The request under the Privacy Act further revealed emails sent by Government officials in the Department of Justice and AANDC containing disparaging remarks about Ms. Blackstock. The records reportedly indicated that the monitoring was related to the child welfare case pending before the Canadian Human Rights Tribunal. On 17 November 2011, Ms. Blackstock went public with the information she had gathered on a national radio programme, *Canadian Broadcasting Company (CBC) the Current*.

Subsequently in December 2011, Ms. Blackstock filed a second request under the Privacy Act covering the dates around time that she had appeared on *Canadian Broadcasting Company (CBC) the Current*. This request revealed furthering monitoring of Ms. Blackstock's personal Facebook page, even postings unrelated to professional or child welfare related issues; her Indian Registry; and professional meetings and public appearances. This request also produced an email from AANDC to the Department of Justice saying that the AANDC had been monitoring Ms. Blackstock's Facebook page for six months, but had stopped upon realizing that the Department of Justice was also monitoring the page. The

documents reportedly indicated that the monitoring activities were carried out in order to “find other motives” for the child welfare case so that it could be challenged on “frivolous and vexatious” grounds. In total, 189 different Government officials in the Department of Justice and AANDC were involved in the monitoring activities, as revealed by the documents received under the Privacy Act request.

In 2012, the Privacy Commissioner of Canada initiated an investigation to determine whether the Government of Canada had breached the Privacy Act in light of its monitoring of Ms. Blackstock. The 2013 report of the Privacy Commissioner determined that the Government had breached the Privacy Act by collecting information about Ms. Blackstock off her personal Facebook page. However, it did not find a breach of the Privacy Act for the monitoring of her professional meetings and presentations, and found that it could determine conclusively that it was the Government that had monitored Ms. Blackstock’s Indian Registry.

In September 2012, the Canadian Human Rights Tribunal amended the child welfare complaint to include allegations of retaliation against Ms. Blackstock and the Caring Society by the Government of Canada. In July 2013, the Tribunal heard testimony in the case regarding alleged retaliation and its decision is pending. In the meantime, the Department of Justice has informed Ms. Blackstock informally that it is no longer monitoring her personal Facebook page while the Tribunal’s decision is pending, although it has refused requests to sign an undertaking towards this end.

Concern is expressed that the alleged retaliation measures taken against Ms. Blackstock are representative of a broader pattern of activities by the Government to monitor the actions of Aboriginal human rights defenders in order to deter them from carrying out their activities in defence of the rights of the First Nations.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency’s Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration, and in particular to article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We would also like to refer to article 22 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

In light of the foregoing, we would be interested in hearing your Government's views about the allegations contained in this letter and any additional information that the Government deems pertinent. In particular, we would like to know:

1. Whether the Government, through Aboriginal Affairs and Northern Development Canada, the Department of Justice, or another Government entity is currently monitoring Ms. Blackstock's personal Facebook page and other activities and if so, the reason for such monitoring.

2. The details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the alleged monitoring of Ms. Blackstone. Have any disciplinary or administrative sanctions been imposed or will they be imposed in the case of a finding of wrongdoing?

3. Please explain how the alleged actions undertaken by Government officials in this case regarding the monitoring of Ms. Blackstock are compatible with the international norms and standards referenced above.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned person are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and
of association

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

James Anaya
Special Rapporteur on the rights of indigenous peoples