

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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
CAN 1/2014:

27 November 2014

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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 25/2, 24/5, 25/18 and 24/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged surveillance of environmental and aboriginal organizations by the National Energy Board (NEB) and the Canadian Security Intelligence Service (CSIS), as well as the sharing of this information between these agencies, the Royal Canadian Mounted Police (RCMP), the security personnel of NEB and private sector organizations.

The issue of undue monitoring of the Executive Director of an aboriginal association was the subject of an earlier communication by the Special Rapporteurs on the rights to freedom of peaceful assembly and of association, on the situation of human rights defenders, and on the rights of indigenous peoples on 7 November 2013, see A/HRC/25/74, Case no. CAN 4/2013. We are grateful for your Excellency's Government response dated 10 January 2014.

According to the information received:

NEB in collaboration with RCMP and the CSIS have engaged in systematic information and intelligence gathering about organizations seeking to participate in NEB's Northern Gateway Project hearings in relation to an oil pipeline project.

These organizations are reported to include Leadnow, Forest Ethics Advocacy Association, the Council of Canadians, the Dogwood Initiative, EcoSociety, the Sierra Club of British Columbia and Idle No More. These organizations have

reportedly no present or historical involvement in criminal activity and the alleged surveillance is reportedly related to their engagement in peaceful advocacy on environmental issues.

CSIS provided NEB with intelligence gathered at the national and regional level about these organizations on 31 January 2013 despite a lack of information amongst law enforcement agencies of any criminal activity being about to be committed. It also seems that CSIS has kept providing intelligence to NEB, which has continued monitoring these organizations since 1 February 2013.

Additional information indicates that RCMP Critical Infrastructure Team informed NEB staff and at least one CSIS official on 19 April 2013 that it would “continue to monitor all aspects of the anti-petroleum industry movement”.

Information received also refers to the biannual “NRCan Classified Briefings” held by Natural Resources Canada, at which CSIS and RCMP had reportedly shared information about security matters, including environmental human rights activists, with NEB and representatives of the energy industry.

Whilst acknowledging the domestic legal framework on freedom of association and privacy rights described in your Government’s response dated 10 January 2014, we are concerned about continued allegations of surveillance of the activities of organizations and human rights defenders engaged in peaceful dialogue that put the independence of associations and the safety of their members at risk.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide any information on the laws or regulations under which the alleged surveillance activities were implemented.
3. Please explain how the alleged actions of the RCMP and CSIS are in accordance with Canada’s obligations under international human rights law, particularly with regard to the rights to freedom of association and freedom of expression.
4. Please provide information about the current status of any surveillance and monitoring by RCMP, CSIS and/or NEB of Leadnow, Forest Ethics

Advocacy Association, the Council of Canadians, the Dogwood Initiative, EcoSociety, the Sierra Club of British Columbia and Idle No More and/or any other civil society organizations.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

David Kaye
Special Rapporteur on the promotion and protection of the right
to freedom of opinion and expression

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Victoria Lucia Tauli-Corpuz
Special Rapporteur on the rights of indigenous peoples

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, the following articles of the International Covenant on Civil and Political Rights, which Canada acceded on 19 May 1976, are particularly relevant:

- article 17 points 1) and 2) which provides that “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation” and that everyone has the right to the protection of the law against such interference or attacks.

- article 19 points 1) and 2) which stipulates that everyone has the right to hold opinions without interference and the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice.

- article 22 point 1) and 2) which provides that everyone has the right to freedom of association with others, including the right to form and join trade unions for the protection of their interests.

Of relevance are also 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 1,2, 5 and 6 which provide for 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, the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations and the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms. The Declaration also stipulates the primary responsibility and duty of States to protect, promote and implement all human rights and fundamental freedoms, by ensuring that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

Moreover, Human Rights Council resolution 24/5, in its operative paragraph 2 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.”

Furthermore United Nations General Assembly Resolution 68/167 emphasizes that “unlawful or arbitrary surveillance and/or interception of communications, as well as unlawful or arbitrary collection of personal data, as highly intrusive acts, violate the rights to privacy and to freedom of expression and may contradict the tenets of a democratic society” and calls States to “review their procedures, practices and legislation regarding the surveillance of communications.”