

Mandate of the Independent Expert on the promotion of a democratic and equitable international order

REFERENCE:
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Excellency,

I have the honour to address you in my capacity as Independent Expert on the promotion of a democratic and equitable international order, pursuant to Human Rights Council resolution 33/3.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning continued interferences in the enjoyment of human rights of the Lubicon Lake Nation.

The situation of the Lubicon Lake Nation was previously the subject of an allegation letter sent by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people on 26 January 2009 (CAN 1/2009).

According to the information received:

The Lubicon Lake Nation is an indigenous group who live in an area of the north central part of the Province of Alberta. The Lubicon Lake Nation is home to one of the longest unresolved land disputes in Canada as its situation was overlooked when Treaty 8 was negotiated with indigenous nations in the surrounding areas in the late 1800s. Hence, aboriginal land rights over the traditional territory of the Lubicon Lake reportedly remain unsettled. In its response to the abovementioned communication, your Excellency's Government clarified that the Governments of Canada and Alberta on one hand and the Lubicon Lake Nation on the other "characterize the status of the tear drop area differently". "The Governments of Canada and Alberta view this territory as lying within the territory covered by Treaty 8 and, in turn, take the position that any land rights of the Lubicon Lake Nation are governed by the terms of that treaty". The Lubicon Lake Nation however claims that it has never entered into the Treaty with any state. The Lubicon Lake Nation asserts that its territory is used by Canada without its consent in violation of its right to self-determination to freely determine its political status and pursue its economic, social and cultural development without interference.

For more than 40 years, the Government of Alberta has approved thousands of oil and gas exploitation activities within the Lubicon Territory without the consent of the Lubicon Lake Nation. Ongoing resource exploitation and extraction has reportedly caused serious environmental, economic, social, psychological and spiritual damage to the Lubicon Lake Nation. It is reported that all traditional sources of Lubicon drinking water have been contaminated by resource

exploitation activity and the Lubicon are now dependent upon bottled water. It is further reported that as a result of oil and gas extraction, income from trapping and moose production has dramatically declined rising the percentage of people on welfare from 10 to over 95 per cent. Very serious health problems, including cancers, tuberculosis and epidemic-levels of asthma, as a result of resource exploitation activity have also been reported. Within an 18-month period, 19 stillbirths out of 21 pregnancies were reportedly documented.

Lately, the Government of Canada has determined that a “band” created under the Indian Act would be the “spoke people” of the Lubicon peoples. As a result, the Government of Canada and the Government of Alberta have allegedly refused to meet with the Lubicon Lake Nations and its chief, but only accepted to meet with the newly chief and council of the Lubicon Lake Band. The Lubicon Lake Nation asserts that they have however never agreed or made any arrangement with Canada to come under the Indian Act legislation.

As documented in the attached annex, numerous decisions from UN human rights mechanisms have in the past years expressed concern over the Government’s treatment of the Lubicon Lake Nation and their ancestral lands. Both the Human Rights Committee and the Committee on Economic, Social and Cultural Rights recommended to Canada to make every effort to resume negotiations with the Lubicon with a view to finding a solution to their claims which would respect the rights of the Band under the Covenants.

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

Since it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment you may have on the above-mentioned allegations.
2. Has a complaint been lodged by or on behalf of the Lubicon Lake Nation?
3. Please provide any additional information about the measures taken, or to be taken, to implement the recommendations of the Human Rights Committee, the Committee on Economic Social and Cultural Rights and the United Nations Special Rapporteur on the rights of indigenous peoples regarding the claims of the Lubicon Lake Nation?
4. Please provide any additional information about the measures taken to ensure the Lubicon peoples are not adversely impacted by resource exploitation in the traditional territory of the Lubicon.

5. Please provide any additional information about the right of Lubicon peoples' prior and informed consent on matter affecting their lives, including through representatives chosen by themselves in accordance with their own procedures.

I would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations against the Lubicon Lake Nation 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 responsible for the alleged violations.

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

Alfred De Zayas
Independent Expert on the promotion of a democratic and equitable international order

Annex

Reference to international human rights law

In connection with the above, I would like to refer your Excellency's Government to common article 1 of the International Covenant on civil and political rights and the International Covenant on economic, cultural and social rights, ratified by Canada in 1976, which provides that "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

Further, I would like to refer your Excellency's Government to the provisions of the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007, in particular its Article 19 which provides that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them". Reference is also made to Article 26: "Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired."

In light of the information and allegations related to the Band representation, I refer to Article 18 of the Declaration which states that "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions".

I further refer to a 1990 decision by the United Nations Human Rights Committee *Lubicon Lake Band v. Canada*, Communication No. 167/1984, in which the Committee found that "Historical inequities, to which the State party refers, and certain more recent developments threaten the way of life and culture of the Lubicon Lake Band, and constitute a violation of article 27 so long as they continue".

Additionally, I refer to the views of the Human Rights Committee from 2006 in which the Committee recommended to Canada to "make every effort to resume negotiations with the Lubicon Lake Band with a view to finding a solution which respects the rights of the Band under the Covenant, as already found by the Committee" (CCPR/C/CAN/CO/5, para. 9). In 2015, the Human Rights Committee "recommended to [Canada] to consult indigenous people to (a) seek their free, prior and informed consent whenever legislation and actions impact on their lands and rights; and (b) resolve land and resources disputes with indigenous peoples and find ways and means to establish their titles over their lands with respect to their treaty rights."

In 2006, the United Nations Committee on Economic, Social and Cultural Rights "strongly recommend[ed] that [Canada] resume negotiations with the Lubicon Lake Band

with a view to finding a solution to the claims of the Band that ensures the enjoyment of their rights under the [International Covenant on Economic, Social and Cultural rights]”. (E/C.12/CAN/CO/4 E/C.12/CAN/CO/5, para. 38).

In 2007, the Committee on the Elimination of Racial Discrimination “urge[d] [Canada] to engage, in good faith, in negotiations based on recognition and reconciliation, and reiterates its previous recommendation that [Canada] examine ways and means to facilitate the establishment of proof of Aboriginal title over land in procedures before the courts (CERD/C/CAN/CO/18, para. 22). This recommendation was reiterated in the Committee’s concluding observations from 2012 (CERD/C/CAN/CO/19-20, para. 20).

In his country visit report to Canada from 2014 the Special Rapporteur on the rights of indigenous peoples recommended that “[a]ny existing legal barriers to the effective exercise of indigenous self-government, including those in the Indian Act, should be removed, and effective measures should be taken to build indigenous governance capacity. Canada should continue to engage in, and adequately fund, meaningful negotiations to transfer governance responsibilities to First Nations, Inuit and Métis governments and to financially support, at adequate levels, the development and operation of indigenous self-governance institutions”. He further recommended Canada to adopt “[c]oncerted measures [...] to deal with the outstanding problems that have impeded progress with the treaty negotiation and claims processes. Moreover, within these processes the Government should take a less adversarial, position-based approach than the one in which it typically seeks the most restrictive interpretation of aboriginal and treaty rights possible. In this regard, the Government should instead acknowledge that the public interest is not opposed to, but rather includes, aboriginal concerns”. (A/HRC/27/52/Add.2, paras. 90 and 96).

Moreover, although Canada is not a State party to ILO Convention 169, its provisions are of relevance and Canada is encouraged to take its articles into account.