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AUG 10 2021

INFORMATION NOTE FOR THE HONOURABLE STEVEN GUILBEAULT

**CANADA'S RESPONSE TO THE UNITED NATIONS COMMITTEE ON  
THE ELIMINATION OF RACIAL DISCRIMINATION UNDER ITS  
EARLY WARNING URGENT ACTION PROCEDURE –  
MI'KMAW INDIGENOUS PEOPLES IN NOVA SCOTIA**

**Issue**

- [REDACTED] Canada will submit its response to the United Nations (UN) Committee on the Elimination of Racial Discrimination (CERD) regarding concerns it has raised under its Early Warning and Urgent Action Procedure (EWUAP) in relation to allegations of acts of racist violence against Mi'kmaq Indigenous Peoples in Nova Scotia.
- Canada's response (Annex 1) was drafted by the Department of Canadian Heritage (PCH), in collaboration with the Department of Fisheries and Oceans Canada (DFO), the Royal Canadian Mounted Police (RCMP), Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC), the Department of Justice Canada (DOJ), Global Affairs Canada (GAC) and the Government of Nova Scotia.
- There is no content from PCH in the response. However, PCH has the overall lead for Canada's international human rights reporting and for liaising with relevant federal departments and provincial and territorial governments in this regard.

**Background**

- As the UN CERD does not have a complaints mechanism, it uses an **early warning procedure** in order to prevent the escalation of existing conflicts and **urgent procedures** to prevent the number of serious violations of the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD).

s.21(1)(b)

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Canada



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- 2 -

- For the Committee, situations that qualify for an early warning procedure could include:
  - the lack of an adequate basis for defining and prohibiting racial discrimination in domestic legislation, inadequate enforcement mechanisms, or an emerging pattern of racial propaganda or appeals to racial intolerance **made by other individuals**; and
  - urgent procedures could be undertaken in situations where serious and persistent racial discrimination is seen to exist.
- Once the Committee decides to undertake an early warning procedure or an urgent procedure, the Committee may make requests to the State Party involved to provide information, and adopt a decision that addresses specific concerns and recommends action.
- On May 4, 2021, Canada received a letter (Annex 2) from the CERD under its EWUAP, requesting information on the steps taken to:
  - Investigate the alleged acts of racist hate speech, violence and incitement to violence, as well as the destruction of property by private actors against Mi'kmaw Indigenous Peoples.
  - Investigate the alleged lack of adequate response by relevant State Party authorities to effectively prevent such acts and protect Mi'kmaw Indigenous Peoples from them.
  - Prevent further acts of violence, racist hate speech, incitement of violence and destruction of property against Mi'kmaw Indigenous Peoples.
  - Respect, protect and guarantee the rights of Mi'kmaw Indigenous Peoples in relation to their fishing activities and territories, as well as their rights to be consulted, to food and to cultural rights, including measures taken to repeal federal and provincial laws, as well as policies and regulations that unduly limit such rights.
  - Details on the status of the treaties concluded between 1760 and 1761 and the implementation of Mi'kmaw fishing rights under such treaties.
- Canada has not entered a declaration under Article 14 of the ICERD that would recognize the competence of the Committee to receive or consider complaints by individuals or groups of individuals.

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- 3 -

- As such, Canada expressly states in the response that its provision of information:
  - Does not constitute agreement that the concerns raised by the Committee are situations appropriate for consideration under the EWUAP; and
  - Is solely as part of its regular periodic reporting to the Committee.

### **Current Status**

- PCH worked in collaboration with DFO, RCMP, CIRNAC, DOJ, GAC and the Government of Nova Scotia to draft Canada's response.
- The response has been distributed for approval among the contributors. The Government of Nova Scotia initially indicated that it might be seeking approval at the ministerial level, but this could change in light of the upcoming provincial election scheduled to take place on August 17, 2021. DFO will be seeking approval from its Deputy Minister while the RCMP, CIRNAC and DOJ will seek approval at the Assistant Deputy Minister level.
- GAC will submit the response to the UN on behalf of Canada [REDACTED]
- While the CERD's April 30, 2021 letter to Canada is posted on the website of the Office of the United Nations High Commissioner for Human Rights, Canada's response will not be made public by the UN. [REDACTED]
- As part of a regular cycle of human rights reporting, PCH plans to submit Canada's combined 24<sup>th</sup> and 25<sup>th</sup> ICERD report to the Committee in July 2022.

  
Gina Wilson

Attachment

s.21(1)(b)

Prepared by: Strategic Policy and International Affairs



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**Pages 4 to / à 16  
are withheld pursuant to sections  
sont retenues en vertu des articles**

**13(1)(c), 21(1)(a), 21(1)(b)**

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REFERENCE: CERD/EWUAP/103<sup>rd</sup> Session/2021/MJ/CS/ks

30 April 2021

Excellency,

I would like to inform you that in the course of its 103<sup>rd</sup> Session, the Committee on the Elimination of Racial Discrimination considered information received under its Early warning and urgent action procedure, related to allegations of acts of racist violence against Mi'kmaw indigenous peoples in Nova Scotia, Canada.

According to the information received, during September and December 2020, especially between 13 and 17 October, Mi'kmaw people, and in particular Mi'kmaw fishers, have been subject to escalating racist hate speech, violence, including with firearms, intimidation, burning and destruction of their property, including lobster traps, lobster processing facilities and work vehicles.

Allegedly, these acts have been carried out by non-indigenous fishers trying to obstruct the Mi'kmaw traditional fishing activities, reportedly as they consider that a Mi'kmaw fishery, which was launched in September 2020, is illegal and that it threatens conservation efforts.

It is further alleged that, despite being aware of the high risk of violence, the competent Canadian authorities – in particular the Royal Canadian Mounted Police (RCMP) and the Department of Fisheries and Oceans (DFO) – failed to take appropriate measures to prevent these acts of violence and to protect the Mi'kmaw fishers and their properties from being vandalized.

It is claimed that the Canadian authorities have also failed to fully investigate the allegations of racially motivated harassment, racist hate speech and incitement of racist violence online, violence and intimidation by private actors against Mi'kmaw human rights defenders and fishers.

In addition, the Committee has been informed that the Mi'kmaw indigenous peoples' right to their traditional fishing activities is based on a series of treaties signed between 1760-1761 by the Mi'kmaq and the British Crown, and that these treaties remain valid according to decisions of the Supreme Court of Canada in 1999.

H.E. Ms. Leslie Norton  
Permanent Representative of Canada  
to the United Nations Office  
Geneva  
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The Committee has further been informed that pursuant to these decisions, Mi'kmaw rights may only be limited if there is an overriding public purpose, that any infringement must be the minimum needed to meet such public purpose and that the indigenous group must be consulted before the limitation on the right is imposed.

According to the allegations received, Provincial and Federal governments have failed to fully respect the treaty based right of the Mi'kmaw peoples to their traditional fishing activities. It is alleged that, in that context, the Mi'kmaw fishers have been subject to criminalization for exercising such fishing rights and that Canadian authorities have confiscated their catches and equipment. It is also claimed that the failure by the State Party authorities to respect and protect the Mi'kmaw people's rights to their fishery has reinforced the escalating reported racism and violence.

The Committee is concerned about allegations of lack of response by the State Party authorities to prevent and to investigate the allegations of racist hate speech and incitement of violence online as well as acts of violence and intimidation against Mi'kmaw peoples by private actors. In case the above allegations would be corroborated, the Committee is concerned that further acts of racist violence and intolerance could exacerbate the hostility and lead to the loss of human lives.

The Committee would like to recall its general recommendation No. 23 (1997) on the rights of indigenous peoples and its recommendations made in paragraphs 14 and 20 of its concluding observations of 2012, that requested the State party "to take steps to prevent racist hate crimes against all ethnic and minority groups, migrants and indigenous peoples in the State party"; "to facilitate reporting by the victims, and ensure effective investigation of cases of racist hate crimes and prosecute and sanction perpetrators"; "to implement in good faith the right to consultation and to free, prior and informed consent of Aboriginal peoples whenever their rights may be affected"; and to "continue to seek in good faith agreements with Aboriginal peoples with regard to their lands and resources claims under culturally-sensitive judicial procedures, find means and ways to establish titles over their lands, and respect their treaty rights" (CERD/C/CAN/CO/19-20).

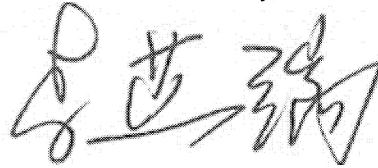
In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee requests that the State party submit information on all of the issues as outlined above by 14 July 2021, as well as on any action already taken to address the above-mentioned allegations and concerns. In particular, it requests the State Party to provide information on measures taken to:

- (a) Investigate the alleged acts of racist hate speech, violence and incitement to violence, as well as and the destruction of property by private actors against Mi'kmaw indigenous peoples;
- (b) Investigate the alleged lack of adequate response by relevant State Party authorities to effectively prevent, and protect Mi'kmaw indigenous peoples from such acts;
- (c) Prevent further acts of violence, racist hate speech, incitement of violence and destruction of property against Mi'kmaw indigenous peoples;
- (d) Respect, protect and guarantee the rights of Mi'kmaw peoples in relation to their fishing activities and territories, as well as their rights to be consulted, to food and cultural rights, including the measures taken to repeal federal and provincial laws, as well as policies and regulations that unduly limit such rights.

The Committee also requests the State party to provide details on the status of the treaties concluded between 1760 and 1761 and the implementation of Mi'kmaq fishing rights under such treaties.

Allow me, Excellency, to reiterate the wish of the Committee to continue to engage in a constructive dialogue with the Government of Canada, with a view to ensuring the effective implementation of the Convention.

Yours sincerely,



Yanduan Li  
Chair  
Committee on the Elimination of Racial Discrimination