



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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REFERENCE: CERD/EWUAP/2022/MJ/CS/ks

29 August 2022

Excellency,

I would like to inform you that the Committee on the Elimination of Racial Discrimination considered additional information received under its early warning and urgent action procedure, related to the situation of Mi'kmaw indigenous peoples in Nova Scotia, Canada.

The Committee would like to thank the State party for its reply dated 14 March 2022 in response to the Committee's letter of 30 April 2021. It takes note of the information provided by your Government with regard to the allegations set out in the Committee's previous letter, including the investigations initiated and the charges laid against a number of individuals in relation to the violent acts that took place in October 2020 against Mi'kmaw and indigenous property.

The Committee also takes note of the appointment of a Federal Special Representative in October 2020 to gather the perspectives of indigenous and non-indigenous harvesters and to improve relationships among indigenous rights holders and non-indigenous harvesters.

The Committee further takes note that the Supreme Court of Canada affirmed the treaty rights contained in the *Peace and Friendship Treaties of 1760/61*, including the traditional fishing rights, in the *Marshall* and *Marshall II* decisions of 1999, and that the Government of Canada has included all Mi'kmaw First Nations in its efforts to implement this right. In this regard, the Committee takes note of the funds provided to Treaty Nations to support increased indigenous participation in commercial fisheries and the Federal Marshall Response Initiative (MRI) replaced later by the Atlantic Indigenous Commercial Fisheries Initiative (AICFI).

Likewise, the Committee takes note that the State party indicates that it will continue to remain cognizant of the Supreme Court's observation that consultations and negotiations are the best way to implement the right to fish in pursuit of a moderate livelihood. In this regard, it notes that the Government of Canada has been negotiating incremental and time-limited agreements called Rights Reconciliation Agreements with the Mi'kmaw and it has also been developing community-level Moderate Livelihood Fishing Plans and an associated Interim Moderate Livelihood Operational Framework.

At the same time, the Committee has received additional information on the situation of the Mi'kmaw indigenous peoples in Nova Scotia. In particular, it has been brought to the attention of the Committee the Report of the Standing Senate Committee on Fisheries and Oceans published in July 2022, which examines the federal government's response to the *Marshall* decision and the implementation of the rights of First Nation communities to fish in pursuit of a moderate livelihood.

H.E. Ms. Leslie E. Norton
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According to this report, the rights-based fisheries that were affirmed in the *Marshall* decision, affecting Mi'kmaq communities and other First Nations, have yet to be fully implemented by the Government of Canada and the lack of implementation has led to rising tensions and violence. The report also collects concerns by Mi'kmaq and other First Nations and stakeholders that include, among others:

- The lack of consultation with indigenous peoples before the Moderate Livelihood Fishing Plans approach was announced;
- The lack of meaningful progress in fishing rights implementation since the *Marshall* decision despite some initiatives adopted;
- The systemic racism within Fisheries and Oceans Canada (DFO) and the criminalization of the exercise of First Nations' rights, leading to mistrust and violence;
- That although First Nations possess some internal capacity to negotiate rights-based fisheries agreements with the Government of Canada, this capacity differs from one First Nation to another and is not comparable to the federal government's capacity;
- The lack of understanding, misunderstanding, and misinterpretations among the non-indigenous Canadian population when it comes to indigenous history, indigenous culture, the *Marshall* decision, other related court decisions, and treaties.

In this regard, the Committee notes that the report of the Standing Senate Committee include recommendations to the Government of Canada, in particular:

- To take steps, in cooperation with the Mi'kmaq and other First Nations to review, and amend or modify as necessary, all relevant laws, regulations, policies, and practices regarding rights-based fisheries to ensure they are in line with Canada's domestic and international obligations, including the Constitution Act, 1982 and the United Nations Declaration on the Rights of Indigenous Peoples;
- To negotiate and enter into nation-to-nation agreements with the Mi'kmaq and other First Nations that will result in true shared decision-making;
- To introduce new legislation in Parliament, in cooperation with the Mi'kmaq, Wolastoqiyik, and Peskotomuhkati, to create a new legislative framework that will allow for the full implementation of rights-based fisheries;
- That all federal government departments and agencies immediately take effective actions to address and eliminate institutional and systemic racism in their laws, regulations, policies, and practices;
- To work in cooperation with the Mi'kmaq and other First Nations to appoint an independent panel of experts to produce a report with specific recommendations to address the prevalence of institutional and systemic racism within Fisheries and Oceans Canada, the Royal Canadian Mounted Police and other departments and agencies responsible for the enforcement of Mi'kmaq and other First Nations rights-based fisheries and to describe a plan to address the systemic racism identified;
- To provide the Mi'kmaq and other First Nations with the capacity (e.g., financial, legal, policy) they require to negotiate the full implementation of their rights-based fisheries with the Government of Canada;
- To develop tools, in cooperation with the Mi'kmaq and other First Nations, to engage and educate the public about rights-based fisheries, including where these rights originated, how they have been affirmed and implemented, and how they differ from other types of fisheries;

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- To provide effective and ongoing education and training to employees of relevant federal departments and agencies, including Crown-Indigenous Relations and Northern Affairs Canada, Fisheries and Oceans Canada and the Royal Canadian Mounted Police, on the past and present context of Indigenous Peoples in Canada and on rights-based fisheries.

The Committee's final consideration is in accordance with the abovementioned recommendations, which are in line with the Convention, as well as with its general recommendation No. 23 (1997) on the rights of indigenous peoples and with its recommendations made to the State party in paragraphs 14 and 20 of its concluding observations of 2012 (CERD/C/CAN/CO/19-20) and paragraphs 14 and 20 (a) of its concluding observations of 2017 (CERD/C/CAN/CO/21-23). These final observations on this matter under the Early Warning and Urgent Action Procedure will be included in its next annual report.

In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee requests that the State party provide updated and detailed information on the situation of the Mi'kmaq indigenous peoples in Nova Scotia as part of its combined twenty-fourth and twenty-fifth periodic reports, which were due on 15 November 2021, in particular: a) the investigations initiated on the violent acts that took place in October 2020 against Mi'kmaq and indigenous property and the results of those investigations; and b) the measures adopted to respect, protect and guarantee the rights of Mi'kmaq peoples in relation to their fishing activities and territories, in light of the concerns and recommendations included in the abovementioned Standing Senate Committee on Fisheries and Oceans, and in accordance with the obligations of the State party under the Convention.

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,



Verene Shepherd
Chair

Committee on the Elimination of Racial Discrimination

