



REFERENCE: CERD/89th/EWUAP/GH/MJA/ks

27 May 2016

Excellency,

I write to inform you that in the course of its 89th session, the Committee on the Elimination of Racial Discrimination has considered, under its early warning and urgent action procedure, the following situations that have been brought to its attention by non-governmental organisations: (1) the allegations of violations of the rights of indigenous women in the village of Lote Ocho in Guatemala by the Canadian company Hudbay Mineral Inc.; (2) the situation of the Lubikon Lake Nation (Muskotew Sakahikan Enowuk) with regard to its land claims.

Concerning the alleged violations of the rights of indigenous women in Lote Ocho (Guatemala), the Committee was informed of the following. According to the information received, in 2007, soldiers, police officers and mining security officials swarmed into Ms. Margarita Caal Caal's house located in the village of Lote Ocho in eastern Guatemala, in order to forcibly evict her from her land. It is alleged that soldiers, police officers and mining security officials also raped her and dragged her from her home that they further set ablaze. Ten other women from the same village were reportedly raped the same day in similar circumstances. It is claimed that those who committed these facts were employees of the Canadian company Hudbay Mineral Inc which is based in Toronto. The information indicates that Ms. Margarita Caal Caal filed a negligence claim against Hudbay Mineral Inc before Canadian courts as did the ten other women. However, the information suggests that Canada has not yet adopted legislative or administrative measures to hold corporations registered in Canada accountable for human rights violations carried out abroad, including violations of the rights of indigenous peoples.

Concerning the situation of the Lubikon Lake Nation, the Committee has been made aware of the following. The submission alleges that for more than 40 years, extraction of oil and gas has been done in the Lubikon Lake territory without the free, prior and informed consent of the Lubikon Lake people. Such extractive activities

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reportedly have had negative impact on their livelihood and health and resulted in environmental, economic, social, emotional, psychological, cultural and spiritual damage. It is alleged that the Lubikon Lake people suffer from serious health problems related to resource exploitation activities including cancers, tuberculosis, epidemic-levels of asthma, reproduction problems which resulted in stillbirths and skin rashes among Lubikon children.

The submission also alleges that the Governments of Canada and Alberta have not yet found ways to resolve the long-standing land claim of the Lubikon Lake Nation concerning the Lubikon territory and have refused to meet with the Lubikon Nation and its Chief Bernard Ominayak to discuss this matter. The submission asserts that both Governments plan to negotiate with Billy Joe Laboucan whom the Governments recognise as the duly elected Chief and Council (under the Indian Act) of the Lubicon Lake Band rather than with Chief Ominayak. It is claimed that the Lubikon Lake Nation does not consider Billy Joe Laboucan and his Council, as their real representatives.

The Committee is concerned that these allegations, if verified, could hinder the full enjoyment of rights under the Convention. With regard to allegations of violations of the rights of indigenous women in the village of Lote Ocho in Guatemala, the Committee recalls its recommendations made in paragraph 17 of its concluding observations of 2007 that requested “the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada” and to “explore ways to hold transnational corporations registered in Canada accountable” (CERD/C/CAN/CO/18). The Committee reiterated these recommendations in paragraph 14 of its concluding observations of 2012, requesting that “the State party take appropriate legislative measures to prevent transnational corporations registered in Canada from carrying out activities that negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada, and hold them accountable” (CERD/C/CAN/CO/19-20).

Concerning the situation of the Lubikon Lake Nation, the Committee recalls its recommendations in paragraph 20 of its concluding observations of 2012, to: “(a) implement in good faith the right to consultation and to free, prior and informed consent of Aboriginal peoples whenever their rights may be affected by projects carried out on their lands, as set forth in international standards and the State party’s legislation; (b) 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 and concerns as outlined above by 31 October 2016, as well as on any action already taken to address these concerns. In particular, it requests that the Government of Canada provide information on:



(a) Efforts made to adopt legislative or administrative measures to hold accountable transnational corporations registered in Canada whose activities violate or negatively affect human rights, including the rights of indigenous people and local communities;

(b) Steps taken to ensure the participation of all Lubikon Lake Nations and their elected representatives in decision-making processes that concern them;

(c) Plans, if any, to negotiate with the Lubikon Lake Nation (MuskotewSakahikan Enowuk) with regard to their land claim referred to above;

(d) Measures to implement in good faith the right to free, prior and informed consent of Aboriginal peoples whenever their rights may be affected by projects carried out on their lands.

Allow me, Excellency, to express the wish of the Committee to continue to engage in a constructive dialogue with the Government of Canada, with a view to provide it with assistance in the effective implementation of the Convention.

Yours sincerely,

Anastasia Crickley
Chair

Committee on the Elimination of Racial Discrimination