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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

**Mandates of the Independent Expert on the promotion of a democratic and equitable international order and the
Special Rapporteur on the human right to safe drinking water and sanitation.**

REFERENCE: OL Water (2008-1) CAN 3/2013

14 May 2013

Excellency,

We have the honour to address you in our capacities as Independent Expert on the promotion of a democratic and equitable international order and Special Rapporteur on the human right to safe drinking water and sanitation pursuant to Human Rights Council resolutions 18/6 and 16/2.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged restrictions on the right to equitable participation of indigenous peoples in decision-making.**

According to the information received:

On 29 February 2012, Bill S-8, entitled 'Safe Drinking Water for First Nations Act', was introduced in the Senate. On 19 June 2012, the House of Commons completed the first reading of the Act. It is alleged that the authorities, which have reportedly introduced this Act with the aim to assist indigenous peoples to have access to clean water, have not recognized the treaty rights to water, and have not assisted the First Nation communities maintain clean water or develop and maintain standards related to water. It is reported that the Bill does not stipulate funding commitments of the Government's departments responsible for water in First Nation reserves. In this respect, a report of an Expert Panel on Safe Drinking Water for First Nations, established in June 2006, reportedly suggests that "it is not credible to go forward with any regulatory regime without adequate capacity to satisfy the regulatory requirements."

It is also reported that indigenous peoples have not benefitted from effective participation in the decision-making process. Concerned people, who do not have the resources to travel to the capital or to the places where "engagements sessions" were held, were reportedly unable to participate in decisions affecting their lives. It is alleged that from February to March 2009, the government held 13 engagement sessions across the country, but failed to take into account some of

the concerns expressed by a number of First Nations organizations, including the Chiefs of Ontario, the Nishnawbe Aski Nation, the Assembly of Manitoba Chiefs and Treaty Seven nations in Alberta.

In this respect, it is alleged that the consultation meetings, held by the federal Government with indigenous peoples on issues where their consent was needed, have failed to allow for the effective participation of the First Nation communities. Allegedly, the authorities have called for small meetings and invited a few people, in particular from urban areas, but did not invite the general indigenous peoples. Such a situation, for example, reportedly happened in a meeting held in Saskatchewan where the Minister of Indian Affairs reportedly was brought into the meeting via a back door, while indigenous peoples were prevented from entering the conference room by a security guard, which ultimately led to violence outside the conference centre.

It is also alleged that, in some cases, indigenous peoples were invited to meetings, but these did not take place. It is further alleged that in some other cases, although the indigenous peoples were given an opportunity to speak, the decisions ultimately taken did not reflect their views. It is alleged that the Federal Government tends to negotiate with indigenous peoples who are closer to its position, and who do not necessarily possess authority to represent the majority of the indigenous peoples concerned.

It is reported that since January 2013, some indigenous peoples have held hunger strikes to draw attention to what they consider are problems with federal First Nations funding agreements. The health of those still on hunger strike has seriously deteriorated in recent weeks.

Concern is expressed that indigenous peoples have not been able to sufficiently take part in the drafting of several recent pieces of legislation affecting them. Concern is also expressed that indigenous peoples have not been able to attend meetings on issues of major importance where their consent was needed.

In connection with the above, we wish to refer to Article 25 of the International Covenant on Civil and Political Rights (ICCPR), which states that “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: To take part in the conduct of public affairs, directly or through freely chosen representatives.” In this respect, we should also like to refer to paragraph 8 of General Comment 25 of the Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal access to public service, which states that “Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association.”

We would also like to refer to Articles 18 and of the Declaration on the Rights of Indigenous Peoples, dated 2 October 2007, which state 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 (...); 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.” Moreover, we would like to refer to Article 6 (b) of the C169 Indigenous and Tribal Peoples Convention, 1989, which states that “In applying the provisions of this Convention, governments shall, establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them.”

We also wish to bring to the attention of your Excellency’s Government resolution 18/6 of the Human Rights Council in which it “recognize[d] that democracy, respect for all human rights, including the right to development, transparent and accountable governance and administration in all sectors of society, and effective participation by civil society are an essential part of the necessary foundations for the realization of social and people-centred sustainable development” (PP14). We also wish to refer to operative paragraph 6 (h) of the aforementioned resolution, which states that a “democratic and equitable international order requires, inter alia, the realization of... the right to equitable participation of all, without any discrimination, in domestic and global decision-making”.

We also wish to bring to the attention of your Excellency’s Government that the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child entail human rights obligations attached to the access to safe drinking water and sanitation. The human right to water means that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses, which includes sanitation.

Since 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 be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary accurate?
2. Please provide full details on the draft law S-8, and explain how its provisions comply with the obligations of your Excellency’s Government under international human rights law, in particular the right of water including safety and affordability of water for all without discrimination.

3. Please indicate whether any consultation has been undertaken with First Nations communities, and more generally, what criteria are used to determine who participates in such consultations.

4. Please indicate what measures have been taken to ensure that First Nation communities take effective part in policies affecting them, including measures aimed at palliating the communities' lack of adequate financial means to travel to places of consultation.

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

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of peoples mentioned in this letter are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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

Catarina de Albuquerque
Special Rapporteur on the human right to safe drinking water and sanitation