

Mandate of the Special Rapporteur on the rights of indigenous peoples

REFERENCE: UA Indigenous (2001-8)
CAN 3/2011

19 December 2011

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the rights of indigenous peoples pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 15/14.

In this connection, I am writing to bring to your Excellency's Government attention information received concerning **the situation of the Attawapiskat First Nation, a remote community in northern Ontario, as well as the alleged generally poor living conditions in aboriginal reserves, which this situation exemplifies**. In light of the seriousness of the Attawapiskat situation, I would also like to inform your Excellency's Government that the undersigned Special Rapporteur on the Rights of Indigenous Peoples intends to issue the attached public statement expressing concern about this situation. The statement will be made public on Tuesday, 20 December 2011.

According to the information received:

The Attawapiskat First Nation

The social and economic condition of the Attawapiskat First Nation, exemplifying the conditions of many aboriginal communities in Canada, is dire. Many of this First Nation's approximately 1,800 members live in unheated shacks or trailers, with no running water. The problem is particularly serious as winter approaches in the remote northern area where the Attawapiskat community lives, which faces winter temperatures as low as -28 degrees Celsius. Many public buildings also lack running water, including the local health centre, which is located five kilometres outside of town.

The federal Government has recently agreed to provide emergency housing in Attawapiskat to address the crisis situation. However, as a condition to receiving such housing assistance, the Government has placed the Attawapiskat under third party management to oversee spending. The Government maintains that the Attawapiskat have mismanaged some 90 million dollars provided by the federal government over the past five years. At

the same time, band members, including the band chief, have denounced the third party management regime, asserting that they are better equipped to respond to the needs of their community than a third party manager.

It is worth noting that the Attawapiskat have been under a co-management scheme for over a decade, under which, among other things, every cheque issued by the band must be co-signed by a co-manager appointed by the office of Aboriginal Affairs and Northern Development Canada (AANDC). Thus, it is pointed out that, at the very least, the co-management scheme has already shown to not protect against the alleged mismanagement of funds.

In any case, construction of housing by the Government will not commence until a winter road is built to the community, which it is estimated could take two months. In the meantime, the Government has announced plans to relocate members of the Attawapiskat community until adequate housing can be built. However, the Attawapiskat band has expressed its opposition to the relocation plan, urging instead that the Government allocate monies to the band so that it can move forward with housing construction. Further, the Canadian Red Cross and other relief agencies have been in the community providing urgent care to vulnerable community members before winter hits.

The current housing situation follows a series of other incidents that have negatively affected the living conditions of the Attawapiskat First Nation. In 1979, the elementary school in Attawapiskat was closed due to breakage of oil pipes located under the site of the school, which resulted in the largest oil spill in Ontario. Since that time, children have been receiving their education in number of portable facilities, which are very basic. Furthermore, in 2009, a massive sewage flood dumped untreated waste into eight buildings housing some 90 people, allegedly caused by a DeBeers diamond mine, Victor Mine, built in 2008, some 90 kilometres from the Attawapiskat settlement. This sewage has reportedly still not been properly cleaned up.

Concerns are also raised about the insufficiency of benefits received from DeBeers. Although Victor Mine is located on traditional Attawapiskat land and DeBeers provides some compensation to the First Nation, no royalties from the mine go to the Attawapiskat; they all go to the province of Ontario. Nor does the First Nation appear to have an equity stake of any kind in the project. In 2009, members of the community blocked a road near the DeBeers mine protesting the fact that they live in impoverished conditions next to a billion dollar mine, located on their traditional land.

Broader concerns

The social and economic situation of the Attawapiskat is reportedly representative many First Nation communities throughout Ontario and Canada. It is alleged that the social and economic conditions of First Nation communities living on reserves is akin to third world conditions. Yet, this situation is not representative of non-Aboriginal communities in Canada, a country with overall human rights indicators scoring among the top of all countries of the world. Aboriginal communities face vastly higher poverty

rights, and poorer health, education, employment rates as compared to non-Aboriginal people.

According to the information received, First Nations communities are systematically underfunded as compared to non-Aboriginal towns and cities. The unequal funding of First Nations communities is allegedly rooted in various funding formulas and policies used by Indian and Northern Affairs Canada to allocate funds to First Nations to support various social and economic programs. Since 1996, the federal government has maintained a 2% cap on spending increases for core services for Aboriginal peoples, a cap that is almost equal to the rate of inflation. This is less than one-third of the average 6.6% increase that most Canadians enjoy through Canada Health and Social Transfers. Further, while funding for First Nations programs has increased in recent years overall, it has not increased at rate equal to population growth.

This system has resulted in, overall, vastly less funding per capita for Aboriginal people than for non-Aboriginal people. In 2005, for example, average Aboriginal per capita funding from the federal government was approximately \$8500, while average non-Aboriginal per capital funding from municipal, provincial and federal governments was approximately \$15,188. The Mohawks of the Bay of Quinte, Oneida Nation of the Thames, Wikwemikong Unceded Indian Territory, and Six Nations of the Grand River are reportedly particularly affected by this scheme, since larger First Nations end up receive fewer monies per capita than smaller First Nations bands. While some of this per capita gap can be explained by economies of scale and urban proximity, much of it appears to be unjustifiable.

Reportedly, systematic underfunding of First Nations exacerbates their already diminished capacity to attend to the social and economic interests of their members. Further, it not does it appear that the Government is responding adequately to requests for assistance. For example, Health Canada has recently placed the the Mohawks of the Bay of Quinte, a large community located near the city of Belleville in southern Ontario, under a precautionary water advisory due to significant groundwater contamination. Approximately 56% of their wells have tested positive for contamination. According to the information received, the Government has repeatedly ignored requests for assistance in the construction of a water treatment facility to address this issue.

Moreover, the Government has allegedly been resisting efforts by the Canadian Human Rights Commission to inquire into allegations of discrimination on the basis of national or ethnic origin related to disparities in funding provided to First Nations as compared to non-aboriginal communities, inquiries that have been requested by First Nations themselves.

In light of the allegations received, I would like to draw the attention of your Excellency's Government to the Article 11 of the International Covenant on Economic, Social and Cultural Rights, which states: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous

improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right...”

Moreover, both the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights affirm that these economic and social rights are to be exercised in consonance with the right of the peoples concerned to self-determination. As stated by common article 1 of the covenants, “[a]ll 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.” The United Nations Declaration on the Rights of Indigenous Peoples, in its article 3, repeats this prescription of self-determination with specific reference to the right of self-determination of indigenous peoples.

Also relevant here, especially with regard to the allegations of discrimination in the funding for social services for aboriginal communities as compared to non-aboriginal communities, as well as allegations of discrimination in funding between and among First Nations themselves, are Canada’s obligations under the International Convention on the Elimination of All Forms of Racial Discrimination. The Convention provides in Article 5 that State Parties shall “undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (e) Economic, social and cultural rights, in particular: ... (iii) The right to housing; (iv) The right to public health, medical care, social security and social services; [and] (v) The right to education and training; ...”.

Further, in its General Comment 23 on indigenous peoples, the Committee on the Elimination of Racial Discrimination calls upon States Parties to “provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics” (para. 4.c).

I respectfully request a response from your Excellency’s Government to the above information. I am interested in knowing your Government’s views about the accuracy of this information and learning about any additional information your Excellency’s Government may deem relevant. In particular, I would appreciate a response to the following questions:

1. What measures will the Government take to provide emergency adequate housing to the Attawapiskat community?
2. What measures will the Government take to permanently address the housing crisis in the Attawapiskat community?
3. What steps will the Government take to ensure that emergency and permanent measures to address the housing crisis in Attawapiskat will recognize and affirm the self-governing authority of the Attawapiskat community?
4. What evidence exists for any conclusion that the Attawapiskat First Nation has mismanaged funds provided by the Government over the past five years?
5. If the Attawapiskat First Nation has indeed mismanaged funds provided by the Federal Government over the past five years, what role, if any, did AANDC

have in such mismanagement, considering the co-management scheme that had been in place in Attawapiskat for some ten years?

6. What are the reasons for the 2% cap on spending increases by the Federal Government for core services for Aboriginal peoples?

In addition to responding to these specific questions, I would be grateful for information regarding programs in place by your Excellency's Government to address the disparate social and economic conditions of First Nations communities, as compared to non-Aboriginal communities, as well as the disparate social and economic conditions between and among First Nation communities. I understand that the information on this subject may be vast, so in particular any information about successful programs and policies in this regard would be most welcome.

I would appreciate a response within sixty days. I undertake to ensure that your Excellency's Government's response is accurately reflected in the report I will submit to the Human Rights Council for its consideration or in any other public statement I may make in relation to this situation.

I undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report I will submit to the Human Rights Council for its consideration.

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

James Anaya
Special Rapporteur on the rights of indigenous peoples