

LUBICON CAMPAIGN FACTSHEET #2

United Nations Human Rights Bodies on Canada's Treatment of the Lubicon Cree

Over the last two decades, Canada's treatment of the the Lubicon Cree has been repeatedly condemned by United Nations human rights bodies and special mechanisms. No other human rights case in Canada has been so frequently criticized. While the recommendations of the bodies are not legally binding, they are considered highly authoritative interpretations of what states should do to live up to their obligations under international human rights conventions and other standards.

1. UN Human Rights Committee (1990)

After a review of evidence from Canadian officials and from the Lubicon, the UN Human Rights Committee concludes that the historic and ongoing failure to protect the land rights of the Lubicon Cree violates Article 27 (the right to culture) of the International Covenant on Civil and Political Rights (ICCPR).

Excerpt:

“Historical inequities, to which the State prefers, and certain more recent developments threaten the way of life and culture of

the Lubicon Lake Band, and constitute a violation of article 27 so long as they continue.”

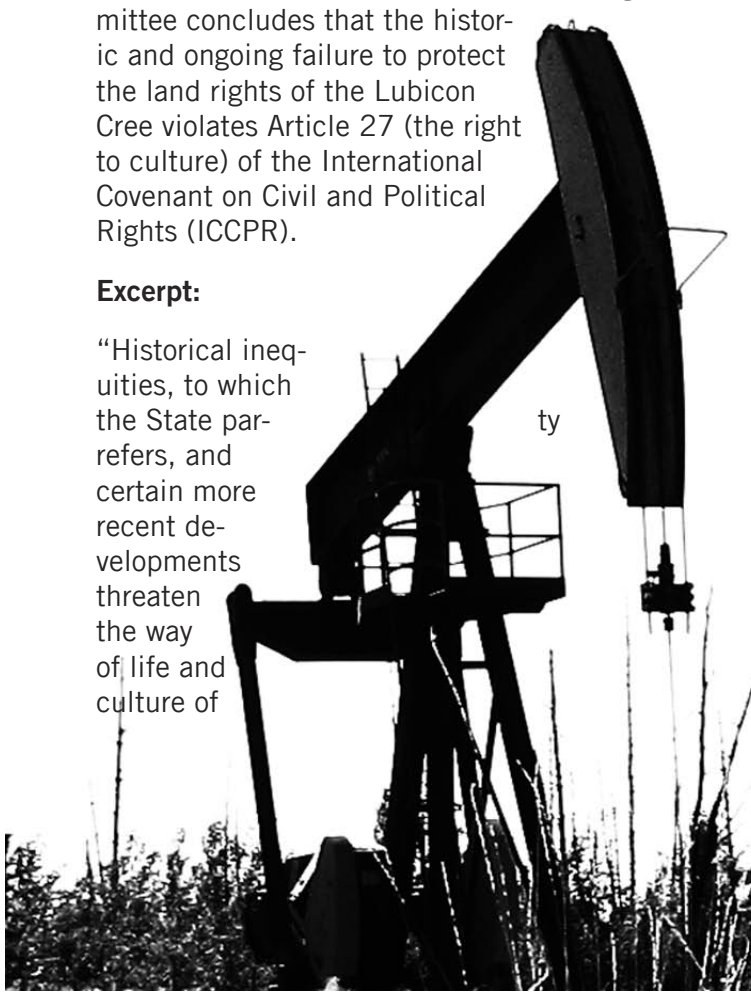
– *Bernard Ominayak and the Lubicon Lake Band v. Canada Communication no. 167/1984, Decisions of the Human Rights Committee, U.N. Doc. CCPR/C/38/D/167/1984 (26 March 1990)*

Government response:

The federal government claims to have fulfilled its obligations by making an offer to the Lubicon Cree – even though that offer was rejected by the Lubicon as inadequate to protect their rights or undo the harms that they have suffered.

Background

The UN Human Rights Committee is the expert body established to monitor compliance with the International Covenant on Civil and Political Rights (ICCPR). The Covenant has been ratified (accepted as law) by 166 states including Canada. Members of the Human Rights Committee are elected by states, but do not represent those states.



The provisions of the ICCPR include the ability for individuals to take complaints to the Human Rights Committee once they have exhausted all opportunities to have their concerns addressed at the domestic level. In 1987 the Committee agreed to hear the Lubicon complaint after concluding that the Lubicon could not achieve effective legal or political redress within Canada. The very fact that the Committee agreed to consider the case of the Lubicon Cree is an indication that this body was not satisfied by the Government of Canada's assurances that it was taking adequate measures to resolve the land dispute. Before setting out on its three-year study of the evidence, the Committee instructed Canada "to take interim measures of protection to avoid irreparable damage to... the members of the Lubicon Lake Band."

2. UN Human Rights Committee (2006)

The UNHRC again expressed concern over the failure to reach a negotiated resolution to uphold the human rights of the Lubicon Cree and called on Canada to ensure that oil and gas development does not jeopardize Lubicon rights.

Excerpt:

"The Committee is concerned that land claim negotiations between the Government of Canada and the Lubicon Lake Band are currently at an impasse. It is also concerned about information that the land of the Band continues to be compromised by logging and large-scale oil and gas extraction, and regrets that the State party has not provided information on this specific issue.

"The State party should make every effort to resume negotiations with the Lubicon Lake Band, with a view to finding a solution which respects the rights of the Band under the Covenant, as already found by the Committee. It should consult with the Band before granting licences for economic exploitation of the disputed land, and ensure that in no case such exploitation jeopardizes the rights recognized under the Covenant."

- *Human Rights Committee, Concluding observations of the Human Rights Committee: Canada, UN Doc. CCPR/C/CAN/CO/5 (20 April 2006)*

Background:

In addition to hearing specific complaints, the UN Human Rights periodically reviews state compliance with their human rights obligations under the ICCPR. For this purpose, the Committee reviews submissions and from the public.

Negotiations between the Lubicon and the federal government broke down in 2003 after federal negotiators said they had no mandate to consider any changes to the government's position on self-government and financial compensation – positions that had already been rejected by the Lubicon. Meanwhile, resource exploitation activity was continuing unabated on Lubicon land.

3. UN Committee on Economic, Social and Cultural Rights (2006)

The Committee on Economic, Social and Cultural Rights also called for protection of Lubicon rights in the face of oil and gas development.

Excerpt:

"The UN Committee strongly recommends that the State party [Canada] resume negotiations with the Lubicon Lake Band, with a view to finding a solution... that ensures the enjoyment of their rights under the Covenant. The Committee also strongly recommends the State party [Canada] conduct effective consultation with the Band prior to the grant of licenses for economic purposes in the disputed land, and to ensure that such activities do not jeopardize the rights recognized under the Covenant."

- *Committee on Economic, Social and Cultural Rights, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada, UN Doc. E/C.12/CAN/CO/4, E/C.12/CAN/CO/5 (22 May 2006)*

Background:

The UN Committee on Economic, Social and Cultural Rights (ESCR Committee monitors the implementation of International Covenant on Economic, Social and Cultural Rights (ICESCR). The Covenant includes protections for the right to education, cultural rights of minorities, the right to health, the right to ad-

equate housing, and the right to food. The Covenant has been ratified (accepted as law) by 160 states including Canada.

In 1998, the Committee had called on Canada “to take concrete and urgent steps to restore and respect an Aboriginal land and resource base adequate to achieve a sustainable Aboriginal economy and culture.”

4. UN Human Rights Committee (2007)

The Committee expressed concern over the continued failure to reach a negotiated solution to protecting Lubicon rights as called for in its 1990 ruling.

Excerpt:

“While noting the complexity of the issues raised by both parties, the Committee observes that they are still not in agreement on an appropriate remedy and urges the State party to resume, without further delay, negotiations with a view to finding a solution to the claims in conformity with the Covenant.”

Background:

In January 2006, the UN Human Rights Committee requested information from Canada on its implementation of the 1990 ruling. Canada’s reply acknowledged that there had been no negotiations since 2003. Although claiming to be willing to negotiate with the Lubicon, Canada’s response to the UN did not indicate any willingness to reconsider its positions on the key outstanding issues of compensation and self-government.

5. UN Special Rapporteur on the Right to Adequate Housing (2008)

After a visit to the Lubicon community, the Special Rapporteur expressed concern over basic living conditions, including the lack of safe drinking water and sanitation, and called for a moratorium on further oil and gas development on Lubicon lands.

Excerpt:

“The Federal Government should resume negotiation with the Lubicon Lake consistent to the Human

Rights Law instruments including the Declaration on the rights of indigenous people.”

- *United Nations Special Rapporteur on adequate housing, Miloon Kothari, Mission to Canada, 9 – 22 October 2007, statement made in Ottawa (22 October 2007).*

“...during his visit to the Lubicon Lake Nation, the Special Rapporteur could witness how families still live without access to potable water and sanitation in appalling living conditions. He also noted the destructive impact of oil extraction activities that continue to lead to loss of lands and the asphyxiation of livelihoods and traditional practices.”

“...various extractive industries – such as TransCanada Pipeline – continue to work and to develop their activities on the territory under claim. These activities, which seem in contradiction with treaty bodies’ recommendations and the right to self-determination and control over natural resources of this community, they have a direct impact on the human rights, including adequate housing of these communities because of the water and air pollution they generate and critical land area taken away from the communities.”

“In line with UN treaty body recommendations, the Special Rapporteur calls for a moratorium on all oil and extractive activities in the Lubicon Region until a settlement is reached with the Lubicon Lake Indian Nation. The Federal Government should resume negotiation with the Lubicon Lake Nation consistent with the Human Rights instruments including the UN Declaration on the Rights of Indigenous Peoples”.

“Until a settlement is reached no actions that could contravene the rights of Aboriginal peoples over these territories should be taken. In that regard, a moratorium should be placed on all oil and extractive activities in the Lubicon region until a settlement. Moreover, activities of private companies on Aboriginal lands – regardless of the status of the claim – should be carried out only with consultation and approval of all Aboriginal and concerned communities. The Special Rapporteur reaffirms the importance of accountability of private actors and calls for respect for human rights in their activities, policies and projects.”



“Authorities should genuinely engage with Aboriginal communities to resolve as soon as possible land claims such as in the Lubicon region so that housing problems can be resolved on a longer-term basis. In the mean-time urgent steps should be taken to improve housing and living conditions regardless of the status of the land claims. Until a settlement is reached no actions that could contravene the rights of Aboriginal peoples over these territories should be taken.”

- *Human Rights Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Miloon Kothari: Addendum: Mission to Canada (9 to 22 October 2007), A/HRC/10/7/Add.3 (17 February 2009).*

Background:

“Special Rapporteur” is a title given to individuals working on behalf of the United Nations to investigate, monitor and recommend solutions to human rights problems related to a specific theme. Special Rapporteurs often conduct fact-finding missions to countries to investigate allegations of human rights violations.

The Special Rapporteur on the Right to Adequate Housing visited Canada in Oct 2007. During his mission the Special Rapporteur conducted an on-site visit to the Lubicon community of Little Buffalo.

6. UN Committee on the Elimination of Racial Discrimination (2008)

In a letter to the Canadian government, the UN Committee on the Elimination of Racial Discrimination raised concerns over the licensing of a massive natural gas pipeline across Lubicon land.

Excerpt:

“... the committee has been aware of the unresolved dispute concerning the North Central Corridor Pipeline (TransCanada Corporation) between the Lubicon Lake Indian Nation and the federal and provincial governments. The information received points to a lack of clarity with regard to the land rights over territory through which the Pipeline would be routed,

and therefore to doubts as to whether the Government of Alberta and the Alberta Utilities Commission may legitimately authorize the construction of a pipeline across Lubicon Territory without prior Lubicon consent.”

- *Committee on the Elimination of Racial Discrimination, Letter to His Excellency, Mr. Marius Grinius, Ambassador, Permanent Mission of Canada to the United Nations at Geneva, Early-Warning Measures and Urgent Procedures (15 August 2008)*

Government response:

The federal government has responded that “The Lubicon Lake Nation was consulted before the project was approved... and was also afforded several opportunities to voice its concerns directly” to TransCanada, the Province of Alberta and the Alberta Utilities Commission.

Background:

The United Nations Committee on the Elimination of Racial Discrimination (UN CERD) is the treaty body responsible for monitoring implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. The Convention has been ratified (made into law) by 173 states, including Canada. In addition to regular reviews of state compliance, the UN CERD also has mechanisms to respond to specific allegations of human rights violations, including a mechanism called Early-Warning Measures and Urgent Procedures.

In November 2007, TransCanada applied to build a massive natural pipeline across Alberta that would include a section crossing Lubicon land. At the time of TransCanada’s application, the company told Alberta’s regulatory body that during “extensive consultation” with First Nations communities there were “no objections” to the project. In fact, the Lubicon had repeatedly told TransCanada that they would object to the pipeline unless TransCanada recognized the existence of unceded Lubicon land rights and dealt with Lubicon environmental and safety concerns prior to making its application to the province. The Lubicon were denied standing in hearings before the Alberta Utility Commission which refused to consider the underlying issue of Lubicon ownership of the land.