

CANADA

20 YEARS' DENIAL OF
RECOMMENDATIONS MADE
BY THE UNITED NATIONS
HUMAN RIGHTS
COMMITTEE AND THE
CONTINUING IMPACT ON
THE LUBICON CREE

**AMNESTY
INTERNATIONAL**



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1. BACKGROUND

Twenty years ago, on 26 March 1990, the United Nations Human Rights Committee (the Committee) adopted its views on the case of Chief Bernard Ominayak and the Lubicon Lake Band vs Canada (Communication No. 167/1984). The Committee ruled that Canada had violated the human rights of the Lubicon Cree, an Indigenous people in the province of Alberta. The ruling was based on evidence that Canada had failed to recognize and protect Lubicon rights to their lands and that intensive oil and gas development had devastated the Lubicon economy and way of life.

The Committee ruled that “historical inequities... and certain more recent developments... threaten the way of life and culture of the Lubicon Lake Band, and constitute a violation of article 27 [of the International Covenant on Civil and Political Rights] so long as they continue.”¹

At the time of the decision, the Government of Canada assured the Committee that it was prepared to reach a negotiated resolution of the Lubicon land dispute. The Committee agreed that a negotiated settlement would be an appropriate remedy. To date, however, no such settlement has been reached. The last negotiations between the Lubicon and the federal government broke down in 2003.

Despite the fact that no agreement has been reached, oil and gas development has continued – and even accelerated– on the disputed land. To date, more than 2,600 oil and gas wells have been drilled on Lubicon lands. This is more than five wells for every Lubicon person. More than 6,754 square kilometers, or almost 70% of Lubicon territory, has been leased for non-renewable resource extraction. This includes 1,395.6 km² of *in situ* tar sands development, a controversial method of oil extraction in which large volumes of pressurized water or steam are used to extract heavy oil.

As a consequence of continued oil and gas development throughout the traditional territory, it is now all but impossible for the Lubicon to carry out the hunting and trapping activities that are central to their cultural identity and which once formed the basis of their economy.² The federal government has treated compensation for this harm and the delivery of services to the community as benefits to be negotiated as part of the resolution of the land dispute. Consequently, the Lubicon people have received little assistance to cope with the loss of traditional livelihoods or to develop alternative sources of livelihood and subsistence. Their community does not even have access to many of the services taken for granted in other communities in Canada such as safe drinking water and sanitation.

After visiting the Lubicon community of Little Buffalo in 2007, the UN 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 (Special Rapporteur on adequate housing) described “appalling living conditions” and “the asphyxiation of livelihoods and traditional practices” as a consequence of “the destructive impact of oil extraction activities.”³

As was the case when they brought their initial complaint before the Committee, the Lubicon

continue to report pervasive health and social problems associated with poverty, cultural erosion, and the lack of opportunities for young people. These problems include high rates of infectious disease such as tuberculosis; disproportionate numbers of miscarriages, stillbirth and other maternal health concerns; and high rates of family violence, alcoholism, substance abuse and suicide.⁴

In 2008, a member of the Lubicon Band Council told Amnesty International, "There are no human rights here. They don't exist. And the proof is in our graveyards. We're having suicides now. There is no future that the young people see, and they basically give up."⁵

Amnesty International makes no claims to speak for the Lubicon people. The Lubicon have very ably brought their concerns to UN treaty bodies and special procedures on numerous occasions. We are, however, taking this opportunity to present our own views as an independent human rights organization that is deeply concerned by the ongoing violation of the rights of the Lubicon Cree.

Amnesty International is gravely concerned that 20 years after the Committee adopted its views on the case, the Lubicon Cree continue to suffer serious human rights violations. Canada's failure to act in a timely and just manner to address these violations is unacceptable. The Lubicon situation also exemplifies broader problems in Canada's treatment of Indigenous peoples, particularly in respect to land rights, that have long been of concern to the international human rights system. Furthermore, Canada's failure to act in good faith to implement the views and recommendations by UN treaty bodies and special procedures on this case sets a poor example for the international community, especially when Canada is often held up as a model of the rule of law and human rights protection.

2. THE EVOLUTION OF INTERNATIONAL HUMAN RIGHTS STANDARDS

The Human Rights Committee's 1990 decision on the Lubicon case was among the earliest examples of UN treaty bodies recognizing the central importance of secure land tenure to Indigenous peoples' enjoyment of their collective and individual human rights. Over the last two decades, an important body of international human rights norms and standards has emerged in this area.⁶ These developments are crystallized in the 2007 UN Declaration on the Rights of Indigenous Peoples. Although the vast majority of its provisions are directly relevant to the Lubicon situation, the following bear emphasis:

- The right to self-determination (article 3)
- The right to self-government (article 4)

- The right to culture and to protection from cultural destruction (article 7-16)
- The right to legal recognition and protection of lands, territories and resources (articles 8(b), 10, 25- 32)
- The right to free, prior and informed consent (article 19, 28, 29, 32)
- The right to remedy and restitution when rights to culture, land, subsistence and free, prior and informed consent are violated (articles 8, 20, 27, 28. 40)

Canada has asserted that because it voted against the Declaration at the UN General Assembly, the Declaration cannot be used as a standard to interpret Canada's human rights obligations.⁷ Such a position is contrary to the nature of the Declaration itself which, as was stated by the UN Special Rapporteur on Indigenous peoples, "represents an authoritative common understanding, at the global level, of the minimum content of the rights of indigenous peoples, upon a foundation of various sources of international human rights law."⁸

On 3 March 2010, the federal government made a public commitment to "take steps to endorse" the Declaration.⁹

3. ONGOING CONCERNS OF UN TREATY BODIES AND SPECIAL PROCEDURES AND CANADA'S RESPONSE

Since the Committee's 1990 decision, the failure of Canadian authorities to reach a just resolution of the Lubicon land dispute has been a source of ongoing concern for the Committee and other UN treaty bodies and special procedures. In April 2006, the Committee expressed concern over the failure to resolve the dispute and over the impacts of resource extraction on Lubicon land. The Committee called on Canada to "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", to "consult with the Band before granting licences for economic exploitation of the disputed land" and to ensure "that in no case such exploitation jeopardizes the rights recognized under the Covenant."¹⁰ The UN Committee on Economic, Social and Cultural Rights which monitors implementation of the Covenant on Economic, Social and Cultural Rights repeated this recommendation later that year.¹¹

The UN Special Rapporteur on adequate housing has recommended that, "The Federal Government should resume negotiation with the Lubicon Lake Nation consistent with 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."¹² In August 2008, the UN Committee on the Elimination of Racial Discrimination (CERD) raised concerns over development on Lubicon lands under its early-warning measures and urgent procedures.¹³ The UN Special Rapporteur on the Situation of human rights and fundamental freedoms of Indigenous peoples also raised concerns about the situation of the Lubicon Cree.¹⁴

Canada has recently commented on the Lubicon land dispute in its July 2009 Interim Report to CERD¹⁵ and its reply to the Special Rapporteur on Indigenous peoples¹⁶. Neither response acknowledges the hardships endured by the Lubicon. In both responses, Canada defends its treatment of the Lubicon by: a) arbitrarily rejecting the right of the Lubicon people to their traditional territories; b) blaming the Lubicon for the failure to achieve a negotiated settlement; and c) asserting that the rights of the Lubicon are adequately protected by existing policies and regulations governing resource development. In Amnesty International's view, these assertions are not consistent with the facts of the case and are not compatible with Canada's obligations to uphold human rights without discrimination.

A. RIGHTS TO LANDS, TERRITORIES AND RESOURCES

In its responses to CERD and the UN Special Rapporteur on Indigenous peoples, the Canadian government asserts that Lubicon rights to their traditional territory were fully extinguished by a treaty concluded between Canada and a number of other Indigenous nations in the region in 1899. On the basis of this claim, Canada goes on to assert that the rights of the Lubicon are now limited only to those rights recognized in the 1899 treaty (known as Treaty 8) such as rights "to hunt, fish and trap in Treaty No. 8 territory and to an amount of reserve land." In responding to the concerns of CERD and the Special Rapporteur on Indigenous peoples, Canada consistently uses this categorization of Lubicon rights to define its obligations.

In fact, as Canada has acknowledged in a letter to the Canadian Labour Congress and Amnesty International¹⁷, the Lubicon were not party to Treaty 8. Because they were relatively isolated at the time, the Lubicon were inadvertently left out of the Treaty 8 process. The Lubicon have never joined that treaty or entered into any subsequent agreement to give up their lands and resources. In fact, in the last round of negotiations between the federal government and the Lubicon, Canada asked the Lubicon to join Treaty 8 but no agreement was achieved.

While convenient to state interests, the assertion that Lubicon land rights were extinguished by Treaty 8 is baseless and profoundly discriminatory. Canadian legal tradition recognizes the existence of Indigenous rights to lands, territories and resources pre-dating the arrival of European colonists and the creation of the Canadian state. The treaty process was based on recognition of the need to obtain the consent of Indigenous peoples before the pre-existing legal status of Indigenous lands and territories could be altered.¹⁸ In interpreting the

Canadian Constitution, which affirms the inherent rights of Indigenous peoples, Canadian courts have consistently found that the state must prove any claims that Aboriginal rights have been extinguished and provide strict justification of any infringement of these rights.¹⁹ Furthermore, Canadian courts have found that even when the state disputes Indigenous peoples' rights to their lands and resources, the state must take reasonable measures to avoid harm to rights that might yet be established through negotiation or court action.²⁰

B. FAILURE TO REACH A FAIR AND TIMELY AGREEMENT TO RECOGNIZE AND PROTECT LUBICON RIGHTS

There have been five rounds of talks between the Lubicon and the federal government since 1986. At several points during these talks, a negotiated settlement appeared to be close at hand. However the Lubicon and the federal government were not able to reach agreement on the issues of self-government and financial compensation. These are vital issues. The powers that the Lubicon exercise over their land and society, and the redress provided to help rebuild their community and economy are vital to the fulfilment and future protection of rights protected under the Canadian Constitution and international human rights standards.

In its submission to CERD, Canada states, "The Governments of Canada and Alberta are ready and willing to resume negotiations at any time should the Lubicon Lake Nation be willing to return to the negotiating table." The submission also claims that the Lubicon have rejected offers to appoint a special representative "who would determine whether there are any areas of compromise and flexibility in the mandates of each of the parties". The implication is that the Lubicon, and not the federal government, are responsible for the failure to reach a settlement. A similar assertion is made in Canada's response to the UN Special Rapporteur on Indigenous Peoples.

In fact, the Lubicon have clearly and repeatedly expressed their desire to return to meaningful negotiations. In a 19 May 2008 letter to the Minister of Indian Affairs, the Lubicon Council states: "Neither Canada nor the Lubicons can responsibly refuse to pursue a settlement of Lubicon land rights, especially given growing tensions resulting from increasing resource company pressure to proceed in unceded Lubicon territory." In respect to the appointment of a Special Representative, the May 2008 letter states that the Lubicon are "prepared to meet anytime with whomever the federal government sends to the table."²¹

The Lubicon, however, have also said that there is no point in returning to the table if the government is not prepared to genuinely negotiate. The last round of talks between the Lubicon and federal government broke down in 2003 after federal negotiators acknowledged that government positions on compensation and self-government were largely fixed and could not be significantly altered. The Lubicon believe that this is still the case. Statements by the government appear to confirm this.

In a 16 January 2009 letter to the Canadian Labour Congress and Amnesty International, the Minister of Indian Affairs stated that any negotiation with the Lubicon must take place "within the parameters in place for the negotiation of land claims."²² In response to the Special Rapporteur, the federal government elaborated that one of these parameters is that

the government will not recognize the right of self-government "for any specific group."

To date, the federal government has also refused to negotiate an objective formula for determining the level of compensation owed to the Lubicon. Instead, the government has simply insisted that its offers are "fair and reasonable."

While it may be expected that the government and the Lubicon will each have their own views on what constitutes a fair and reasonable settlement, the government must not take positions that violate its obligations under national and international law. Nor should it take unconstructive positions that needlessly block or delay a just resolution of the dispute.

UN treaty bodies and special procedures have repeatedly condemned Canada's land claims policies for requiring Indigenous peoples to accept arbitrary limits to their inherent rights, including the rights of self-government.²³ The office of the independent Auditor General has also criticized Canada's approach to land claims as creating unnecessary barriers to timely conclusion of negotiations.²⁴ It is utterly inappropriate therefore that such policies should define or limit the measures the government is prepared to take to uphold the rights of the Lubicon Cree.

C. PROTECTION OF LUBICON RIGHTS PENDING RESOLUTION OF THE LAND DISPUTE

With little likelihood of an imminent settlement of the Lubicon land dispute, urgent attention must be given to preventing further erosion of Lubicon rights. In its replies to CERD and the Special Rapporteur on Indigenous peoples, Canada asserts that Lubicon rights are being protected by existing policies and procedures governing the licensing of resource development. In Amnesty International's view, the existing regulatory framework has proven utterly inadequate and has allowed Lubicon rights to be ignored in violation of Canadian legal standards and international human rights norms.

The Supreme Court of Canada has determined that even when the State disputes Indigenous ownership of the land, the federal, provincial and territorial governments have an unavoidable obligation to determine how their decision might affect Indigenous peoples and, prior to taking that decision, to take reasonable measures to accommodate Indigenous concerns. While the extent of accommodation required depends on the specific circumstances, the Canadian Supreme Court has found that in at least some instances decisions should proceed only with the "full consent" of the affected peoples.²⁵

Canadian authorities have construed this court-identified duty extremely narrowly. For example, Alberta government guidelines for consultation with Indigenous peoples focus almost exclusively on individual projects, rather than the broader decisions about the scale and nature of resource development. In fact, provincial guidelines explicitly state that "the Government of Alberta does not consult with First Nations prior to the disposition of Crown mineral rights, and First Nations consultation is not a condition of acquiring or renewing mineral agreements."²⁶

The vast majority of oil and gas development in Alberta is also excluded from independent environmental impact assessment, on the grounds that the environmental consequences are already known and can be appropriately managed. It was reported in 2009 that the province is considering reclassifying *in situ* tar sands extraction so that it would also be excluded from environmental impact assessment. Furthermore, there is no environmental impact assessment process to look at the combined, cumulative impact of resource development. This denies affected communities an important source of independent information on the proposed projects.

The province of Alberta has never consulted the Lubicon before issuing leases, licences or permits on their land. All that they have required of companies is that they inform the Lubicon about their operations. The province has not required companies to demonstrate adequate disclosure, effective consultation or meaningful accommodation of Lubicon concerns.

Many companies have, in fact, entered into agreements with the Lubicon before seeking licenses from the province. These voluntary measures are welcome. Unfortunately, however, the Lubicon appear to have little recourse if companies chose to ignore their rights.

In October 2008, an Alberta regulatory agency approved construction of the largest pipeline to date across Lubicon land. The North Central Corridor project not only crosses Lubicon traditional territory, but also borders on an area, intended to be part of the future reserve, that is of particular cultural importance to the Lubicon.

In meetings with the corporation, the Lubicon explained that they had significant questions and concerns about health, safety and environmental consequences of the pipeline. Before dealing with these concerns, however, the Lubicon wanted the company to acknowledge Lubicon rights to their lands and territory. The company refused to do so and proceeded with its application. The Lubicon then tried to raise their objections before the Alberta Utility Commission but were denied standing. Having first determined that the underlying issue of Lubicon ownership of the land was beyond its mandate, the Commission ruled that the Lubicon had not demonstrated that the pipeline would cause harm to a narrower set of rights that it deemed relevant, namely their hunting and trapping rights.

In a response summarized by the Special Rapporteur on Indigenous peoples, Canada characterizes this process as one in which the Lubicon were consulted and had the opportunity to be heard.²⁷ In fact the process provided no acknowledgement or protection of Lubicon rights. As such the process was inconsistent with the legal obligations defined by Canadian courts and fell far short of international human rights standards such as the right of free, prior and informed consent.

4. THE CURRENT SITUATION

In 2009, a serious split developed among members of the Lubicon Band Council leading to two different groups claiming to constitute the Lubicon government. Amnesty International, which does not comment on electoral processes or take positions on the legitimacy of specific governments, takes no position on this dispute. The organization, however, remained in contact with both sides and with others in the community. In Amnesty International's view, the leadership dispute does not change the underlying human rights issues about which there is still common concern among the Lubicon people.

In response to this leadership dispute, the federal government has contracted private sector firms to take over administration of the limited federally-funded services provided to the Lubicon people. Amnesty International is concerned by the implications of the government's actions, which further diminish Lubicon control over their own lives. There is a danger that, even if this does not become a bargaining tool for the federal government, it could further exacerbate the power imbalance between the Lubicon and the government in all future dealings. The federal government must make public its criteria for returning control of these services to the Lubicon people and a timetable for doing so at the earliest opportunity.

5. AMNESTY INTERNATIONAL'S RECOMMENDATIONS

In the 20 years since the Human Rights Committee adopted its views on the case brought by the Lubicon Cree, authorities in Canada have not only failed to reach a resolution to the Lubicon land dispute, they have caused further harm to the Lubicon by allowing unrestrained resource development on the disputed land while denying the Lubicon equitable access to government services.

Amnesty International is continuing to call on the federal government to engage in genuine, good faith negotiations on all outstanding issues in the Lubicon land dispute. The mandate for these negotiations should be determined by Canada's obligations under domestic law and international human rights standards.

Pending such a resolution, urgent measures must be taken to prevent further erosion of Lubicon rights and reduce hardship and suffering among the Lubicon people.

No resource development activities should be permitted anywhere in the disputed land except with the clearly expressed free, prior and informed consent of the Lubicon people.

Interim funding should be provided to ensure delivery of essential services including sanitation and water in manner satisfactory to the Lubicon people.

ENDNOTES

¹ United Nations Human Rights Committee Communication No. 167/1984: Canada. 10/05/90. CCPR/C/38/D/167/1984. Article 27 of the ICCPR provides for the protection of the right of persons belonging to ethnic, religious, or linguistic minorities to enjoy, in community with the other members of their group, their own culture.

² In response to Lubicon protests, the Government of Alberta agreed in 1988 to halt development in three small areas of land that, in a future settlement, would form a Lubicon reserve. These lands are of particular cultural and historical significance to the Lubicon people. However the traditional hunting and trapping economy and way of life of the Lubicon depends on the ecological integrity of their much larger traditional territory. Their rights to this larger territory remain unrecognized and unprotected.

³ United Nations Special Rapporteur on adequate housing, Miloon Kothari, Mission to Canada, 9 – 22 October 2007, statement made in Ottawa (22 October 2007).

⁴ Amnesty International has carried out a number of research missions and visits to the Lubicon Cree territory to document ongoing concerns over the impoverishment, ill-health and social strife resulting from the violation of their land rights. In 2003, Amnesty International published a report on the continued failure to achieve a negotiated resolution of the dispute as called for in the 1990 decision of the UN Human Rights Committee: *“Time is wasting”*: *Respect for the land rights of the Lubicon Cree long overdue*, April 2003, AMR 20/01/2003, <http://www.amnesty.org/en/library/info/AMR20/001/2003/en>. Amnesty International issued a follow-up report in October 2008 that described the ongoing violation of the human rights of the Lubicon Cree: *Land and life under threat: The Lubicon Cree of Canada*. October 2008. AMR 20/006/2008, <http://www.amnesty.org/en/library/info/AMR20/006/2008/en>.

⁵ Dwight Gladue. Quoted in “Our Land, My People: The Struggle of the Lubicon Cree.” Video. Amnesty International, 2008.

⁶ For example, in its general Comment on the right to the highest attainable standard of health, the UN Committee on Economic, Social and Cultural Rights stated:

... in indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension. In this respect, the Committee considers that development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health. (UN Doc. E/C.12/2000/4, 11/08/2000, at para 27.)

The Committee on the Elimination of Racial Discrimination’s *General Recommendation XXIII concerning Indigenous Peoples* includes *inter alia* the following:

The Committee calls in particular upon States parties to... Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken

without their informed consent. (UN GAOR, 52nd Sess., Supp. No. 18, UN Doc.A/52/18 (1997) Annex V at para. 4.)

The concept of free, prior and informed consent is also affirmed in various treaty body recommendations and rulings in respect to specific cases, including Committee on Economic, Social and Cultural Rights, *Concluding observations: Colombia, UN Doc. E/C.12/Add. 1/74*. 30 November 2001; Committee on the Elimination of Racial Discrimination, *Concluding observations: Suriname, UN Doc. CERD/C/SUR/CO/12*, 3 March 2009.

⁷ UN Human Rights Council. Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya. Addendum: Summary of communications transmitted and replies received, 18 September 2009, A/HRC/12/34/Add.1. at paras. 34-5.

⁸ Human Rights Council, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S. James Anaya, UN Doc. A/HRC/9/9* (11 August 2008) at para. 85 (Conclusions).

⁹ Canada. Speech from the Throne. 3 March 2010. <http://www.speech.gc.ca/eng/media.asp?id=1388>.

¹⁰ Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada, UN Doc. CCPR/C/CAN/CO/5* (20 April 2006).

¹¹ 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).

¹² *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), para. 107.

¹³ Committee on the Elimination of Racial Discrimination, Letter from Chairperson Fatimata-Binta Victoire Dah to H.E. Mr. Marius Grinius, Ambassador, Permanent Mission of Canada to the United Nations at Geneva, Early-Warning Measures and Urgent Procedures. 15 August 2008. http://www2.ohchr.org/english/bodies/cerd/docs/Canada_letter150808.pdf

¹⁴ UN Human Rights Council. Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya. Addendum: Summary of communications transmitted and replies received, 18 September 2009, A/HRC/12/34/Add.1.

¹⁵ Canada. Interim Report in follow-up to the review of Canada's Seventeenth and Eighteenth Reports, International Convention on the Elimination of All Forms of Racial Discrimination. July 2009. http://www.pch.gc.ca/pgm/pdp-hrp/docs/cerd/f-rppr_17_18/index-eng.cfm.

¹⁶ Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya. Addendum: Summary of communications transmitted and replies received, 18 September 2009, A/HRC/12/34/Add.1, paragraphs 30-50.

¹⁷ The Honourable Chuck Strahl, Minister of Indian Affairs and Northern Affairs, Letter to the Canadian Labour Congress and Amnesty International, 19 January 2009.

¹⁸ The federal representative who oversaw the conclusion of Treaty 8 stated the principle in this way: "Indians should not be deprived of their occupation rights without compensation and their formal consent." David Laird. "North West Indian Treaties." *MHS Transactions Series 1, No. 67. Manitoba Historical Society 1905.*
<http://www.mhs.mb.ca/docs/transactions/1/treaties.shtml>.

¹⁹ "... the honour of the Crown is always at stake in its dealing with Indian people. Interpretations of treaties and statutory provisions which have an impact upon treaty or aboriginal rights must be approached in a manner which maintains the integrity of the Crown. It is always assumed that the Crown intends to fulfil its promises. No appearance of "sharp dealing" will be sanctioned any ambiguities or doubtful expressions in the wording of the treaty or document must be resolved in favour of the Indians. A corollary to this principle is that any limitations which restrict the rights of Indians under treaties must be narrowly construed.... the onus of proving that a treaty or aboriginal right has been extinguished lies upon the Crown. There must be "strict proof of the fact of extinguishment" and evidence of a clear and plain intention on the part of the government.." *R. v. Badger*, [1996] 1 S.C.R. 771, para. 41.

²⁰ *Haida Nation v. British Columbia (Minister of Forests)* [2004] 3 S.C.R.511:

The Crown, acting honourably, cannot cavalierly run roughshod over Aboriginal interests where claims affecting these interests are being seriously pursued in the process of treaty negotiation and proof. It must respect these potential, but yet unproven, interests.... To unilaterally exploit a claimed resource during the process of proving and resolving the Aboriginal claim to that resource, may be to deprive the Aboriginal claimants of some or all of the benefit of the resource. That is not honourable.

²¹ <http://tao.ca/~fol/lm/080519mailing/080519B02Strahl.pdf>.

²² The Honourable Chuck Strahl, Minister of Indian Affairs and Northern Affairs, Letter to the Canadian Labour Congress and Amnesty International, 19 January 2009.

²³ UN Committee on the Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada, UN Doc. CERD/C/CAN/CO/18 (25 May 2007), para. 22. Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, UN Doc. E/C.12/1/Add.31 (10 December 1998), para. 18. Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, UN Doc. CCPR/C/79/Add.105, 7 April 1999, para. 8. *Human rights and indigenous issues: Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, Addendum: Mission to Canada*, UN Doc. E/CN.4/2005/88/Add.3 (2 December 2004), para. 20. Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, UN Doc. CCPR/C/CAN/CO/5 (20 April 2006) at para. 8. 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), para. 37.

²⁴ Auditor General of Canada, September 1998 Report, Chapter 14—Indian and Northern Affairs Canada—Comprehensive Land Claims. http://www.oag-bvg.gc.ca/internet/English/parl_oag_199809_14_e_9320.html.

Auditor General of Canada, November 2006 Report. Chapter 7 —Federal Participation in the British Columbia Treaty Process—Indian and Northern Affairs Canada. http://www.oag-bvg.gc.ca/internet/English/parl_oag_200611_07_e_14975.html.

²⁵ *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010.

²⁶ The Government of Alberta's First Nations Consultation Guidelines on Resource Development and Land Management. November 14, 2007 Final. http://www.aboriginal.alberta.ca/documents/First_Nations_and_Metis_Relations/First_Nations_Consultation_Guidelines_LM_RD.pdf.

²⁷ UN Human Rights Council. Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya. Addendum: Summary of communications transmitted and replies received, 18 September 2009, A/HRC/12/34/Add.1.