

# International Organization of Indigenous Resource Development

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## **JOINT SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COUNCIL**

### **UNIVERSAL PERIODIC REVIEW ON CANADA**

### **AT THE FOURTH SESSION OF THE WORKING GROUP ON THE UPR (2-13 FEBRUARY 2009)**

#### **Submitted By:**

**Samson Cree Nation  
Ermineskin Cree Nation  
Louis Bull Tribe  
Montana Cree Nation**

**And**

**International Organization of Indigenous Resource Development**

**September 2008**

## **Introduction:**

This joint submission to the Human Rights Council's Universal Periodic Review of Canada is presented by the Maskwacis Cree<sup>1</sup> of the Treaty No. 6 Territory and the International Organization of Indigenous Resource Development<sup>2</sup>.

For over thirty years our representative delegations have been seeking justice, recognition and respect in numerous international fora<sup>3</sup>, including the Human Rights Commission, its subsidiary bodies; and the British High Courts. The focus of this submission is still the same in the hope that this Human Rights Council through its Universal Periodic Review will help to promote better relations among our peoples, tribes and Nations (Witaskêwin)<sup>4</sup> according to the original spirit and intent of Treaty No. 6 and its adhesions.

### Treaty Rights are Human Rights

It is well established law that Treaty Rights are Human Rights. The most serious ongoing and fundamental violation of our human rights by the Crown in the Right of Canada, including the Crown in the Right of Alberta, is the continuing breach of Treaty No. 6. There are many instances and examples. Our delegations have argued those for many years in the courts of Canada and international fora, like the various bodies of the United Nations, the International Labour Organization, the Rotterdam Tribunal, and World Conferences.

We draw attention to the following ongoing breaches. First our Treaty No. 6 is with Great Britain and Ireland. Our Elders believe and understood this to be an international agreement with Her Majesty the Queen. The obligations of this Treaty have been unilaterally transferred to the Crown in the Right of Canada without the free, prior and informed consent of the Maskwacis Cree as a Treaty partner. This fundamental violation of international law has greatly impacted our partnership.

We have presented interventions stating that Treaty No. 6 is prima facie evidence of our inherent rights of self determination and Cree Government.

Since Canada has assumed the Crown obligations it has to date continued to violate our Treaty rights, inter alia: to health, education, livelihood, lands, territories and resources (including water) and free, prior, informed consent. These are done through unilateral and arbitrary policies of the Government, through its bureaucracies and laws. Furthermore, the single and most noticeable evidence of this are the financial reductions and cutback of programs and services which are legal obligations under Treaty.

For these and other reasons, our Elders and leaders, since 1975, have brought international attention to these matters. Beginning in 1977 to date, our delegations have raised Treaty 6 violations as serious concern, including a call to the UN Commission and Sub-Commission on Human Rights to conduct an independent study on Treaties. Professor Miguel Alfonso Martinez (now current Chairman of the Human Rights Council Advisory Committee) as the Special

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<sup>1</sup> Descendants of Treaty No. 6, Between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions: Samson Cree Nation, Ermineskin Cree Nation, Montana Cree Nation, Louis Bull Tribe. Note that this submission is presented without prejudice to the legal positions of these Four Nations.

<sup>2</sup> IOIRD is a UN accredited Non-Governmental Organization by ECOSOC; active in international affairs since 1989

<sup>3</sup> UN, ILO, UNPF, WHO, WIPO, UNESCO, WTO, OAS World Conferences

<sup>4</sup> Witaskêwin is a Cree word to describe the Treaty relationship as living harmoniously and peacefully with one another

Rapporteur conducted an independent nine year study on Treaties including our Treaty No. 6. His final report presents several conclusions and recommendations<sup>5</sup>.

Prior to the UN Treaty Study we presented interventions at the Rotterdam Tribunal on issues regarding our Lands, Territories and Resources. We brought an application before the British High Courts<sup>6</sup> to ensure Treaties were entrenched in the Canadian Constitution before it was (re)patriated to Canada in 1982<sup>7</sup>.

Because our Elders view Treaty No. 6 as a sacred agreement, we have consistently lived our Treaty rights and obligations according to their original spirit and intent as understood by our forefathers. While this information including song, traditional sacred ceremonies, bundles and knowledge is transferred through oral testimony, the Canadian courts have refused to recognize our Elders as experts, indeed in some cases our Elders have been ridiculed and totally disrespected as witnesses in court<sup>8</sup>.

### Treaties are a Solution. The UN Declaration is a Solution

In the face of these ongoing blatant Treaty violations by the Crown (Canada) and that the promotion and defense of our inherent rights having been very costly, we have continued to believe we can achieve justice through the international mechanisms. Our delegations have in good faith pursued this search for respect and justice and now bring it before this Universal Periodic Review. We have always proposed positive interventions. Yes we have presented our complaints but we recommended alternative solutions for consideration in the hope our Treaty No. 6 will be honored, respected and implemented<sup>9</sup>.

Being concerned by having to litigate<sup>10</sup>, we attempted other alternatives to seek recognition of Treaties as solutions. For example the Montana Cree Nation argues for and seeks a true bi-lateral relationship. Domestically, we note where there is serious political will, resolution to conflict can be dealt with in partnership (based on Treaty relationship). A recent good example of a process in Canada was the Joint Task Force on the development of new federal legislation<sup>11</sup>. Noting not all First Nations endorsed the legislation however the model as a method of work merits future consideration and use. We would argue that this presents good evidence of implementation of the UN Declaration article 19, which was well received and accepted by most First Nations and Parliament<sup>12</sup>.

Internationally, an example of good practice was our Co-Chairing the Working Group on the Preambular Paragraphs and Article 37 on Treaties during the consideration by the Inter-sessional Working Group of the Commission on Human Rights. It is very important to note that our delegation co-chaired these sessions with the delegation of Canada and they have since publicly stated their support for the work and the article on Treaties in the UN Declaration<sup>13</sup>. Our effort

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<sup>5</sup> E/CN.4/Sub 2/1999/20

<sup>6</sup> Indian Association of Alberta case *R. v. Secretary of State for Foreign and Commonwealth Affairs, ex parte Indian Association of Alberta*, [1982] 2 All E.R.

<sup>7</sup> Constitution Act, 1982, being schedule B to the Canada Act 1982 (U.K.) 1982 c.11

<sup>8</sup> Cases such as the Samson Cree Nation: Buffalo v. The Queen, and the Sawridge Band and Her Majesty the Queen

<sup>9</sup> Interventions to the UN Working Group on Indigenous Populations and

<sup>10</sup> Ermineskin Tribe v. Her Majesty the Queen in Right of Canada filed in the Court of Queen's Bench of Alberta August 05, 2008

<sup>11</sup> For the first time new legislation was jointly drafted by representatives of First Nations and the Government of Canada.

<sup>12</sup> Article 19 of the UN Declaration: "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."

<sup>13</sup> Second UN Expert Seminar on Treaties (report to be presented) Statement by the Government of Canada [page 3 paragraph3] "Nonetheless it should be noted that Canada, together with Willie Littlechild, led consultations on the Declaration's Treaty provisions and supports the consensus text that emerged on Treaties..."

to develop better relationships based on Treaty No. 6 as a Nation to Nation agreement is further evidenced by our role as Chairperson Rapporteur of the First UN Expert Seminar on Treaties in Geneva 2003<sup>14</sup> and hosting in the Maskwacis Territory of Treaty No. 6 the Second UN Expert Seminar on Treaties<sup>15</sup>. These were as follow up implementation of a recommendation from Professor Martinez as Special Rapporteur of the UN Treaty Study. The success of these important international activities is again because we work together in good faith as Treaty partners. These good practices give us hope that we can indeed bring about better understanding as peoples that results in peaceful co-existence. We believe the UN Declaration on the Rights of Indigenous Peoples and Treaty No. 6 offer the framework for better relations and reconciliation we seek in Canada. We suggest, however, more awareness of Treaty is necessary which can be addressed as Human Rights education.

Finally it is our view that every preambular paragraph and article of the UN Declaration is relevant to Treaty No. 6 and indeed we restate "it is therefore also a UN Declaration on Treaties and Treaty Rights." We also by resolution support and endorse the submissions of the Grand Council of Crees (Eeyou Istchee), the Assembly of First Nations and the Amnesty International (Canada) whom we've had the honour of working with on common interests for many years<sup>16</sup>. We have presented two major submissions. As further background information to this submission we refer to two major interventions our delegations presented to the United Nations and the UN Permanent Forum on Indigenous Issues: "Implementing Treaty Rights at the International Level: The Role of the UN Declaration on the Rights of Indigenous Peoples" (HR/CANADA/TSIP/SEM/2006/BP.3) and UNPF6 Item 3 Special Theme: "Territories, Lands and Natural Resources" (E/C.19/2007/CRP.9)

#### Recommendations:

In conclusion we trust this first Universal Periodic Review on Canada by this new Human Rights Council mechanism, which we view as a first implementation of article 42 of the UN Declaration<sup>17</sup>, will consider three recommendations which we respectfully submit be addressed to Canada:

1. Establish House of Commons/Senate Committees in the Parliament of Canada on the International Affairs of Indigenous Peoples
2. Utilize the UN Declaration on the Rights of Indigenous Peoples as Principles and Minimum Standards in the Implementation of Treaties to Ensure Better Relations and Peaceful Co-existence
3. Introduce a curriculum of studies on Indigenous Treaties and Agreements based on Indigenous oral traditions and perspectives for all Schools across Canada to promote Human Rights education.

Thank you for your kind consideration to this information which we respectfully submit.

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<sup>14</sup> E/CN./Sub.2/AC.4/2004/7 Report on First Expert Seminar on Treaties Chairperson Rapporteur Wilton Littlechild

<sup>15</sup> The Second UN Expert Seminar on Treaties (14-17 November 2006 Hobbema, Alberta Canada) Final Report to be presented

<sup>16</sup> Four Nations Chiefs and Councils meeting on September 05, 2008

<sup>17</sup> Article 42 "The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration."