



Asubpeeschoseewagong Netum Anishinabek

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Submission on the sixth periodic report of Canada to the United Nations Committee
on Economic, Social and Cultural Rights

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This memorandum, submitted to the United Nations Committee on Economic, Social and Cultural Rights ahead of its upcoming review of Canada, highlights areas of concern for the Committee's consideration of the Canadian government's compliance with the International Covenant on Economic, Social and Cultural Rights. It contains information on the treatment of our First Nation and our rights by the Government of Canada, and relates to Covenant Articles 1, 2, 6, 11, 12, and 15. It proposes issues and recommendations that we hope the Committee will raise with the government.

To:

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BACKGROUND

I am writing on behalf of the Asubpeeschoseewagong Netum Anishinabek, also known as Grassy Narrows First Nation. In our community of about 1,500 people, over 900 of whom live on our reserve, children and youth outnumber the adults. We are deeply concerned about the future of these young people. We do not want them to inherit the legacy of human rights violations endured by previous generations.

We hope that the Committee will use the opportunity of this review to ask Canadian authorities to respond to the abuse of our fundamental human rights described below.

MERCURY POISONING

1. Throughout the 1960s, the provincial government of Ontario allowed a pulp and paper mill to dump approximately 9 metric tonnes of mercury into the English and Wabigoon River system that flows through our land. Mercury is extremely dangerous in the aquatic environment, accumulating in the flesh of fish, especially those species that are higher on the food chain, and poisoning those who eat the fish. Independent studies have shown that even today mercury persists in unusually high levels in our river sediment and that this mercury continues to be taken up and accumulated in the food chain. No cleanup has ever been done of the contaminated river system even though the government scientists hired to examine the problem recommended remediation methods in the 1980s.

2. The English and Wabigoon River system is the lifeblood of our people. Fishing is a central part of our culture, of who we are as a people. Fishing also provides a healthier and more affordable alternative to dependence on store bought food. Before the river was contaminated many of our people made good livings as commercial fishers, guides for sports fishers, or working in fishing lodges.

3. The contamination of our fish has created a severe health crisis in our community. We have had many cases of chronic mercury poisoning. This has resulted in pervasive, debilitating health problems such as deteriorating motor control and coordination, damage to the brain, nervous system, kidneys, heart and other organs, loss of touch and the experience of numbness and tingling, and loss of vision, speech and hearing. Even among children, we have cases of neurological and developmental problems linked to mercury. These concerns have been confirmed by leading experts on mercury poisoning from the Centre for Minamata Studies at Kumamoto Gakuen University in Japan, who have carried out a series of tests in our community since 1975.

4. The federal and provincial governments have never fully acknowledged the mercury poisoning that we are suffering. There has been no long term tracking of the health of people exposed to mercury, nor adequate health treatment to assist in their care and rehabilitation. The federal and provincial governments have not

recognized the testing carried out by the Japanese scientists, even though those scientists are world-leading experts who have received international awards. There has never been an apology.

5. In the 1980s, the federal and provincial governments did agree to establish a Mercury Disability Board that provides limited financial compensation to some of the community members exhibiting symptoms of mercury poisoning. However, most people who apply for compensation are turned down. This includes two-thirds of community members that the experts from Japan have diagnosed as being impacted by mercury. In addition, the rate of compensation has never been increased to account for inflation, with the result that the real value of the compensation has declined by half since the program started. Furthermore, the government has not provided specialized medical treatment specific to the problem of mercury poisoning.

CLEARCUT LOGGING WITHOUT CONSENT

6. Unfortunately, since the mercury issue first came forward in the 1970s and 80s, governments in Canada have not met their obligation to prevent further harm to our community and to our rights. Large-scale, industrial clearcut logging licensed by the province has resulted in the destruction of traplines, driven away important animal species and destroyed patches of berries and plant medicines. As a result, other important sources of food, livelihood and cultural practice have been taken from us. In addition, we have also become aware of scientific research that shows clearcut logging releases additional mercury from the forest into the waterways.

7. The people of Grassy Narrows are united in our opposition to further clearcut logging. In 2002, youth from the community launched a blockade against clearcut logging that still stands today. In January 2007, the Chief and Council, the Clan Mothers, the Elders Council, the Trappers Council, the Youth Council, and the blockaders together declared "a moratorium on further industrial activity in our Traditional Territory until such time as the Governments of Canada and Ontario restore their honour and obtain the consent of our community in these decisions that will forever alter the future of our people."

8. Our moratorium has been accepted by a number of major corporations and investment groups. The provincial government, however, has never acknowledged that we have a right to say no to development that threatens our rights. A new forest management plan adopted by the province in December 2013 against the express opposition of our people would allow new clearcutting on our traditional territory.

9. We asked the province to put their forest management plan through an environmental review process, in order to look at the impact of mercury release into our waterways. Given that our river system still experiences high levels of mercury that threaten our health and way of life, we believe the province should at the very least refrain from adding more mercury to the system. In December 2014, the

province decided that its latest logging plans would not even been subject to an environmental review. In response to serious concerns raised by our community over the potential that soil leaching and run-off from clearcuts would introduce more mercury into the river system, the province expressed confidence that its existing forest management rules would address any risk. This is in sharp contrast to the peer reviewed scientific studies which find that clearcut logging in the boreal forest increases mercury levels in fish and the province's own statement that no mitigation measures have ever been tested.

10. Treaty 3 is an agreement made in 1873 between Canada and our Anishinaabek people that recognizes our ongoing right to maintain our way of life throughout our traditional territory, of which our reserve is only one small part. In July 2014, a Supreme Court of Canada decision affirmed the province's solemn obligation to uphold the treaty and protect our harvesting rights. Grassy Narrows is currently in talks with the provincial government over forest management, and has also had meetings with provincial officials about the mercury issue. However, these talks have not yet lead to meaningful respect for our rights and the province refuses to commit to a moratorium on logging while we talk. The outcome of these talks remain uncertain and we remain deeply concerned that, as the province's unilateral decisions about logging on our lands demonstrates, our rights remain effectively unprotected. Meanwhile, the federal government has done nothing to protect us.

LACK OF ACCESS TO POTABLE WATER

11. Our water treatment plant has been incapable by design of producing safe drinking water for our people since it was commissioned in 1994. Our central piped water has been on a continuous boil water advisory since 2014 and neighbourhoods with well water have been on a do not consume order since 2013. We have many unexplained illnesses in our community. Some of the chemicals in our water cannot be removed by boiling. For these reasons we have been in a state of emergency due to our drinking water crisis since August 2015.

12. Our direct filtration system is incapable of removing *Cryptosporidium* from our surface water source—a potentially fatal parasite. Ontario's Ministry of Environment had regulations requiring effective filtration of *Cryptosporidium* off reserve since 1987, yet INAC funded the building of our system in 1993 with inadequate filtration. Our community was not placed on a continuous boil water advisory by Health Canada until 2014 and so our people drank water without adequate *Cryptosporidium* filtration for two decades.

12. Following the Walkerton Inquiry Ontario has required that drinking water treatment plants attain a threshold value for chlorine concentration and contact time (CT value). Our plant is structurally incapable of attaining the required CT value and therefore cannot reliably disinfect our water.

13. We have had recurring problems with coliform in our drinking water. Recently, Health Canada testing found unsafe levels of coliform in our drinking water through testing at a new MOECC installed treated water sampling tap. Instead of taking action to fix the problem Health Canada erroneously dismissed the finding as a sampling error and switched to a new sampling location.

14. Our water has chronically had levels of disinfection byproducts (DBPs) including THMs and HAAs at levels above the safety guidelines. These DBPs are potentially cancer causing and are also potentially linked to a wide range of other health impacts. Some of these DBPs are not removed by boiling. Some of the highest levels of DBPs are found at the school and daycare and have been reported since 1999 at least.

15. A series of engineering assessments including one in 2001 and another in 2011 found our drinking water treatment system and our source water to be high risk due to fundamental problems. There is no source water protection plan and no watershed management plan in place for our region and yet our source water is subject to potential impacts from dams, logging, mining, pulp mill effluent and sewage. And yet nothing substantive has been done to improve the safety of our drinking water system.

16. As a result of our state of emergency INAC now re-imburses our community for the purchase of bottled water for our people. However, INAC limits this water to 4.5 L per person per day. This is not sufficient to meet our needs for drinking, cooking, brushing our teeth, washing our faces, etc. We get no support in providing bottled water to our school, recreational center, Elders' center, hockey rink and other community spaces. We are told that we can bath our babies and children in the tap water but that we must make sure they do not open their mouths. We are told to buy tap mounted filters if we are concerned about DBPs but we cannot afford them. We receive no support for the storage and distribution of bottled water to people in our community such as Elders and people with disabilities. Our community is at risk of going into debt due to expenses related to our drinking water crisis.

17. Statistics Canada data from 2005 show a median income at Grassy Narrows First Nation of only \$6,112. Grassy Narrows residents have a dramatically lower median income than recorded for all residents of Canada in 2005 which was \$30,000 for females and \$46,900 for males. This inequity in income makes it harder for us to obtain sufficient healthy food and safe water for our people. It also makes us less able to deal with the cumulative impacts of mercury poisoning, clearcut logging, unsafe water, relocation, hydro damming, residential schools, and racism. Previously our community had near full employment as fishers and guides and an extensive traditional economy. This was severely impacted by relocation, hydro damming, the closure of fisheries and lodges due to mercury poisoning, clearcut logging and other government decisions that were made without our consent. We are further excluded from the mainstream economy by racism, inadequate education funding, and lack of adequate health care and treatment for our people.

18. We have yet to receive any support towards the study, design, and build of a new water treatment plant. We are told that we will not receive a response to our request for this support until April. We are told by the government that the soonest we could have a new water treatment plant is 5-10 years from now if we begin on the necessary studies immediately.

VIOLATIONS OF RIGHTS

In our view, the actions of the federal and provincial governments outlined above represent a serious, ongoing violation of rights protected under the Covenant, including:

- the right to self-determination, the right to sovereignty over our natural resources and the right not to be deprived of our means of subsistence (Article 1);
- the prohibition against racial discrimination (Article 2);
- the right to earn a living (Article 6);
- the right to an adequate standard of living, including the right to food (Article 11);
- the right to health (Article 12);
- and the right to culture and the benefits of scientific progress (Article 15).

Given that the rationales given for the denial of our rights have always related to costs – the cost of providing redress or the cost of not logging our lands – we believe that the actions of governments in Canada are also in violation of the requirement of Article 2 that each state must take steps “to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant.”

RECOMMENDATIONS

In its upcoming Committee review of Canada, Grassy Narrows encourages the Committee to ask the State party questions and to make recommendations about the following:

- A plan and timeline for remediating the 9,000 kg of mercury that was dumped in our river following the recommendations of leading independent scientists in that field.

- Concrete steps to ensure that the right to free, prior, and informed consent is respected in any decisions about logging, mining and other industries on our homeland.
- A timeline for providing our full community with safe potable water from a new state of the art drinking water treatment, storage, and distribution system.
- Concrete steps towards eliminating the income disparity between Grassy Narrows people and other Canadians.
- The timeline and plans for upgrading community and household water and wastewater systems on First Nations reserve to be consistent with level of service and quality enjoyed by the majority of Canadians.

Concrete steps the government of Canada will take to address the acute safe drinking water and sanitation issues on many Ontario reserves, including St. Louis Lake 40, Res. #149 and Grassy Narrows.

- Effective measures to ensure that our people can exercise our culture by hunting, fishing, trapping and safely eating our traditional foods throughout our homeland.
- Effective measures to ensure that mercury survivors are adequately compensated and provided with the highest standard of health care, therapy and support.
- Steps to ensure that First Nations people, and women in particular as keepers of the water, can exercise their cultural life related to water, recognizing its spiritual significance.

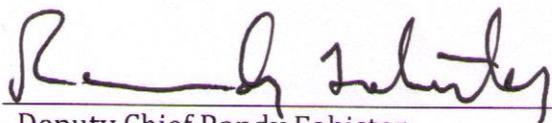
We hope you will find these comments helpful in your examination of Canadian's compliance with the Covenant, and would welcome an opportunity to discuss our findings with you.

Miigwetch,

Quorum of Chief and Council, Asubpeeschoseewagong Netum Anishinabek (Grassy Narrows First Nation)



Chief Roger Fobister



Deputy Chief Randy Fobister

Bill Fobister

Councillor Bill Fobister Sr.

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