

Lubicon Lake Indian Nation

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**Submission to the 70th Session of the UN Committee on the Elimination of Racial
Discrimination with Regard to Lack of Canadian Compliance with UN Human Rights
Decisions and General Recommendation No. 23 of the Committee on the Elimination of
Racial Discrimination
February 19-March 9, 2007
Geneva**

Synopsis

Canada has been the subject of several UN decisions regarding abuse of the human and aboriginal rights of the Lubicon Lake Indian Nation under two international human rights covenants to which Canada is a signatory. Canada has not only ignored these decisions but has misrepresented them to both Canadians and to members of the international community.

Canada's continuing abuse of the human rights of the Lubicon people is also in violation of the International Convention on the Elimination of All Forms of Racial Discrimination, and in particular Section 5 of General Recommendation No. 23 of the Committee on the Elimination of Racial Discrimination.

The Lubicon Lake Indian Nation respectfully requests that the UN Committee on the Elimination of Racial Discrimination take all necessary steps to ensure that Canada complies with UN findings respecting violations of the human and aboriginal rights of the Lubicon Lake people under the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and Section 5 of General Recommendation No. 23 of the Committee on the Elimination of Racial Discrimination.

Background

In 1984 the Lubicons filed a complaint with the UN Human Rights Committee charging Canada with denying the Lubicons the right of basic subsistence as a people under Article 1 of the International Covenant on Civil and Political Rights. Canada argued the Committee should not consider the Lubicon complaint contending that the Lubicons had failed to exhaust all domestic remedies and, despite documented Lubicon existence as a distinct society occupying a distinct Territory prior to the advent of surrounding Canadian society, that the Lubicons are not a people but only "a thinly scattered minority group living in the midst of a more numerous population grouping".

In 1987, after hearing a number of submissions from both sides, the UNHRC agreed to hear the Lubicon complaint concluding "there are no effective (domestic) remedies available to the Lubicon Band". The Committee also instructed Canada "to take interim measures of protection to avoid irreparable damage to (Lubicon) Chief Ominayak and other members of the Lubicon Lake Band". (This decision is reported in UN document CCPR/C/30/D/167/1984 dated 27 July 1987.)

On March 28, 1990, the Thirty Eight Session of the UNHRC ruled on the 1984 Lubicon complaint. The Committee broadened the cultural, religious and linguistic rights protected under Article 27 of the International Covenant on Civil and Political Rights “to include the rights of persons, living in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong”. The Committee then found that “historical inequities...and more recent developments threaten the way of life and culture of the Lubicon people and constitute a violation of Article 27 so long as they continue”. (This decision is reported in UN document CCPR/C38/D/167/1984.)

Accepting Canadian government assurances that Canada was seeking to negotiate a settlement with the Lubicon people that would respect Lubicon land rights, the Human Rights Committee also found that “Canada proposes to rectify the situation with a remedy that the Committee deems appropriate within the meaning of Article 2 of the Covenant (essentially providing that the parties to the Covenant undertake to respect and ensure the rights of all people living within its Territory)”. Commenting on the relationship between this finding and the finding holding Canada in violation of the Covenant as long as the situation continues, a Committee official was quoted in the Canadian media as saying the Committee decision is “telling both sides to continue negotiating in good faith”.

Canadian Government Misrepresentation of the 1990 UNHRC Decision

On May 3, 1990, the Canadian Indian Affairs Minister issued a news release indicating “The finding by the United Nations Human Rights Committee confirms what Canada has acknowledged”. He said “(Canada has) an obligation to the Lubicons which must be settled”. He said “The (Canadian) government is pleased to note that the United Nations considers our efforts at negotiations to be an appropriate remedy to meet that obligation”. He then went on to falsely claim that the Committee had also found that a “take-it-or-leave-it” settlement offer tabled with the Lubicons by Canada in January of 1989 -- which Canada misrepresented to the Committee and which was rejected by the Lubicons because it made no effective provision for the Lubicons to once again achieve economic self-sufficiency -- “more than meets any obligation Canada has under the International Covenant”. (Details of the 1989 “take-it-or-leave-it” Canadian offer are provided in subsequent submissions to the UNHRC.)

Submission to the 85th Session of the UNHRC

In October of 2005 the Lubicons made another submission to the UNHRC pointing out that 15 years had passed, that resource exploitation activity in the unceded Lubicon Territory had continued to wreak irreparable damage to Lubicon society and the Lubicon people, that no “interim measures of protection” had ever been taken by Canada contrary to the 1987 Committee decision, and that Canada had still failed to comply with Committee findings or to rectify the situation.

Ignoring the charge that no “interim measures of protection to avoid irreparable damage” had ever been taken and that resource exploitation activity had continued to wreak irreparable

damage to Lubicon society and the Lubicon people, Canada acknowledged that “Land claim negotiations between the Government of Canada and the Lubicon Lake Indian Nation are at an impasse”. Canada alleged the reason for the impasse is “The Lubicon assert that Canada’s mandate is not sufficient to meet (Lubicon) demands, especially as it relates to the issues of financial compensation and self-government”.

Canada claimed “the (Canadian) Minister of Indian Affairs and Northern Development wrote to (Lubicon) Chief Ominayak (on June 23, 2005) proposing a return to the negotiation table in regard to issues other than compensation and self-government, in order to continue progress toward a settlement of the Lubicon land claim”. Canada claimed “That offer was rejected by Chief Ominayak”.

These statements made by Canada to the UNHRC misrepresent both the reason for the impasse in negotiations and the content of the related exchange of correspondence between the Canadian Indian Affairs Minister and the Lubicon Chief. Negotiations did not reach an impasse because “the Lubicons assert that Canada’s mandate is not sufficient to meet (Lubicon) demands”. Negotiations broke down because Canadian negotiators indicated that they had no mandate at all to negotiate Lubicon self-government as part of a settlement of Lubicon land rights, and because Canadian negotiators refused to discuss financial compensation unless the Lubicons agreed to commence compensation negotiations with a bottom line figure requested by Canadian negotiators after they refused to discuss all substantive bases for financial compensation. (Copies of the exchange of correspondence between the Minister and the Chief are attached to the May 1, 2005 Lubicon submission to the 36th Session of the UNCESR. The complete Lubicon submission is available at: <http://www.ohchr.org/english/bodies/cescr/docs/info-ngos/lubiconlakeindian.pdf>.)

In October of 2005 the Eighty-Fifth Session of the UNHRC made the following concluding observations regarding the 2005 Lubicon and Canadian submissions (UN document CCPR/C/CAN/CO/5):

“The (UNHRC) 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 (Canada) has not provided information on this specific issue. (Articles 1 and 27).

“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 (on Civil and Political Rights), 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”.

Canadian Government Proposal to Negotiate Non-Binding Memorandum of Intent

In November of 2005 Canada proposed to proceed with negotiations on the basis of a non-binding Memorandum of Intent “to pursue an agreement that would include (establishment of an Indian reserve for the Lubicon people and provision of community construction funds)”. The Memorandum of Intent said “All other elements of the Lubicon Lake Claim Settlement Agreement would remain outstanding and eligible for future negotiation”.

What Canada was thus proposing was that the Lubicons agree to set aside long-standing settlement issues as a pre-condition of returning to the negotiating table with no assurance that Canada would ever be prepared to negotiate these key settlement issues -- including economic development, self-government, financial compensation, wildlife management and environmental protection. (A copy of the proposed Canadian Memorandum of Intent is attached to the May 1, 2005 Lubicon submission to the 36th Session of the United Nations Committee on Economic, Social and Cultural Rights.)

A new Canadian government was elected in January of 2006. Between January and March of 2006 Chief Ominayak wrote the new Canadian Indian Affairs Minister five letters offering to return to the negotiating table immediately and to work full time until a mutually satisfactory settlement of Lubicon land rights could be achieved. The Minister did not respond to the Chief’s letters until the following August in a letter again refusing to discuss key settlement items including self-government and financial compensation.

Submission to the 36th Session of the UNCRSCR

On May 1, 2006 the Lubicons made a submission to the 36th Session of the United Nations Committee on Economic, Social and Cultural Rights. The Lubicons pointed out that UNCESCR had called upon Canada in 1998 “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”.

The 2006 Lubicon UNCESCR submission referred to the 1987 and 1990 decisions of the UNHRC and pointed out that there is still no settlement of Lubicon land rights; that no “interim measures of protection to avoid irreparable damage” to the Lubicons had ever been taken by Canada as per the 1987 UNHRC decision; that continuing resource exploitation activity had severely damaged the ecology of the unceded Lubicon Territory and destroyed the traditional Lubicon hunting, trapping and gathering economy and way of life; and that there had been no Lubicon land negotiations between Canada and the Lubicon people since December of 2003.

The 2006 Lubicon submission testified that the Lubicon people had been forced onto welfare in order to survive, lived in overcrowded housing conditions without such basic services as indoor plumbing, and suffered from serious health problems related to resource exploitation activity including cancers of all kinds, a tuberculosis epidemic affecting a third of the Lubicon population, reproduction problems which resulted in 19 stillbirths out of 21 pregnancies in an 18 month period, skin rashes among Lubicon children people so severe as to cause permanent scarring, and near-epidemic asthma and other respiratory problems.

The 2006 Lubicon submission indicated that resource exploitation activity was continuing apace in the unceded Lubicon Territory under licences and permits issued by Canadian

government without consulting the Lubicons contrary to the 2005 UNHRC concluding recommendation.

The Lubicons asked the UN Committee on Economic, Social and Cultural Rights to reaffirm earlier UN human rights decisions on the Lubicon situation and to censure Canada for failure to comply with International Covenants and UN decisions and concluding observations.

On May 4, 2006 -- during the 36th Session of the UN Committee on Economic, Social and Cultural Rights -- Lubicon representatives learned that the Alberta Provincial Government had just announced the June 14, 2006 sale of rights to oil sands under 50,000 hectares of land in the heart of the unceded Lubicon Territory. Extracting oil from the oil sands requires 3 to 6 barrels of superheated water or water in the form of steam to be injected into the fragile boreal subsurface for each barrel of oil produced. The environmental consequences of this process are of great concern, not only to the Lubicons but also to people across Canada and around the world. This June 14, 2006 oil sands sale was conducted without consulting the Lubicon people contrary to the 2005 UNHRC concluding observation that Canada "should consult with the Band before granting licenses for economic exploitation of the disputed land, and ensure that in no case such exploitation jeopardizes the rights (of the Lubicon people) under the (International Covenant on Civil and Political Rights)".

UNCESCR members asked Canadian representatives about the sale of rights to oil sands under 50,000 hectares of Lubicon land without consulting the Lubicons. Canadian representatives ignored the question just as they had ignored UNHRC questions in 2005 about "information that the land of the Band continues to be compromised by logging and large-scale oil and gas extraction".

Asked about negotiations with the Lubicons urged by the UNHRC in its 2005 concluding observation, Canadian officials replied simply:

"That Lubicon claim is not active at this time since the Canadian government offered the Lubicons a proposed offer. The Lubicons rejected that offer. At this particular time we are not negotiating that claim".

Pressed for more information regarding the impasse in Lubicon land negotiations, Canadian officials told the Committee:

"There was back in the 1990's an offer to settle with the Lubicons. The UN felt that offer was appropriate. That offer has since been enriched. It was rejected by the Lubicons.

"Canada had a proposal to deal with self-government. The Lubicons refused to negotiate without wholesale change to the federal mandate on self-government and compensation.

"We look for an offer that's fair to all sides. We can't make the Lubicons negotiate.

“We have an agreement with the Lubicons -- a Comprehensive Agreement -- signed April 6, 2006. It deals with programs and services provided to all Indians. It’s worth almost three million dollars Canadian.

“The Lubicons have all the typical programs and services except for major capital. We continue to provide programs and services to the extent we can.”

The “offer to settle” made “back in the 90’s” referred to by Canadian representatives is the “take-it-or-leave-it” settlement offer made to the Lubicons in January of 1989. The terms of that offer were misrepresented to the Committee by Canada and it was rejected by the Lubicons because it made no effective provision for the Lubicons to once again achieve economic self-sufficiency. Tabling an unacceptable “take-it-or-leave-it” offer does not constitute negotiations.

Whether the government’s 1989 “take-it-or-leave-it” offer has been enriched, as Canadian representatives allege -- or has just been repackaged -- is arguable if one takes into account normal increases in Canadian government subsistence funding formulas and the impact of inflation. What is not arguable, however, is that Canada’s current settlement position, like the 1989 offer, is put forward on a non-negotiable, “take-it-or-leave-it” basis and fails to deal with key settlement items including self-government and financial compensation.

Contrary to claims by Canadian officials, the 1990 UNHRC decision does not say that the Committee “felt” Canada’s 1989 “take-it-or-leave-it” offer was “appropriate”. As UNHRC officials made clear at the time, and as the Committee made clear again in its 2005 concluding observation, the Committee found negotiations to be an appropriate way to rectify the situation but, in the words of the 1990 decision, “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 as long as they continue (underlining added)”.

The claim that “Canada had a proposal to deal with self-government”, but “the Lubicons refused to negotiate without wholesale change to the federal mandate on self-government and compensation”, is also deliberately misleading. The way Canada proposed “to deal with self-government” was to include a paragraph in a settlement agreement agreeing only to talk about Lubicon self-government post-settlement of Lubicon land rights. Canadian negotiators flatly refused, and continue to refuse, to discuss recognition of the right of the Lubicon people to be self-governing as part of an agreement of Lubicon land rights saying they have “no mandate” to negotiate self-government as part of a settlement of Lubicon land rights. (Copies of correspondence between Canadian Indian Affairs Ministers and Chief Ominayak in which Canada’s position on negotiation of self-government is clearly spelled out are attached to the May 1, 2006 Lubicon submission to the 36th Session of the United Nations Committee on Economic, Social and Cultural Rights.)

The “wholesale change to the federal mandate on self-government and compensation” the Lubicons allegedly seek is for federal negotiators to negotiate financial compensation based on substantive bases for calculating financial compensation -- like the value of the resources extracted from unceded Lubicon Territory -- and that Canada rescind secret Canadian Justice Department “Guidelines for Federal Self-Government Negotiators” instructing Canadian negotiators on how to negotiate self-government in ways that are not legally binding on

Canada. In fact the Lubicons ask only that Canada send negotiators back to the table with a mandate to negotiate all outstanding issues in good faith including financial compensation and self-government. (A copy of the secret Canadian Justice Department "Guidelines for Federal Self-government Negotiators" is attached to the May 1, 2006 Lubicon submission to the 36th Session of the United Nations Committee on Economic, Social and Cultural Rights.)

The three million dollar "Comprehensive Agreement" to which Canadian government officials referred is normal Canadian government funding to Indian communities in Canada for education, social assistance, housing and some other basic maintenance programs and has nothing to do with settling outstanding Lubicon land rights. It is hardly adequate to provide 500 Lubicons with bare subsistence in their own unceded resource-rich Territory while the dollar value of the natural resources taken from unceded Lubicon Territory since 1989, without consultation or Lubicon consent, is conservatively estimated -- using government information -- to be in excess of thirteen billion dollars.

Half of the three million dollars referred to by Canadian officials goes directly to the provincial government to run a K-12 school in the Lubicon community of Little Buffalo Lake. The education provided for Lubicon children in this provincial school is demonstrably substandard to the education provided non-aboriginal children in provincial schools.

During the school year the white, English-speaking teachers in the Little Buffalo School live in a little white enclave located in the middle of the Cree-speaking Lubicon community. The white, English-speaking provincial teachers socialize with each other and identify with dominant Canadian society. They do not live in the community during the summer months and take their holidays during the school year out of the community. They have indoor plumbing in their little white enclave. The white teachers are the only people in Little Buffalo with indoor plumbing. The Lubicon people in the surrounding Lubicon community of Little Buffalo Lake do not have indoor plumbing.

The second biggest budget item in the so-called "Comprehensive Agreement" is social assistance at \$234 per month for a single individual. The value of this money must be assessed in the context of a situation where the traditional Lubicon hunting and trapping economy has been destroyed by resource exploitation activity and the Lubicon people can no longer rely on the land to support them.

All of the traditional sources of Lubicon drinking water have been contaminated by resource exploitation activity and the Lubicons are dependent upon bottled water for their drinking water. The Lubicons have to travel over 100 kilometers one way in order to buy bottled drinking water at \$5 for 18 liters. It costs \$65 for gas alone to make the round trip to the nearest commercial facilities to purchase food and water. There is no public transportation and many of the Lubicons don't have vehicles.

Lastly the so-called "Comprehensive Agreement" provides a total of \$140,000 per year for Lubicon residential housing. It barely scratches the surface of the housing requirements of

500 Lubicon people who live largely on welfare in third world housing conditions with as many as three generations living in a small, badly insulated 81 square meter bungalow with no indoor plumbing or toilet facilities. Some of the old people have to be physically helped to get to outhouses through the snow in the cold winter months when temperatures can reach below -40°C.

On May 19, 2006 the concluding observations of the 36th Session of the United Nations Committee on Economic, Social and Cultural Rights were released. Echoing the 2005 decision of UN Human Rights Committee that found Canada in continuing violation of the International Covenant on Civil and Political Rights, the UNCESCR decision reads as follows:

“The Committee strongly recommends that the State party (Canada) resume negotiations with the Lubicon Lake Band, with a view to finding a solution to the claims of the Band that ensures the enjoyment of their rights under the (International Covenant on Economic, Social and Cultural Rights). The Committee also strongly recommends the State party (Canada) conduct effective consultation with the Band prior to the grant of licences for economic purposes in the disputed land, and to ensure that such activities do not jeopardize the rights recognized under the (International Covenant on Economic, Social and Cultural Rights).”

Canada Again Misrepresents UN Decisions

Four days later the Canadian federal Minister of Indian Affairs publicly “shrugged off” the decision of the UNCESCR. He told reporters “Let’s be clear about this”. He said “The Canadian government and the Alberta (provincial) government have been at the table for many years”.

The Canadian Indian Affairs Minister said “We have continued to put fair and reasonable positions on the table”. “In fact”, the Minister claimed, “the position that the government has put on the table was described in a previous United Nations report as a fair and reasonable position”. (A copy of the Minister’s statements responding to the UNCESCR decision and the Lubicon Chief’s response have been provided to OHCHR staff.)

In July of 2006 Lubicon supporters across Canada and Europe started receiving a form letter from the Canadian Indian Affairs Minister which said, in part:

“I thank you for sharing your concerns with me; however it seems that you have been misinformed. At no time have the federal negotiators taken the position that they have no mandate to negotiate issues of self-government and compensation. In fact, in the fall of 2003, Canada made a compensation offer to the Lubicon that (Canada unilaterally deems) was fair to the Lubicon, the other First Nations in Treaty 8 that have settled similar claims (the Lubicons are not a party to Treaty 8) and to all Canadians. Canada’s offer is significantly more generous than the 1989 offer to the Lubicon, which was found by the United Nations Human Rights Committee in 1990 to be ‘appropriate to rectify the situation’ (Underlining added)”.

“In relation to self-government, Canada’s negotiator also has a mandate to negotiate, as part of the land claim settlement, a (non-binding) Framework Agreement on Self-

government (spelling out an agenda for self-government negotiations post-settlement of Lubicon land rights)...When the Lubicon rejected Canada's offer to enter into negotiations on a Framework Agreement, Canada offered to put a clause in the Land Claim Settlement Agreement that stated that self-government negotiations would begin following successful ratification of the Land Claim Agreement, at a time when the Lubicons indicated their readiness to begin.

"The impasse which began in November of 2003 was the result of the Lubicon not accepting Canada's ("take-it-or-leave-it") offers on self-government and compensation. I believe you will agree that this is quite different from your statement that Canada's negotiator does not have a mandate." (Copies of form letters to Lubicon supporters from the Canadian Indian Affairs Minister can be provided upon request.)

On August 18, 2006 the Canadian Indian Affairs Minister wrote the Lubicon Chief responding to the Lubicon Chief's letters of the previous January, February and March. In his letter the Minister indicates that the Canadian land settlement offer includes "a joint offer from Canada and Alberta of \$24 million in compensation". In addition, the Minister wrote, "Canada has also offered to enter into (separate) negotiations on a (non-binding) Self-Government Framework Agreement pursuant to Canada's Inherent Rights Policy (which includes the secret Justice Department 'Guidelines for Federal Self-Government Negotiators' on how to negotiate self-government agreements which are not legally binding on Canada), or to include legally binding clauses in a Land Claim Settlement Agreement, agreeing to enter into self-government negotiations after the successful ratification of the Land Claim Agreement when the Lubicon are ready to begin." ("Take-it-or-leave-it" offers to talk about self-government independent of Lubicon land negotiations, or which legally bind Canada only to talk about Lubicon self-government after the Lubicons have ceded rights to valuable Lubicon lands and resources, pointedly illustrate the nature of the problem leading to the current impasse in Lubicon land negotiations.)

The Minister wrote "I find Canada's offer to be fair and reasonable, made in good faith, to the Lubicon people, to fulfill the Lubicon's outstanding treaty obligation". (In fact no treaty has ever been negotiated between Canada and the Lubicon people ceding Lubicon land rights in any legally or historically recognized way. What the Minister is suggesting is that the Lubicons are covered by the provisions of a treaty negotiated over a hundred years ago with other aboriginal societies, with their own traditional Territories in the area surrounding the Lubicon Territory, which he is claiming supposedly ceded Lubicon Territory to Canada and which, in the Minister's view, Canada's unilaterally determined take-it-or-leave-it offer fulfills.)

The Minister concluded "I am prepared to honour the offer that is currently on the table, as set out herein, and to resume negotiations, under the current federal mandate, to seek a resolution of the remaining elements of a final settlement". (The "current mandate", as the Minister's letter makes clear, includes neither negotiation of financial compensation nor negotiation of self-government as a part of a settlement of Lubicon land rights.)

The Lubicon Chief responded to the Minister's letter on August 31, 2006 as follows:

“Federal representatives have repeatedly advised us that the ‘current mandate’ does not allow for negotiation of financial compensation or recognition of Lubicon self-government. We have made clear from the very beginning that financial compensation and recognition of the Lubicon right of self-government are essential elements of any settlement of Lubicon land rights. There will be no settlement of Lubicon land rights until there is agreement on all outstanding items including financial compensation and recognition of the Lubicon right of self-government.

“As I have indicated to you in letters dated January 24, February 6, March 2 and March 27, 2006, the Lubicon people are prepared to return to the negotiating table tomorrow. All we ask is that the government of Canada send negotiators back to the table with a full mandate to negotiate all outstanding issues in good faith. There is nothing on the Lubicon negotiating table that cannot be settled in short order, including financial compensation and recognition of the Lubicon right of self-government, if only federal negotiators return to the table with a full mandate to negotiate all outstanding items and instructions to get serious about negotiating a settlement of Lubicon land rights within a prescribed period of time. Needless to say, however, a negotiated settlement of Lubicon land rights cannot be achieved if there are no negotiations.” (Copies of the August, 2006 exchange of correspondence between the Canadian Minister and the Lubicon Chief have been provided to the OHCHR staff.)

Current Situation

Canada has not responded to the Lubicon Chief’s letter of August 31, 2006 offering to return to the negotiating table immediately if only Canadian negotiators are sent back to the table with a full mandate to negotiate all outstanding settlement issues in good faith.

Despite the 1987 UNHRC decision instructing Canada “to take interim measures of protection to avoid irreparable damage to Chief Ominayak and other members of the Lubicon Lake Band”, no such measures have ever been taken by Canada.

Despite the 1990 finding of the 38th Session of the UNHRC holding Canada in violation of the International Covenant on Civil and Political rights over Canada’s abuse of the human rights of the Lubicon people for as long as these developments threaten the way of life and the culture of the Lubicon people, Canada has made no effort to alleviate the potentially genocidal consequences of unbridled resource exploitation activity in unceded Lubicon Territory but has continued to misrepresent the situation to both Canadians and to members of the international community.

Despite conclusions by the 85th Session of the UNHRC and the 36th Session of the UNCESCR urging Canada to make every effort to resume negotiations with the Lubicons with a view to finding a solution which respects the rights of the Band under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, no such effort has been made.

Despite conclusions by the 85th Session of the UNHRC and the 36th Session of the UNCESCR urging Canada to consult with the Band before granting licenses for economic exploitation of the disputed land -- and to ensure that in no case such exploitation jeopardizes

Lubicon rights under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights -- no such consultations have been undertaken, and economic exploitation of the disputed land has continued apace to the great and continuing injury of Lubicon rights and interests recognized under two international human rights covenants to which Canada is a signatory. In 2006 alone, Canadian government sold leases and licenses to over 120,000 more hectares of Lubicon land to oil and gas companies for more than \$18 million.

Canadian Violation of the International Convention on the Elimination of All Forms of Racial Discrimination and in particular General Recommendation No. 23 of the Committee on the Elimination of Racial Discrimination

General Recommendation No. 23 of the UN Committee on the Elimination of Racial Discrimination reaffirms that the provisions of the International Covenant on the Elimination of All Forms of Racial Discrimination apply to indigenous peoples. Section 5 of General Recommendation No. 23 reads as follows:

“The Committee especially calls upon State parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.”

Section 5 speaks to the heart of the Lubicon case. By overtly refusing to negotiate compensation and governance issues while continuing to issue licenses and permits for resource exploitation on unceded Lubicon Territory, Canada is violating Section 5 of General Recommendation No. 23 of the Committee on the Elimination on Racial Discrimination.

In 1996 the Royal Canadian Commission on Aboriginal Peoples recognized that secure access to land and natural resources is essential to the protection of the fundamental human rights of indigenous peoples, including the right to be free from racism and discrimination. In 2002 the UN Committee on the Elimination of Racial Discrimination asked Canada for reaction to the recommendations of the Royal Commission on Aboriginal Peoples.

As with decisions, findings, recommendations and concluding observations of the UNHRC and the UNCECSR pertaining to violation of the human rights of the Lubicon people under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Cultural and Social Rights, Canada is ignoring the concerns of the Committee on Elimination of Racial Discrimination and continuing to abuse the human and indigenous rights of the Lubicon people.

Action Sought

The Lubicon Lake Indian Nation respectfully requests that the Committee on the Elimination of Racial Discrimination find Canada in violation of the International Covenant on the Elimination of All Forms of Racial Discrimination, and in particular Section 5 of General Recommendation No. 23; reaffirm earlier UN decisions regarding Canadian abuse of the human rights of the Lubicon people and take all necessary steps to ensure that Canada complies with international human rights covenants to which Canada is a signatory.