



European Alliance for the Self-Determination of Indigenous Peoples

Compilation of UN-objections regarding Canada's policy and treatment of Indigenous (Aboriginal) Peoples as well as regarding the violations of their rights (1998-2017) – SHORT VERSION

Aktionsgruppe Indianer & Menschenrechte (AGIM), Munich, Germany:
www.aktionsgruppe.de

Arbeitskreis Indianer Nordamerikas (AKIN), Vienna, Austria:
<http://www.arbeitskreis-indianer.at/>

Comité de Solidarité avec les Indiens des Amériques (CSIA-NITASSINAN), Paris, France: www.csia-nitassinan.org

Internationales Komitee für die Indigenen Amerikas Schweiz, Zürich, Switzerland: www.incomindios.ch

Menschenrechte 3000, Freiburg, Germany: www.menschenrechte3000.de

Verein zur Unterstützung nordamerikanischer Indianer (ASNAI), Berlin, Germany: www.asnai.de

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Preamble

Canada globally promotes itself as a major leader of human rights. However, results of various UN-human rights procedures show a different picture. There is not one single human rights treaty body or human rights procedure by which Canada has not been criticized – in particular regarding the treatment of Indigenous (Aboriginal) Peoples and the violation of their rights. The following is a compilation of those objections expressed by the various human rights bodies and procedures within the UN since 1998.

The full paper including the relevant paragraphs from the various reports focusing on the violation of the rights of indigenous peoples can be found on:

www.arbeitskreis-indianer.at/uno-objections-canada_2018.pdf

or

<https://tinyurl.com/yatgol5e>

This paper only focuses on statements and recommendations directly regarding the rights and situation of indigenous/aboriginal peoples. Thus, general comments on violations of other human rights which still significantly impact them (e.g. rights of children or women, racism and discrimination, or elimination of torture and ill-treatment) are not listed.

List of Objections (1998-2017) – briefly commented

UN Committee on Economic, Social and Cultural Rights CESCR (1998)

Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada. 10/12/98 E/C.12/1/Add.31, 18.

The Committee criticises the direct connection between Aboriginal economic marginalization and the ongoing dispossession of Aboriginal peoples from their lands, endorses the recommendations of Royal Commission on Aboriginal Peoples that policies which violate Aboriginal treaty obligations and the extinguishment, conversion or giving up of Aboriginal rights and title should on no account be pursued by the State Party.

Committee on the Elimination of Racial Discrimination CERD (2002)

Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada. 23/08/2002. CERD/C/61/CO/3.

There is hardly any other official UN report existing which so strongly criticizes Canada in terms of human rights. Being a signatory to the "International Convention on the Elimination of All Forms of Racial Discrimination" Canada has the obligation to report to CERD periodically. Obviously Canada does not take this obligation seriously because it has failed to do so for a long time. CERD was obviously impressed by the evidence submitted by the indigenous groups and presented a long list of concerns.

General Assembly. Official Records. Fifty-eighth Session. Supplement No. 38 (A/58/38).

Twenty-eighth session (13-31 January 2003). Twenty-ninth session (30 June-18 July 2003).

Report of the Committee on the Elimination of Discrimination against Women. Fifth periodic report Canada

In reporting to the UN General Assembly the Committee expresses concerns regarding many aspects of indigenous (aboriginal) women in Canada: high percentage living in poverty (among other reasons also due to cuts for legal aid and welfare assistance – based on changes in eligibility rules), systematic discrimination in all aspects of their lives; in particular the fact that they constitute a high percentage serving prison sentences and they suffer high rates of domestic violence. The Committee recommends to Canada to ensure that aboriginal women receive sufficient funding in order to be able to participate in the necessary governance and legislative processes that address issues which impede their legal and substantive equality. It also requests the State party to provide comprehensive information on the situation of aboriginal women in its next report (which was not considered as comprehensive enough in the fifth periodic report).

85th Session of the United Nations Human Rights Committee HRC – ICCPR (17 October - 3 November 2005)

Canada's periodic report on the implementation of the International Covenant on Civil and Political Rights (ICCPR). CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT. Concluding observations of the Human Rights Committee. CANADA. CCPR/C/CAN/CO/5

The Committee strongly notes with concern that many of the recommendations it addressed to the State party in 1999 remain unimplemented. It does not buy Canada's assurance of alternative policies to extinguishment of inherent aboriginal rights in modern treaties, and remains concerned that these alternatives may in practice amount to extinguishment of

aboriginal rights. Another objection is how Canada deals with violence against and the violent deaths Aboriginal women.

UN Committee on Economic, Social and Cultural Rights CESCR (May 2006)

On the occasion of the review of Canada's fourth and fifth periodic reports concerning rights referred in the International Covenant on Economic, Social and Cultural Rights

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER

ARTICLES 16 AND 17 OF THE COVENANT. Concluding Observations of the Committee on Economic, Social and Cultural Rights. CANADA. E/C.12/CAN/CO/5

The Committee criticises the discrimination against First Nations women and their children as well as the acts of violence against Aboriginal women, who constitute a disproportionate number of victims of violent death, rape and domestic violence. CERD also notes big concerns about the adverse effects of economic activities connected with the exploitation of natural resources in countries outside Canada by transnational corporations registered in Canada on the right to land, health, living environment and the way of life of indigenous peoples living in these regions. The Committee also notes the disproportionately high rate of incarceration of aboriginal peoples within Canada. It also does not buy Canada's assertion that the "cede, release and surrender" approach has been abandoned regarding Aboriginal title.

Committee on the Elimination of Racial Discrimination CERD (2007)

Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada, 25/05/2007. CERD/C/CAN/CO/18.

The Committee mentions with regret the lack of substantial progress to address discrimination and violence against First Nations women and their children. It also is concerned about the adverse effects of economic activities connected with the exploitation of natural resources in countries outside Canada by transnational corporations registered in Canada on the right to land, health, living environment and the way of life of indigenous peoples living in these regions. CERD is again concerned about the disproportionately high rate of incarceration of aboriginal peoples compared with the general population. It does not buy the information that the "cede, release and surrender" approach to Aboriginal land titles has been abandoned. It recommends that Canada supports the immediate adoption of the United Nations Declaration on the Rights of Indigenous Peoples, and that it considers ratifying the ILO Indigenous and Tribal Peoples Convention No.169

Committee on the Elimination of Discrimination against Women CEDAW. Forty-second session.

Concluding observations of the Committee on the Elimination of Discrimination against Women Canada 07/11/2008 (CEDAW/C/CAN/CO/7)

Many of the concerns and recommendations of the Committee are reiterations from previous concluding observations. The Committee recommends that the State party take immediate action to amend the Indian Act to eliminate the continuing discrimination against women with respect to the transmission of Indian status. It also recommends that the State party ensures that section 67 of the Canadian Human Rights Act is interpreted and applied in a way that provides full protection for aboriginal women against discrimination and full redress for any human rights violations. Although the Committee notes that a working group has been established to review the situation relating to missing and murdered women in the State party and those at risk in that context, it remains concerned that hundreds of cases

involving aboriginal women who have gone missing or been murdered in the past two decades have neither been fully investigated nor attracted priority attention, with the perpetrators remaining unpunished. The Committee calls upon the State party to urgently carry out thorough investigations of the cases of aboriginal women who have gone missing or been murdered in recent decades. Furthermore, the Committee is concerned that a disproportionate number of aboriginal women are incarcerated to address the issue of the over incarceration of aboriginal women and calls on Canada to redesign its classification system for women in the federal prison system. In addition, the Committee addresses the fact that a disproportionately high number of aboriginal children, including girls, are being taken into State custody and recommends that Canada take all necessary measures to address the issue of the separation of aboriginal children from their parents.

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 (2009)

Report of the 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. MISSION TO CANADA (9 to 22 October 2007). A/HRC/10/7/Add.3

The Special Rapporteur notes the concerns expressed about the rise in the number of the homeless and people in inadequate housing and living conditions (in particular Indigenous Peoples). In particular he refers to the connection between the poor housing situation of indigenous peoples and the unresolved land claims land-rights and the housing situation

UN General Assembly Working Group on the Universal Periodic Review (UPR) (2009)

Report of the Working Group on the Universal Periodic Review. Canada. 05/10/2009. A/HRC/11/17

Most of the countries commenting on Canada's human rights record were referring to the poor treatment and/or violation of the rights of Indigenous peoples. They noted that in many cases Canada had not implemented the United Nations treaty body standards and/or recommendations. Most the countries also requested that Canada takes measures regarding the violence against Indigenous women. Many countries were urging Canada to full accept/adopt/ support/implement UNDRIP. The working group formulated 68 recommendations. Canada only accepted less than half of the 68 recommendations, partially rejecting 22 and completely rejecting 14.

Committee on the Elimination of Racial Discrimination CERD (2012)

Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada, 09/03/2012. CERD/C/CAN/CO/19-20.

CERD expressed its concerns about Canada's policy regarding Indigenous Peoples, mentioning disproportionately high incarceration numbers, conflicts over land specifically in regards to treaty rights, Aboriginal Title and extractive industries. Furthermore, it also reflected on violence against women and their disappearance. Most of the entire report deals with concerns regarding indigenous peoples.

Special Rapporteur on the right to food, Olivier De Schutter (2012):

Mission to Canada from 6 to 16 May 2012

The UN Special Rapporteur on Food emphasized the significance of "access to land" in order to have food, promoted the Aboriginal Title and the right to self-determination of

Indigenous Peoples. Thus he expressed his concerns about Canada's federal government policies that have disrupted and even devastated the traditional practices of Indigenous People by removing controls over land and natural resources.

UN Committee against Torture (2012):

Consideration of reports submitted by States parties under article 19 of the Convention. Concluding observations of the Committee against Torture. Canada. 07/06/2014; CAT/C/CAN/CO/6

The Committee is concerned about reports on the excessive use of force by law enforcement officers often in the context of crowd control at federal and provincial levels, with particular reference to indigenous land-related protests at Ipperwash and Tyendinaga as well as the G8 and G20 protests. The Committee is particularly concerned about reports of severe crowd control methods and inhumane prison conditions in the temporary detention centres (arts. 11 and 16).

UN General Assembly Working Group on the Universal Periodic Review (UPR) (2013)

Report of the Working Group on the Universal Periodic Review. Canada. 28/06/2013; A/HRC/11/17 and 17/09/2013; A/HRC/24/11/Add.1

Again most of the countries commenting on Canada's human rights record were referring to the poor treatment and/or violation of the rights of Indigenous peoples and were disappointed that Canada was not implementing the earlier UPR recommendations but flatly denying many of them. E.g., same reaction as 2009: Canada does not accept calls to develop a national action plan for the implementation of the UN Declaration on the Rights of Indigenous Peoples, because it sees UNDRIP just as a non-legally binding, aspirational document. Many countries were urging Canada to fully accept/adopt/support/implement UNDRIP and develop a national action plan for UNDRIP implementation. All these recommendations were not accepted by Canada. More than 20 states raised specific concerns about high levels of violence against Indigenous women in Canada. The report includes 162 recommendations, 58 of these very directly referring to indigenous/aboriginal peoples.

Special Rapporteur on the rights of indigenous peoples, James Anaya (2014)

Report: The situation of indigenous peoples in Canada (07/05/2014). A/HRC/27/52/Add.2

The Special Rapporteur warns of a crisis in Canada when it comes to how aboriginal people in this country are treated, noting that the relationship between the federal government and indigenous peoples is even more strained than a decade ago. The report notes that the "disturbing phenomenon" of missing and murdered aboriginal women has further strained relations, and it calls on Ottawa to launch "a comprehensive, national inquiry" into the issue of why aboriginal women and girls remain vulnerable to abuse.

Human Rights Committee (HRC) (2015):

International Covenant on Civil and Political Rights. Concluding observations on the sixth periodic report of Canada (13/08/2015). CCPR/C/CAN/CO/6

Canada's Comprehensive Land Claims policy, its refusal to consult, ongoing violence against Indigenous protesters and its refusal to hold an inquiry into missing and murdered Indigenous women were among the issues raised in the UN Human Rights Committee report on Canada released today. The report specifically takes Canada to task for its policies leading to "the extinguishment of Indigenous lands and titles." The Committee urged Canada "to resolve land and resources disputes with indigenous peoples and find ways and means to establish their titles over their lands." On the related issue, the Committee pointed out that indigenous peoples "were not consulted, to ensure that they may exercise their right to free, prior and informed consent to projects and initiatives concerning them, including legislation, despite favourable rulings of the Supreme Court." The U.N. report also criticized "the excessive use of force by law enforcement officers during mass arrests in the context of protests at federal and provincial levels, with particular reference to Indigenous land-related protests."

Committee on Economic, Social and Cultural Rights (2016):

International Covenant on Economic, Social and Cultural Rights. Concluding observations on the sixth periodic report of Canada (Advance Unedited Version; 04/03/2016). E/C.12/CAN/CO/6

Canada is failing to advance social equality and justice on many fronts and is not measuring up to the UN International Covenant on Economic, Social and Cultural Rights. The report lists some positive developments, but overall lambastes Canada for its treatment of temporary foreign workers as well as women's rights. It notes that Canadian women are still over-represented in part-time and low-paid work, and repeatedly cites failures regarding Indigenous people and African Canadians and the social disparities they face. Prior consent for Indigenous people regarding the use of their land has not been protected by Canada, the review found. One barrier to a more social and economically equal Canada, is that Canada does not have a justice system that allows its citizen to fight for social rights. The Committee is concerned that, despite certain promising developments and the Government's commitment to review its litigation strategies, economic, social and cultural rights remain generally non-justiciable in domestic courts," the review reads. That affects people who are homeless, disabled, Indigenous or otherwise marginalized, who have little legal basis to argue for their interests, said the UN committee.

Committee on the Elimination of Discrimination against Women CEDAW (2016)

Concluding observations on the combined eighth and ninth periodic reports of Canada. 25/11/2016. CEDAW /C/CAN/CO/8-9.

Canada did not provide the eighth report in time, therefore there were no concluding observations of the Committee since 2008. Again, the concluding observations are - to a large extent - reiterations of previous reports, demonstrating that the situation for indigenous women in Canada is far from having improved. Again, the Committee recommends removal of all discriminatory provisions of the Indian Act that affect indigenous women and their descendants. Despite some activities of Canada regarding gender-based violence against women, the Committee is concerned about and calls on Canada to counteract the continued high prevalence of gender-based violence against indigenous women and girls, the very low number of cases of gender-based violence against women

reported to the police by victims, the low rates of prosecution and conviction and the lenient penalties imposed on perpetrators of gender-based violence against women, the lack of a national action plan, the lack of shelters, support services and other protective measures for women who are victims of gender-based violence, which reportedly prevents them from leaving their violent partners and the lack of statistical data on gender-based violence against women, including domestic violence, in particular on investigations, prosecutions, convictions, sentences and reparation. Despite the establishment of a national inquiry into missing and murdered indigenous women and girls (2015), the Committee recommends that Canada fully implement, without delay, all earlier recommendations issued by the Committee and recommends additional provisions in the mandate of the inquiry, including the investigation of the role of police forces. The Committee further recommends that Canada addresses the root causes of trafficking and the exploitation of women and girls in prostitution by adopting and implementing adequately resourced programmes and other appropriate measures, in particular regarding members of indigenous communities. The Committee again recommends that Canada addresses the issue of disproportionate incarceration of indigenous women.

Committee on the Elimination of Racial Discrimination CERD (2017)

Concluding observations on the twenty-first to twenty-third periodic reports of Canada. 31/08/2017. CERD/C/CAN/CO/21-23.

The UNCERD-report condemned racism and rights violations encountered by Aboriginal Peoples in Canada, echoing Indigenous Nations who made submissions to the committee on their experiences of racial discrimination since the past 150 years of colonial policy and law. While taking note of the recent set of 10 Principles Respecting the Government of Canada's Relationship with Indigenous Peoples, the UN CERD committee however is "deeply concerned" by Canada's continuous violations of the land rights of Indigenous Peoples "in particular environmentally destructive decisions for resource development which affect their lives and territories continue to be undertaken without the free, prior and informed consent of the Indigenous Peoples, resulting in breaches of treaty obligations and international human rights law." The report criticizes that for Indigenous Peoples in Canada "costly, time consuming and ineffective litigation is often the only remedy in place of seeking free, prior and informed consent" and is highly concerned that "permits have been issued and construction has commenced at the Site C dam, despite vigorous opposition of Indigenous Peoples affected by this project". The Committee urges Canada to "immediately suspend all permits and approvals for the construction of the Site C dam" in British Columbia and to "incorporate the free, prior and informed consent principle in the Canadian regulatory system". Additionally, the Committee is alarmed at the continued high rates of violence against indigenous women and girls, urging Canada to take immediate action. The report also found that despite its previous recommendations and multiple decisions by the Canadian Human Rights Tribunal, "less money is reportedly provided for child and family services to indigenous children than in other communities, and that this gap continues to grow".