

**UNITED NATIONS
HUMAN RIGHTS COMMISSION**

UPR SUBMISSION UNDER GENERAL ASSEMBLY RESOLUTION 60/251

**CHIEF ALLAN ADAM
ATHABASCA CHIPEWYAN FIRST NATION
UPR SUBMISSION RE CANADA**

PART I - BACKGROUND

1. Athabasca Chipewyan First Nation (ACFN) is a “Band” within the meaning of Canada’s Indian Act. The Dene people live within the Mackenzie Valley Basin in three jurisdictions within Canada: Alberta, Saskatchewan, and the Northwest Territories. We are Denesuline, the Indigenous Peoples of the Athabasca region. We are the Keepers of the Water of the Athabasca River, Peace River, and Lake Athabasca in Alberta, Canada.
2. The Athabasca River headwaters begin on the Eastern slopes of the Rocky mountains in Alberta and joins with the Peace River at Lake Athabasca. These waters flow north, draining into the Mackenzie Basin and travelling to the Arctic sea. We, the Indigenous Peoples of the Athabasca live on our traditional territories at Fort Chipewyan, downstream from pulp mills, oilsands tailings ponds, oilsands mines, and other industrial developments located along the Athabasca River.
3. The oilsands in Northern Alberta cover 4.3 million hectares (10.6 million acres). In 2003, 30 square kilometers (160 square miles) of land had been directly and detrimentally affected by tar sands development. By the summer of 2006, that number had grown to 2,000 square kilometers (772 square miles), almost a five-fold increase within three years.
4. Tar sands consist of a mixture of sand, clay and a heavy crude oil, or tarry substance called bitumen. To mine the oil the tar is superheated in “cookers” with steam piped into the Earth to make the oil flow. Between 2 and 4.5 barrels of water is required for each barrel of oil produced from the tar sands. The extracted bitumen is later processed in industrial facilities called up graders into synthetic crude oil to be piped to the U.S. for refining. These up grader facilities and their smoke stacks bellow poisonous and polluting emissions into the air. Wastewater is emptied into toxic tailing ponds. Lately, *in-situ* technology is being used to pump steam under the earth making the bitumen to flow through wells using steam or solvents.
5. Some of these toxic-tailing ponds are located next to the Athabasca River, a major tributary in northern Alberta. In 2007, Alberta approved withdrawal of 119.5 billion gallons of water for tar sands extraction. An estimated 82% of this water comes from the Athabasca River.
6. By 2010, the industry is projected to generate 8 billion tons of waste sand and 1 billion cubic meters of wastewater. Tar sands mining are a major source of greenhouse gas emissions and a major contributor to climate change and global warming.

Treaty 8

7. Our ancestors signed a treaty with Her Majesty the Queen of England in 1899, after the Geological Survey of Canada discovered the bitumen reserves. In exchange for allowing Europeans access to our traditional territories, we were guaranteed the protection of our traditional livelihood rights.
8. Although the written treaty contains a clause stating that our Aboriginal title was extinguished, none of the signatories of the treaty could read and our Elders tell us that the sale of our lands, waters, and resources was never discussed. Our Elders were unaware of the value of our lands as a source of mineral wealth to the European colonizers.
9. The Supreme Court of Canada has, through various decisions interpreting the Constitution, declared the principles of Treaty interpretation, and has held that Canada is bound by its own Constitution to live up to honor the spirit and intent of Treaty 8. Because Canadian case law requires that treaties be interpreted in the manner understood by Indigenous Peoples taking into account their historical and cultural context, the validity of the clause of the treaty extinguishing Aboriginal title to land and miners is cast in doubt.

Constitution Act, s.35(1)
R. v. Badger, [1996] 1 S.C.R. 771; [1996] S.C.J. No. 39 (QL)
R. v. Marshall, [1999] 4 C.N.L.R. 161; [1999] 3 S.C.R. 456; [1999] S.C.J. No. 55 (QL)
10. In accordance with s.52 of Canada's constitution, and the principles of constitutionalism and the rule of law, any Crown action, legislation, or policy that breaches the Treaty 8 and is thereby inconsistent with s.35(1) of the Constitution, is of no force or effect.

Constitution Act, ss.35(1) and 52

Declaration of Indigenous Peoples' Rights

11. The Canadian Government opposed the Draft Declaration of Indigenous Peoples' Rights. The Prime Minister claimed that the Declaration is not applicable in Canada. However, this claim has no legal basis and is unprecedented in Canada's foreign and domestic policy. On Tuesday, April 8, the House of Commons passed a resolution to endorse the Declaration as adopted by the UN and calling on Parliament and the Government of Canada to "fully implement the standards contained therein."

<http://www.treatycouncil.org/PDFs/UN%20Decl-%20Commons%20Vote%20-%20FINAL%20joint%20release%20April%209%2008.pdf>

PART II - SUBMISSIONS

The Crown in right of Canada and Alberta has failed to live up to its Constitutional and domestic legal standards

12. Canada is therefore in breach of Treaty, breach of its own constitution and in breach of various International instruments in the following ways:

Health

13. Dr. John O'Connor, a medical Dr. in Fort Chipewyan, recognized a rare form of cancer in residents that usually occurs 1 in every 10,000 people. He found 5 cases in 1500 residents at Fort Chipewyan - more than 29 times the expected rate.
14. Upstream industrial development has resulted in the contamination of the water and destruction of fish habitat. A study completed by Dr. Kevin Timoney, commissioned by the local health authority of Fort Chipewyan, found high levels of arsenic, mercury and polycyclic aromatic hydrocarbons in fish which we rely on for a substantial portion of their diet. Hydrocarbons are carcinogens found in tar. Dr. Timoney's findings indicated that there are contaminants in the food supply that are associated with the types of cancer observed in the community.

Kevin P. Timoney, A Study of Water and Sediment Quality as Related to Public Health Issues, Fort Chipewyan, Alberta, 11 November 2007, e-mail: ktimoney@interbaun.com.

15. Indigenous Peoples living on reserves do not benefit from a level of protection of safe drinking water comparable to that enjoyed by Canadians who live off reserves. Indigenous communities, unlike other communities, have no laws and regulations governing the provision of drinking water.

Report of the Auditor General available online at
http://www.oag-bvg.gc.ca/internet/English/aud_ch_cesd_200509_5_e_14952.html

16. Despite this knowledge, when we petitioned the Auditor General of Canada to request an inquiry into the high levels of carcinogens in the fish and the high rates of rare cancer in our community, the government of Canada has refused to make any serious investigation into the matter, claiming that it is the province's responsibility. We are being deprived of our enjoyment of the highest attainable standard of physical health. Our rights to life and security are compromised by high levels of environmental toxins.

Petition by Peter Cyprien, Petition No. 238 and government response, available online at
http://www.oag-bvg.gc.ca/internet/English/esd_pet_238_e_30190.html
ICESCR Art. 12(1), (2)(a)
DRIP Art. 7

Failure to protect livelihood

17. Our community used to obtain 80% subsistence of its subsistence from the land. We relied on migratory birds, fish, and wildlife and wild berries for our food source. Because of the increasing death rate and chronic illnesses including previously unknown cancers we have been forced to abandon our traditional livelihood
18. Our rights to self-determination and our rights to resources within our traditional lands are continually being violated by state-sanctioned unsustainable development. In the process of enriching transnational corporations, we are being deprived of our own means of subsistence.

International Covenant on Economic, Social and Cultural Rights (ICESCR) Art. 1
ICCPR Art. 1

Cultural genocide

19. Due to high levels of contamination by upstream industrial development, we can no longer drink the water or eat the fish, meat, and berries within our traditional lands. Our land is our life: Our culture is based on the land. We can no longer live on the land and our traditional way of life has disappeared. We are being exterminated as distinct Peoples: This is cultural genocide.

Declaration of the Rights of Indigenous Peoples, Articles 3, 4, and 5

20. By allowing unchecked and unsustainable development on our territories, we are being denied the right to enjoy our culture.

ICCPR, Article 1 and 27

Failure to recognize First Nations right of self-determination

21. We have always lived here. Before European colonization, we had our own languages, customs and legal systems and we governed our territories in accordance with our cultural knowledge and beliefs. We have not been conquered, nor has there ever been any extinguishment of our inherent right to self-determination and self-government.

International Covenant on Civil and Political Rights (ICCPR) Art. 1

22. Indigenous Peoples rights to subsistence derived from traditional lands is protected by international law. Canada, in allowing the degradation of our traditional territories and the destruction of our traditional livelihood continues to violate international law.

ICESCR Art. 1
ICCPR Art. 1

23. By excluding our community from managing our traditional territories, Canada has failed to “recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources...”

CERD General Recommendation XXIII on Indigenous peoples paragraph 5

Failure to consult with Indigenous Peoples regarding the impacts of industrial development

24. Although Canada has not signed on to the Declaration on the Rights of Indigenous Peoples, Canada’s own domestic laws require meaningful and substantial consultation with Indigenous Peoples “prior to the approval of any project affecting their lands or territories and other resources.” Canadian Supreme Court decisions interpreting the Constitution it have established the requirement that the Indigenous Peoples of Canada must be consulted whenever the Crown contemplates action that may have a negative effect on Aboriginal and treaty rights. Where Indigenous Peoples have unextinguished Aboriginal title, their full and informed consent may be required.

Constitution Act, s.35(1)
Delgamu’ukw v. British Columbia, [1997] S.C.J. No. 108 (QL); [1997] 3 S.C.R. 101 at para 169
Declaration on the Rights of Indigenous Peoples (DRIP) Art. 32

25. The Canadian government, relying on the constitutional division of government powers, has abdicated its responsibility to ensure that ACFN participates in meaningful and substantial consultation with regard to the licences and approvals granted by the Alberta government to industry to use the lands and waters within our traditional territories. In many cases, we have not even been informed of government action, regulations, or policies until they have taken effect.
26. We have not been engaged with the Crown in right of Alberta in any dialogue relating to comprehensive watershed planning within our traditional territories. The Alberta government is currently devising a regime of policy relating to surface and groundwater management within our territories without our involvement, despite our requests to be informed and engaged in the process. The policies considered would allow the oilsands mines and tailings ponds to be constructed in the middle of the largest subsurface aquifer in Alberta.
27. The Canadian government has failed to consult with us through our representative institutions, regarding legislative and administrative measures that affect us directly. We have no means to participate in decision-making in administrative and other bodies responsible for setting policy concerning the use of our traditional territories. In particular, we have been allowed no decision-making authority at the regulatory appeal boards which decide whether industrial projects proposed within our traditional territories will proceed. We believe it is appropriate, given that we are more directly affected and that the proposed industrial development is within our traditional territories, that we be granted the resources to establish our own institutions and initiatives.
28. Alberta has devolved responsibility for consultation to industry stakeholders with whom we have no treaty relationship. Such consultation has not been in good faith and in a form appropriate to the extent of the impact of development on our social, cultural, spiritual, and economic rights.
29. The government does not require industry to consult with us in the early stages of development in which project proponent apply for permits and licences.
30. We have not experienced a sincere effort to achieving agreement with us on the comprehensive management of our lands and waters. The government does not require our consent prior to approval of oilsands projects and other developments that negatively impact the exercise of our rights.

ILO Convention 169 Art. 6.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of September, 2008.

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