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COMMISSION ON HUMAN RIGHTS
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Discrimination and Protection
of Minorities
Working Group on Indigenous
Populations
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Items 4 and 5

GRAND COUNCIL OF THE CREES (OF QUEBEC)
A non-governmental organization in consultative status with the Economic and Social Council

I. Consideration of the Right to Autonomy, Self-government and Self-determination, including Political Representation and Institutions. (E/CN.4/Sub.2/1985/22 Annex I)

We are signatories to the Convention de la Baie James et Nord Quebecoise. This Convention has been ratified by State legislation and has been recognized as a constitutionally binding treaty by the State signatories. It contains provisions for the recognition and establishment of self-government within our territory.

The legislation providing for Cree self-government known as the Cree-Naskapi (of Quebec) Act was proclaimed in June 1984 by act of the Canadian Parliament.

Our experience since that time places us in a special position to comment critically on this issue. We present our comments, not as complaints, but to provide some reality testing, and critical analysis for the standard-setting activity.

The Cree-Naskapi (of Quebec) Act is the first legislation in Canada to depart from the colonial provisions of the Indian Act which still dominates all other Indian life in Canada. We attained this freedom only as a provision of a land claims settlement, and not because of State recognition of a fundamental indigenous right to self-government. This means that the provisions of the Cree-Naskapi (of Quebec) Act would not

necessarily be made available in Canada to other indigenous populations upon their request.

We consider the Act to be a manifestation of Cree self-determination, because we negotiated the content of the legislation both within the State Convention and later during the drafting of the Act itself.

Obviously self-determination does not always mean independance. The courts have decided that the Cree Naskapi Act establishes a third level of government in Canada.

Although some States are proclaiming recognition of the principle of self-government, we find in practise that there has been great reluctance to fully implement those provisions of the Act that provide for autonomus self-government. Recent State sponsored studies indicate that the Act no longer meets State policy objectives. One study noted the reluctance public officials have toward handing over control and administration of indigenous populations.

There is a vast disparity between the recognition of self-government powers when practised by a provincial government, for example, and the same exercise of self-government by an indigenous population such as the Crees.

This is manifest in several ways which restrict the ability of indigenous self-government authorities to carry out their responsibilities: denial of access to State officials, denial of fiscal resources and financing arrangements, unilateral policy decisions which abrogate legislative and constitutional authority, the use of Crown immunity to prevent process of redress, the misuse of parliamentary procedure to circumvent legislative obligations, the application of ministerial perogatives to deny the jurisdiction of legislative oversight commissions.

While we believe that the Cree-Naskapi (of Quebec) Act is a positive and innovative self-government document, we see a vital need for international standards that will protect the right of self-determination in its practical manifestations.

The practical exercise of indigenous self-government powers rests now on an extremely fragile base. We are overpowered by dominant State interests and power politics. We are an experiment. If we claim authority and autonomy in the true exercise of self-government powers, we are considered a threat and therefore a failed experiment by the State. If we do not meet the responsibilities given by our own people, we have surely failed.

These experiences must be taken into consideration in the draft principles. There must be international oversight. The concept of indigenous self-government must rest upon standards which will prevent it from being distorted and misrepresented as some kind of colonial self-administration. Implementation is a normal adjunct to the standard setting activity of the United Nations.

We ask you to act as observers in our exercise of self-government, and to consider the measures we may take here to assure that indigenous peoples are not denied the right of self-determination, or one practical expression of it as self-government.

II. Comments and suggestions on Draft Principles (E/CN.4/Sub.2/1985/22 Annex II)

1. The right to the full and effective enjoyment of the fundamental rights and freedoms universally recognized in existing international instruments, particularly in the Charter of the United Nations and the International Bill of Human Rights.

This is an acceptable principle but only confirms the applicability of recognized fundamental rights to indigenous populations; a point which should never be subject to any doubt.

Since several States with indigenous populations have suggested that existing U.N. instruments provide sufficient guarantees, and therefore preclude the need for additional protections, we would want to sound a note of caution. The existing instruments do not provide sufficient protection for indigenous populations.

Our own experience in Canada provides ample proof of the need for international oversight to assure respect and implementation for treaties and agreements. Most existing instruments are not being fully respected; and we should proceed here with language which directs compliance with existing instruments with regard to indigenous populations.

2. The right to be free and equal to all other human beings in dignity and rights, and to be free from discrimination of any kind.

This also is consistent with rights recognized in existing instruments. As a universal statement of principle we certainly endorse it.

When one considers, however, that indigenous populations have often been expelled from their own lands, and subjected to hundreds of years of subjugation and economic disadvantage, then equality provisions may only serve to perpetuate a substantive inequality. This principle could be used to deny the special circumstances which define indigenous populations, and might be used to vitiate affirmative action programs. Clarification is required to preclude this possibility.

3. The collective right to exist and to be protected against genocide, as well as the individual right to life, physical integrity, liberty and security of person.

Although existing guarantees should be sufficient, cases such as the Lubicon Indians in Alberta, Canada, prove the need for a strong and specific remedy. The failure of domestic judicial process to respond with sufficient speed and effect is a tragic historic fact.

> 4. The right to manifest, teach, practice and observe their own religious traditions and ceremonies, and to maintain, protect, and have access to sites for these purposes.

This provision is consistent with recognized U.N. principles for the protection of religious freedom. We caution that some member states with large indigenous populations provide protections of this kind in the guise of recognizing the "multicultural" diversity of their populations, while in fact denying the actual practise of indigenous life which embodies religion, economy, culture, and education in a single unified concept.

> 5. The right to all forms of education, including the right to have access to education in their own languages, and to establish their own educational institutions.

We strongly endorse this principle, because we recall vividly the experience of being punished for using our own language.

We were the first indigenous people in Canada to obtain control over our own education, and we have elaborated upon this principle in the establishment of the Cree School Board. We were able to do this, however, only in the process of an agreement for compensation, as part of a legal convention.

This principle should recognize a fundamental right, and should not require that an indigenous people give up something else to obtain it.

Furthermore, such a principle is moot without the resources to carry out an educational program. The experience of the Cree School Board proves that rights can be illusory without protected resources.

> 6. The right to preserve their cultural identity and traditions, and to pursue their own cultural development.

The comments in (4.) and (5.) above apply. Member states with large indigenous populations are often willing to provide elaborate guarantees on these kinds of rights, in order to

preclude other serious and substantive guarantees which directly affect the economy and social welfare of indigenous populations.

Our caution is that principles such as this must be accompanied by others which provide for primary health services, shelter, nutrition, mobility, and rights to land and resources. Cultural rights mean very little to hungry sick people without shelter. Yet indigenous populations are typically the most economically and socially disadvantaged sector of society, even in the so called "developed" countries.

> 7. The right to promote intercultural information and education, recognizing the dignity and diversity of their cultures.

This is redundant. Easy to approve but devoid of content. There are many serious and consequental principles which should take precedence over the consideration of principles such as this.

III. Comments on Draft Principles (8), (9), and (10) from the Report of the NGO-Sponsored Workshop with Members of the United Nations Working Group on Indigenous Populations, Annex I (Sept.6,7, 1986)

> 8. The right to determine, plan and implement all health, housing, and other social and economic programs affecting them.

We were able to obtain conditional rights to control health and social services through the establishment of the Cree Board of Health and Social Services during land claims negotiations in 1974. This led to a legal Convention in 1975 which has the force of a constitutionally protected treaty.

Control over housing and economic programs was obtained through the passage of the Cree-Naskapi (of Quebec) Act in 1984.

It is our view, however, that these rights should have been available to us outside of the land claims negotiation process, and that they came to us, in fact, only by way of a compensation regime. Therefore, we do not practise these rights as a result of the recognition of a universal human rights principle by the member State.

These are among the most essential and vital of all rights. But we would point out that they can be illusory without the resources necessary to implement them, and thus bring them into effect.

> 9. The right to special State measures for the immediate, effective and continuing improvement of their social and economic conditions, with their consent, that reflect their own priorities.

We make reference to our earlier comments with regard to Principle (2.) Draft Principles (E/CN.4/Sub.2/1985/22 Annex II) that affirmative programs can be seen to conflict with some universal human rights principles; they are nevertheless essential under the circumstaces.

Social and economic conditions are directly linked; witness an epidemic in our communities in 1980 that was directly related to the non-implementation of certain essential provisions of a legal Convention entered into with the member State.

Thousands of indigenous persons are deprived of housing, clean

water, safe sanitation and other necessities. Because of long term neglect, the cost of providing these essentials has now become considerable. As a result member States with large indigenous populations prefer to make the provision of these services conditional upon the surrender of other rights that will provide cost offsets. The legal Conventions referred to above provides numerous examples of these conditions.

> 10. The right to be secure in the enjoyment of their own traditional means of subsistence, and to engage freely in their traditional and other economic activities, without adverse discrimination.

This was one of the primary principles of the legal Convention referred to above. The Crees traditional economy is hunting, fishing, and trapping. State's activity encroached upon our ability to continue this activity.

We negotiated for a special regime that would protect this activity in the future. This is elaborated in the Convention through the Cree Hunters and Trappers Income Security Progarm, and the Cree Trappers Association.

We also negotiated special environmental protection regimes that require developers to respect provisions for the continuation of the traditional economy.

We caution that the existence of the Convention is not sufficient in and of itself to provide the necessary protections. We suggest that an international oversight mechanism is necessary to prevent constant attempts to renegotiate and abrogate Conventions that have been concluded.

States may argue that the cost of implementing existing Conventions is too great, or as a court in Alberta, Canada concluded with regard to the Lubicon Indians, that traditional economy is no longer a viable and realistic possibility, and that protection is therefore denied.

Finally, it should not be necessary to obtain these rights as part of a land claim settlement. The Cree provide an example of available mechanisims for the protection of traditional economy; but it is not an example of a State's recognition of an indigenous right. That is why we need the recognition of this principle here.

IV. Consideration of the right to health, medical care, other social services and adequate housing. (E/CN.4/Sub.2/1985/22 Annex I)

Political rights are to all effect illusory unless they are accompanied by fundamental protections for health, social services and shelter.

The history of indigenous peoples, certainly in the Western Hemisphere, and particularly in North America has demonstrated tragically the relationship between protection of health and the very survival of indigenous populations. There is strong evidence that the importation of virulent disease was at least an acknowledged if not conscious tactic to subjugate the indigenous populations.

Many would like to take comfort in the notion that all of this is history; but the process has continued and is continuing. The Grand Council of the Crees has had direct experience with these issues which has been brought to the attention of the Working Group in previous sessions.

We would request that the consideration of health, medical care, social services, and adequate housing be amended to include safe drinking water, and essential sanitary services. Indigenous populations are often subjected to forced relocations as a result of development activities on their lands. This has had, along with other effects, the effect of depriving them of access to safe drinking water. Health statistics on infant mortality are often a good reflection of this occurance.(Indian Conditions: a survey, Govt. of Canada, 1980)

The fatal epidemic of gastro-enteritis in the Cree communities in Quebec, Canada in 1980-81 was directly linked to the failure to provide safe drinking water and essential sanitary services as specifically required by a legal Convention. Medical experts noted the fundamental connection between safe drinking water, proper sanitation, proper housing, and adaquate health services during the Cree epidemic (Canada, House of Commons Standing Commiteee on Indian Affairs and Northern Development, minutes 26 March 1981, and, An Epidemic of Infantile Gastroenteritis in the Hudson Bay and James Bay Regions, G. Pekeles, M.D. March 1981) Preventive health certainly inlcudes the concepts of safe drinking water and proper sanitation.

We call your attention to the legal Convention known as the Convention de la Baie James et Nord Quebecoise entered into between the Grand Council of the Crees and the Government of

Canada et al, which provides for the establishment of the Cree Board of Health and Social Services, which brought the provision of health services under the control of the Cree people.

We note, however, that this was done as part of a compensation program in a land claims settlement, and not as a result of the recognition by the State party of a fundamental right of indigenous people to control their own health services. Nevertheless, we think this example is significant in the context of the consideration of this item.

Finally we must point out that States with large indigenous populations object to the cost of health service and housing. This has in many cases provided a rationale particularly for the failure to provide adequate and sufficient housing.

In our experience this has lead to a serious unacceptable backlog in housing supply for indigenous populations. In our territory overcrowding and extreme winter conditions combine to create serious health problems. The continuing presence of tuberculosis within the northern indigenous populations has been directly related to unsatisfactory housing conditions.

The failure to support the costs associated with the alleviation of this problem is not defensable when so many human lives are at risk. It is particularly reprehensible that wealthy highly developed States would put forward such arguments. But it is a fact supported by health statistics, that the conditions and living standards of indigenous populations in these countries are comparable to the Third World.(Indian Conditions 1980)