

COMMISSION ON HUMAN RIGHTS  
Sub-Commission on Prevention of Discrimination  
and Protection of Minorities  
Working Group on Indigenous Populations  
Sixteenth session  
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Item # 8

Comments by the Grand Council of the Crees (Eeyou Istchee)  
on the draft final report by Mr. Miguel Alfonso Martínez Special  
Rapporteur on the "Study on treaties agreements and other  
constructive arrangements between States and indigenous peoples"

1. The Grand Council wishes to congratulate the Special Rapporteur for the work he has done, and in particular for the comprehensive treatment of the issues and for the concise manner in which he has framed his conclusions.

2. The Grand Council strongly supported the need for a study on treaties between indigenous peoples and States, and notes that the approval to conduct such a study by the United Nations was delayed for many years.

This delay prevented us from having a completed treaty study during the critical period while the Declaration on the Rights of Indigenous Peoples was being drafted.

3. Nevertheless, the completion of the treaty study at this time will contribute to the standard setting activities of the Working Group on Indigenous Populations, and to the process of approval of the draft Declaration by the Commission on Human Rights.

4. The Grand Council is particularly concerned with the issue of extinguishment, and commends the Special Rapporteur for pointing out that Canada requires extinguishment of native title as a precondition to treaty negotiation.

5. It is important to point out that extinguishment, as such, is exclusively applied against native title, that is, indigenous ownership rights, and that, as such, it is a racially discriminatory provision. Extinguishment is a clear human rights violation against indigenous peoples.

6. The Special Rapporteur notes correctly that States seek their advantage through treaties but often neglect to respect their obligations to indigenous peoples in these same treaties. As such, treaties often serve as instruments of dispossession.

WGIP 98/NAM.CAN/20

7. The Grand Council of the Crees is concerned with the discussion of the James Bay and Northern Quebec Agreement under category "B" "Other Constructive Arrangements", fearing that readers might interpret the Rapporteur to have concluded erroneously that the James Bay and Northern Quebec Agreement is a "constructive arrangement" rather than a treaty. The Special Rapporteur intends to clarify this point, having assured us that the James Bay and Northern Quebec Agreement is, clearly and indubitably, a treaty, and not a "constructive arrangement"; although, he is aware that the State party has argued before the courts that the James Bay and Northern Quebec Agreement is not a treaty
8. We would point out that in successive court judgments the James Bay and Northern Quebec Agreement has been conclusively recognized as a treaty.
9. The Grand Council of the Crees welcomes the findings of the Special Rapporteur that the James Bay and Northern Quebec Agreement was negotiated under conditions of "duress".
10. It is important to note that failure by the State parties to fully respect and implement the James Bay and Northern Quebec Agreement remains a major preoccupation of the Crees of Eeyou Istchee.
11. We would note that the James Bay and Northern Quebec Agreement was negotiated at a time when Canada had no policy regarding land claims, and that a land claims policy was developed only after the James Bay and Northern Quebec Agreement was concluded.
12. The Special Rapporteur quite properly takes note of the abhorrent State practice of unilateral abrogation of treaties with indigenous peoples. The Grand Council of the Crees believes that a new type of extinguishment is involved in this practice.
13. States extinguish aboriginal title in the process of treaty making. They then fail to implement and respect these treaties. The new practice concerns the so called treaty implementation agreements, whereby States agree to respect a new set of obligations which are said to implement the original treaty, but which replace and extinguish the obligations contained in the treaty itself. The Grand Council of the Crees asks the Special Rapporteur to take note of this new and insidious practice which has been applied extensively in the province of Manitoba, Canada in connection with the treaty known as the Northern Flood Agreement. Similar attempts of treaty abrogation have been made with the James Bay and Northern Quebec Agreement.
14. The Grand Council of the Crees welcomes the recommendations of the Special Rapporteur, and in particular, his recommendation for more effective national mechanisms for conflict resolution. However, where such conflict resolution mechanisms do not exist,

or have not proven effective due to the inherent conflict of interest of the State party, recourse to international sources of adjudication must be made available.

15. The Grand Council of the Crees strongly supports the Special Rapporteur's recommendation for an international registry of treaties between indigenous peoples and States.