

**TO: Committee on Economic, Social and Cultural Rights (CESCR)  
Human Rights Treaties Division (HRTD)  
Office of the United Nations High Commissioner for Human Rights (OHCHR)  
Palais Wilson - 52, rue des Pâquis  
CH-1201 Geneva (Switzerland)**

**FROM:** Canadian civil society groups: Peace Valley Environment Association, Sierra Club of British Columbia, Yellowstone to Yukon Conservation Initiative, and Wilderness Committee

## **SUBMISSION**

**RE:** Severe impacts on indigenous peoples' rights in British Columbia, Canada, and significant impacts on the right to food security for indigenous and non-indigenous citizens, from Site C dam

We, the undersigned, wish to bring to the Committee's urgent and immediate attention the severe impacts on a number of First Nations and Métis peoples, most especially First Nations represented by the Treaty 8 Tribal Association, arising from the construction of a 1,100 MW hydroelectric facility on the Peace River in north-eastern British Columbia ("Site C"). Site C would also cause significant impacts on the rights to food security for both indigenous and non-indigenous citizens of Canada.

**Context:** In 2011 the British Columbia Crown utility, BC Hydro, initiated the environmental approval process for the Site C dam and generating facility. The provincial and federal governments appointed a Joint Review Panel to determine whether Site C was likely to cause significant adverse environmental, economic, social, health, and heritage effects, and to record assertions of impacts on the Aboriginal and treaty rights of the affected First Nations and Métis peoples.

**Project description:** Site C is a proposed third dam and hydroelectric generating station on the Peace River in northeast British Columbia. The Peace River arises in the Rocky Mountain Trench in north-central British Columbia, flows through British Columbia and Alberta, and ultimately drains into the Arctic Ocean. The 83-kilometre reservoir would flood the Peace River as well as the lower reaches of several tributaries, including Halfway River and Moberly River. Site C is planned to generate up to 1,100 megawatts of capacity and an average of 5,100 gigawatt hours of electricity per year.

Site C would impact a number of First Nations and Métis in British Columbia, Alberta and the Northwest Territories. First Nations represented by Treaty 8 Tribal Association have established treaty rights to use the impacted area for food, cultural and spiritual purposes according to their seasonal rounds; other First Nations have established Aboriginal rights. The Treaty 8 Tribal Association stated that Site C "cannot be reconciled with Treaty 8 Tribal Association values and uses of their lands, nor can it be reconciled with the ongoing use of the Peace River valley as a refuge for wildlife, as a place for agriculture, and as a place where Treaty 8 First Nations' cultural and spiritual values can be protected."<sup>1</sup> 12 aboriginal groups testified they use the land within Site C's immediate impact area. These groups

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<sup>1</sup> Joint Review Panel Report, p. 431.

include the four first nations of Treaty 8 Tribal Association (Doig River First Nation, Halfway River First Nation, Prophet River First Nation and West Moberly First Nations), Sauleau First Nations, Blueberry River First Nations, McLeod Lake Indian Band, Dene Tha' First Nation, Duncan's First Nation, Horse Lake First Nation, Kelly Lake Métis Settlement Society and Métis Nation British Columbia.<sup>2</sup> In addition, the Mikisew Cree and Athabasca Chipewyan First Nations, whose concerns were excluded from the scope of the Joint Review Panel process, successfully brought the issue of downstream impacts on the Peace Athabasca Delta-Wood Buffalo National Park, a UNESCO World Heritage Site, to the World Heritage Committee. The World Heritage Committee noted with concern the lack of engagement with indigenous communities in monitoring activities, as well as insufficient consideration of traditional ecological knowledge.<sup>3</sup> The Committee requested Canada to refrain from proceeding with any further development that would be difficult to reverse and to invite a UNESCO monitoring mission.

The Joint Review Panel concluded the following:

- That Site C is likely to cause a significant adverse effect on fishing opportunities and practices for the First Nations represented by Treaty 8 Tribal Association, Sauleau First Nations, and Blueberry River First Nations, and that these effects cannot be mitigated;<sup>4</sup>
- That Site C would likely cause a significant effect on hunting and non-tenured trapping for the First Nations represented by Treaty 8 Tribal Association and Sauleau First Nations, and that these effects cannot be mitigated;<sup>5</sup>
- That Site C would likely cause a significant adverse effect on other traditional uses of the land<sup>6</sup> for the First Nations represented by Treaty 8 Tribal Association, Sauleau First Nations and Blueberry River First Nations, and that some of these effects cannot be mitigated;<sup>7</sup>
- That Site C would likely cause significant adverse cumulative effects on current use of lands and resources for traditional purposes;<sup>8</sup>
- That there would be significant adverse effects on heritage resources for both aboriginal and non-aboriginal people;<sup>9</sup>
- That the proponent had failed to prove the need for the power on the timetable set forth.<sup>10</sup>

Despite these findings of severe impacts on First Nations, some of which cannot be mitigated, in December 2014 the British Columbia and Canadian governments gave approval for the project to proceed. West Moberly and Prophet River First Nations immediately challenged the decision in a judicial review process; Blueberry River First Nations (Alberta) launched a separate case for infringement of

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<sup>2</sup> Joint Review Panel Report, p. 92; pp. 123-127. <https://www.ceaa-acee.gc.ca/050/documents/p63919/99173E.pdf>

<sup>3</sup> Decisions adopted by the World Heritage Committee at its 39<sup>th</sup> session (Bonn, 2015), 39 Com 7B 18, p. 81. <http://whc.unesco.org/archive/2015/whc15-39com-19-en.pdf>

<sup>4</sup> Joint Review Panel Report, p. 103.

<sup>5</sup> Joint Review Panel report, p. 109

<sup>6</sup> According to the submission of Treaty 8 Tribal Association, 42 sites of cultural or spiritual values would be flooded. These include spiritual places, burials, medicine collection areas, teaching areas, ceremonial and prayer offering places, and locations associated with place names and oral histories. Joint Review Panel Report, p. 111-112.

<sup>7</sup> Joint Review Panel Report, p. 113.

<sup>8</sup> Joint Review Panel Report, p. 120.

<sup>9</sup> Joint Review Panel Report, p. 238.

<sup>10</sup> Joint Review Panel Report, p. 306.

treaty. Peace Valley farmers and landowners filed their own petitions for judicial review. Despite the fact that these legal challenges are ongoing, and that the UNESCO mission to Canada is scheduled for the spring of 2016, BC Hydro has aggressively pursued preliminary construction works, including temporary bridge construction and logging of riverbanks.

We are concerned that the Site C dam would have a significant impact on Canada's performance on issues related to the general provisions of the Covenant as highlighted in the Committee's List of issues, namely:

**Under Article 1, Free disposal of natural wealth and resources, para 2** (policies and practices initiated to ensure the full protection of inherent indigenous treaty rights and titles; mitigating impact of climate change on indigenous peoples and their ways of life): West Moberly and Prophet River First Nations have stated their opposition to the Site C dam, and are pursuing legal challenges to the Site C dam on the basis of violation of their treaty rights. Notwithstanding the established treaty rights of these Nations, the British Columbia government is aggressively pursuing the dam construction, while Canada is failing in its constitutional and fiduciary duty to uphold aboriginal and treaty rights as defined by the Supreme Court of Canada *In Re R. v. Sparrow*.<sup>11</sup> The Site C dam would interfere with the treaty rights to hunt, fish and pursue traditional livelihoods by contaminating the remaining fisheries in the upper Peace watershed with methylmercury<sup>12</sup>, severely reducing moose populations, and preventing the maintenance of a viable population of Grizzly bears. By choking off a crucial wildlife corridor (the Peace River Break through the Rocky Mountains), the Site C dam would hinder migration of wildlife attempting to cope with climate change, thereby affecting the availability of game for First Nations hunting not just in the immediate region but through the northern Rockies.<sup>13</sup>

**Under Article 1, para 2** (free, prior and informed consent), the Joint Review Panel only "received information" regarding the manner in which Site C "may adversely affect asserted and established Aboriginal and treaty rights". The Panel's terms of reference explicitly excluded the ability to draw conclusions on the scope or strength of Aboriginal rights, the scope of the Crown's duty to consult or accommodate Aboriginal groups, or whether Site C is an infringement of Treaty No. 8 rights. Nowhere did the British Columbia or federal governments' decision-making process include the test of "free, prior and informed consent". Indeed, in the face of explicit opposition asserted in a court of law, the governments decided to proceed with the project.

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<sup>11</sup> <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/609/index.do>. For a summary of the precedent-setting value of the Sparrow case for indigenous rights and the fiduciary duty of the Crown, please see <http://indigenousfoundations.arts.ubc.ca/home/land-rights/sparrow-case.html>.

<sup>12</sup> A study commissioned by McLeod Lake Band and West Moberly First Nations, conducted an analytical analysis of mercury in tissue samples from 57 Bull Trout that were caught by members McLeod Lake Indian Band and West Moberly First Nations in accordance with their traditional seasonal rounds from the Crooked River, which is connected to the Williston Reservoir (the W.A.C. Bennett dam upstream from the proposed Site C). Methylmercury was initially released from the flooding of 1,700 km<sup>2</sup> of land for the construction of the W.A.C. Bennett dam. The study found that 98 per cent of the Bull Trout samples had tissue mercury concentrations that exceeded the guideline of 0.1 mg/kg wet weight (ww), based on the consumption of approximately 1 kg of fish per week. This is the guideline that most closely approximates West Moberly and McLeod Lake fish consumption in accordance with cultural practices.

<sup>13</sup> Submission by the Yellowstone to Yukon Conservation Initiative, Joint Review Panel Report, p. 89.

**Under article 11, Right to an adequate standard of living, para 2** (measures adopted to reduce hunger and food insecurity, in particular among indigenous people), the governments of British Columbia and Canada have failed to give adequate weight to the Site C dam's impacts on indigenous people's food security, through impacts on hunting and fishing, and the contamination of remaining native fisheries, as outlined above. The Site C dam would also have an impact on food security for the British Columbia population as a whole, through flooding of uniquely productive lands capable of providing fruits and vegetables to satisfy the nutritional requirements of 1 million people – one quarter of the B.C. population.<sup>14</sup> Only 5 per cent of the land mass of British Columbia is suitable for agriculture; as a result, the province is heavily dependent on food imports from California and other areas that are experiencing severe, ongoing climate-related drought and loss of productive capacity. As a result the prices of fruits and vegetables are rising and this trend is expected to continue.<sup>15</sup> The governments of British Columbia and Canada have failed to provide for food security as an essential climate adaptation measure to avoid or at least reduce human suffering from climate change.

Finally, we contend that the Site C dam project constitutes a “forced eviction” within the meaning of General Comment No. 7: The right to adequate housing (art. 11 (1) of the Covenant), para 7.<sup>16</sup> Comment 7 explicitly deals with evictions “carried out in connection with conflict over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects” which is an obvious concern in the face of Aboriginal opposition. The UN Special Rapporteur on the right to housing has expanded on this considerably, saying: “Prior to any decision to initiate an eviction, authorities must demonstrate that the eviction is unavoidable and consistent with international human rights commitments protective of the general welfare.”<sup>17</sup> Far from demonstrating that eviction is unavoidable, the Joint Review Panel found that the proponent had failed to demonstrate the need for the project. Moreover, rather than allowing the courts to adjudicate, as enjoined by the Special Rapporteur, the governments of British Columbia and Canada proceeded to construction while the various judicial review processes are still ongoing.

In view of the foregoing, we respectfully ask that the Committee urge the Canadian government to suspend the project until the issues of treaty rights, aboriginal rights, food security rights and forced eviction have been resolved.

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<sup>14</sup> “Diminished and dismissed”, Expert report submitted to the Joint Review Panel by agrologist Wendy Holm, P.Ag.

<sup>15</sup> For a British Columbia-specific study of impacts of climate change on food prices, please see this 2014 study commissioned by British Columbia's premiere credit union:

[https://www.vancity.com/AboutVancity/News/MediaReleases/FoodStudy\\_October\\_10\\_2014/](https://www.vancity.com/AboutVancity/News/MediaReleases/FoodStudy_October_10_2014/)

<sup>16</sup> [http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/1\\_Global/INT\\_CESCR\\_GEC\\_6430\\_E.doc](http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/1_Global/INT_CESCR_GEC_6430_E.doc).

<sup>17</sup> UN Special rapporteur on adequate housing. 2007. *Basic principles and guidelines on development-based evictions and displacement*. Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living. A/HRC/4/18.

**Signatories:**



**Andrea Morison**

**Peace Valley Environment Association** is a citizens' group based in Fort St John, British Columbia, in the heart of the Peace Valley. The purpose of the Peace Valley Environment Association is to facilitate the development of a truly sustainable land use plan for the Peace River Valley.



**Bob Peart, Executive Director**

**Sierra Club of British Columbia** is B.C.'s oldest environmental organization. Sierra Club BC's mission is to protect, conserve, and educate the public about B.C.'s wilderness, species and ecosystems – within the urgent context of climate change impacts.

**Dr. Jody Hilty, PhD, President and Chief Scientist**

**The Yellowstone to Yukon Conservation Initiative** works to connect and protect habitat from Yellowstone to Yukon so people and nature can thrive



**Gwen Barlee, Policy Director**

**The Wilderness Committee**, founded in BC in 1980 is a grass roots membership based conservation organization with 60,000 members, supporters and volunteers. The Wilderness Committee works to protect Canada's biodiversity through strategic research and grassroots public education.