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INDEPENDENT INDIGENOUS SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE – ON CANADA'S FIFTH PERIODIC REPORT - OCTOBER 2005

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I. INTRODUCTION

1. This submission has been prepared by indigenous peoples from across Canada. The majority of the nations involved have their territories coincide with what is also known as the Province of British Columbia. From the islands, to the coast, over the coastal mountains into the Interior and all the way to the Rocky Mountains, it is the largest area where historically no treaties have been signed. Our people have a history of calling for the recognition of our nationhood and our Aboriginal Title to our lands and resources. This explains why many of the struggles related to indigenous sovereignty and land rights explained in the following engage the province of British Columbia. Yet, we also share in the experience of peoples from across Canada who historically signed treaties, rooted in their nationhood and custodianship of the land. The Nishnawbe Aski Nation participated in the preparation of the report and the traditional territories of the peoples brought together by Treaty 9 cover 2/3rds of what is now known as the Province of Ontario. Stretching across the north, the territory spans 700 miles in length and 400 miles in width, from the Manitoba border in the west, to the Quebec border in the east and from the Hudson's and James Bay watersheds in the north and roughly to the Canadian National Railway line in the south. The 49 communities represented by the Nishnawbe Aski Nation use these vast territories and call them their home.

2. Our submission is backed by a long history of struggling for the recognition of Aboriginal and Treaty Rights. In Ontario, Treaty 9 was signed in 1905 and with the 100th anniversary of the signing of the Treaty the people today are still struggling for its implementation [1]. Treaty rights come from the spirit, intent and provisions in these documents. Unfortunately, these are understood and interpreted by the Crown and by indigenous peoples in two different and contradictory ways. The province of British Columbia on the other hand, only entered confederation in 1871 and no treaties were signed in the vast majority of the territories. In 1910 the Chiefs of the Interior of British Columbia jointly presented a declaration to Prime Minister Laurier to make it clear that they never considered reservations as a

[1] http://treatyninecommemoration.on.ca/

settlement, but called for recognition of their inherent land rights[2]. In 1926 the Chiefs led by William Parrish traveled to England to deliver a similar message to the King of England. A year later an amendment to the Indian Act was passed prohibiting indigenous peoples in Canada from organizing regarding the recognition of their land rights. They also could not hire lawyers, who in turn were threatened with disbarment had they worked for indigenous peoples. It was only in 1951 that this prohibition and the potlatch ban, disallowing the traditional feast of the coastal people, was lifted[3].

3. In the 1960s and 1970 our people started reorganizing politically, setting up organizations to assert our land and treaty rights. In the 1980s we opposed the patriation of the Canadian constitution because the government of Canada tried to eliminate any reference to indigenous peoples and our rights. So indigenous peoples from across Canada united first in the Constitution express to Ottawa in 1980 and in 1981 to London England. We achieved the inclusion of Section 35 in the Canadian Constitution of 1982 recognizing Aboriginal and Treaty Rights. Since then we have been calling for the implementation of these rights. Our people opened their hearts and participated in the Royal Commission on Aboriginal Peoples in the hope of seeing the federal government finally address our most fundamental concerns, starting with land rights and moving on to governance and self-determination. We are still awaiting the implementation of the findings and recommendations of the Royal Commission. We have won important decisions in Canadian courts from treaty rights to fishing rights and land rights known as Aboriginal Title, in areas where no treaties had been signed.

4. Our people have also been at the forefront of the international movement for the recognition of land rights. The first international indigenous organization, the World Council of Indigenous Peoples, was founded exactly 30 years ago in October 1975 in Port Alberni, British Columbia and George Manuel of the Secwepemc Nation was elected the first President. Now his grandson Ska7cis Manuel has traveled to the session of the Human Rights Committee in Geneva to submit a report in the name of a number of nations that have been historically connected in the struggle for the recognition of their rights. For example the

[2] Interior Chiefs (1910) Memorial to Sir Wilfried Laurier, Kamloops, August 1910, please refer to: http://www.secwepemc.org/memorial.htm
[3] http://www.landoftheshuswap.com/msite/sixties.php

Nuxalk nation adopted George Manuel into their nation over 20 years ago and asked him to represent them internationally, during a recent potlatch they reestablished that connection with the Secwepemc nation and the mandate to take their concerns international.

5. Our submission is based on this historic, principled position at the local, national and international level, but in the following we will focus on the most recent challenges and current violations of our indigenous rights, especially in the period since the last periodic report of Canada, namely from 1999 to 2005. We will build on the concluding observations following the last review of Canada's periodic report, comment on Canada's report and most importantly provide first hand information from the respective indigenous peoples regarding violations of their human and indigenous rights.

II. THE INDIGENOUS RIGHT TO SELF-DETERMINATION

A. CANADA'S FAILURE TO RESPOND TO THE COMMITTEE REQUEST

6. We consider the request by the United Nations Human Rights Committee to "provide information on the concept of self-determination as it is applied to Aboriginal peoples in Canada"[4] to be of utmost importance. In the concluding observations of the UN Human Rights Committee made on 7 April 1999 in the "Principal Areas of Concern and Recommendations" that the Committee had, it: "regrets that no explanation was given by the delegation [Canada] concerning the elements that make up that concept [of self-determination], and urges the State party to report adequately on implementation of article 1 of the Covenant in its next periodic report."[5]

7. The Canadian government does not recognize that Aboriginal peoples have the right to self-determination. In response to the Committee request to Canada for an adequate implementation report on the implementation of self-determination as it is applied to Aboriginal peoples, Canada answered that it "is continuing to evolve in relation to its ongoing participation in the UN Working Group on the Draft Declaration on the Rights of Indigenous Peoples and other international

[4] CCPR/C/85/L/CAN. (List of Issues) paragraph 1
[5] CCPR/C/79/Add.105 paragraph 7

fora, the Government of Canada will present information on this specific issue at the oral presentation of this report."[6] This response adds further insult to injury because Canada is one of the countries who in the negotiations on the Draft Declaration has opposed a strong definition of the indigenous right to self-determination, especially the recognition as peoples under international law.

8. Canada has even inscribed its opposition to indigenous nationhood or their recognition as peoples at the outset of its national policy on self-government[7]:
"The inherent right of self-government does not include a right of sovereignty in the international law sense, and will not result in sovereign independent Aboriginal nation states. On the contrary, implementation of self-government should enhance the participation of Aboriginal peoples in the Canadian federation, and ensure that Aboriginal peoples and their governments do not exist in isolation, separate and apart from the rest of Canadian society."

9. The policy then goes on to state that:
"Under the federal approach, the central objective of negotiations will be to reach agreements on self-government as opposed to legal definitions of the inherent right. Under this approach, the range of matters that the federal government would see as subjects for negotiation could include all, some, or parts of the following: establishment of governing structures, internal constitutions, elections, leadership selection processes; membership ; marriage; adoption and child welfare; Aboriginal language, culture and religion; education ; health; social services; etc…"

10. It is clear from that statement and the listing that the government of Canada does not want to recognize the inherent right to self-determination of indigenous peoples, rather it wants to limit it to delegated authority, at best at the level of local governments, such as municipalities, that have no inherent jurisdiction. What is proposed is a mere regulation of internal affairs, basically an extension of certain responsibilities currently conferred by the Indian Act and its replacement with so-called self-government agreements. It is clear that the main focus is on the provision of services that are currently provided by the federal government. Given the level of expenditure for these services the federal government would be happy

[6] CCPR/C/CAN/2004/5 paragraph 8
[7] for the full text of the policy please consult the webpage of the Department for Indian and Northern Affairs: http://www.ainc-inac.gc.ca/pr/pub/sg/plcy_e.html (preambular reference)

to offload some of the responsibility to Indian bands and tribal councils, so that they will ultimately have to cut those services. It seems clear that in a time of increased trade liberalization and privatization the provision of services free of charge will not be able to be maintained much longer. Also indigenous peoples do not have inherent rights to most of those services, but rather their inherent rights are tied to their lands and resources and if they cannot achieve recognition of those rights they will likely be left with nothing in the long-term. In the meantime, the dependence on federal government funding to be able to finance programmes and services will ensure that indigenous organizations depending on this funding will abide by federal policies.

11. Our coalition views the Canadian government' s declaration that they will only address the issue of self-determination as it is applied to Aboriginal peoples orally before the Human Rights Committee, as further confirmation that Canada has a very weak position on the issue. They are not in a position to provide written submissions, because there are no policies in place in Canada to appropriately deal with the issue. Indeed existing policies negate the right to self-determination and other important indigenous rights that flow from it. We consider the announcement to only report orally as a strategic move to try to gloss over the issue and avoid to have to deal with it in detail. Again, we want to reiterate that Canada is on the record internationally as openly opposing the right to self-determination and a number of its national policies openly undermine inherent indigenous rights. .

12. It is clear that by merely orally responding to the complex issues raised by Article 1, Canada is trying to minimize and circumvent addressing these issues. In fact Canada should not be allowed to do this unless Canada does address these issues adequately and fully. It is important to note that indigenous peoples in British Columbia have never ceded their sovereignty and to date all but one nation, have not signed treaties where they would cede control over their territories. In other areas of Canada where treaties were signed indigenous people hold the position that these agreements are fundamentally flawed. This is confirmed vis-à-vis historical treaty research that indigenous groups have been undertaking. There continues to be great disparity between the Canadian government and indigenous peoples on the "spirit and intent" and interpretation of these treaties. Indigenous peoples believe that this kind of 18th century colonial attitude is unfit for the 21st century.

13. Canada takes the position that Canada "subscribes to the principles set forth in the *International Covenant on Civil and Political Rights*. Article 1 of the Covenant is implemented without discrimination as to race, religion or ethnic origin. All Canadians have meaningful access to government to pursue their political, economic, social and cultural development."[8] This position makes it clear that Canada does not recognize an indigenous right to self-determination and the inherent indigenous rights that are deeply connected to it. Canada says that it treats indigenous peoples like any other segment of society, with no mention made of the special nature of indigenous rights. The response also implies that all rights have to be exercised through or guaranteed by the government, whereas it is clear that inherent indigenous rights preceded any colonial and successor governments and are the basis for the exercise of indigenous self-determination today. It is therefore very important to consider this statement not only from the perspective of Canada but also from the perspective of indigenous peoples who own the territory now claimed by Canada and feel that the historic injustice is being perpetuated by the Canadian government now claiming that all indigenous rights have to be exercised through them.

B. CANADA IS ADVERSERIAL TO THE RECOGNITION OF INDIGENOUS RIGHTS

14. The Canadian executive system currently recognizes two mutually exclusive levels of government, namely the federal and provincial governments. Historically there have always been disputes regarding the distribution of power. Although the provinces might have more specific heads of power, the federal government always has had the fiscal powers, especially to collect taxes. The federal government has strategically used fiscal policy and contribution agreements to influence provincial heads of power. Although usually one order of government does not want to cede any power to the other order of government, the federal government has been trying to "offload" certain obligations to provide services like health care and education to the provinces. Also when it comes to the implementation of indigenous rights, one order of government routinely argues that it falls into the responsibility of the other order of government. For example it is argued that land management falls into the competence of provinces, and the

[8] CCPR/C/CAN/2004/5 paragraph 9

federal government will argue that they have to accommodate Aboriginal Title and rights, although the Supreme Court of Canada has made it clear that the federal government has a special trust obligation to secure the implementation of these rights. The one issue that the two orders of government firmly agree on, is that they do not want indigenous peoples to be recognized as a third order of government, although Section 35 of the Canadian constitutions forms the platform for the recognition of indigenous jurisdiction as a third order of government and thereby the full implementation of the right to self-determination.

15. The Supreme Court of Canada has ruled that the federal government has a special fiduciary obligation to protect the inherent rights of indigenous peoples. Yet both the government of Canada and the provincial government will go to court to oppose the recognition of indigenous rights. Canada has an adversarial court system that often has indigenous peoples on the one hand, bringing a claim for the recognition of their rights, and the federal and provincial governments on the other side opposing it. In a number of other cases, you will even see the federal or provincial Crown prosecuting Aboriginal peoples for the exercise of their inherent rights, this is done in an attempt to criminalize indigenous peoples because they take action to ensure the protection of their constitutionally recognized rights.

16. In Canada Aboriginal and Treaty Rights are constitutionally protected under Section 35 (1) of the Constitution Act 1982 which states that "The existing aboriginal and treaty rights of aboriginal peoples of Canada are hereby recognized and affirmed". Aboriginal Title was found by the Supreme Court of Canada to "encompasses the right to exclusive use and occupation of the land held pursuant to that title for a variety of purposes, which need not be aspects of those aboriginal practices, customs and traditions which are integral to distinctive aboriginal cultures."[9] When the governments failed to implement the constitution and Supreme Court of Canada decisions indigenous peoples again took them to court to oppose the business as usual approach to continue to allow corporate access to the traditional territories of indigenous peoples and again they won before the Supreme Court of Canada in the Haida Tree Farm Licence cases[10].

[9] Delgamuukw *v.* British Columbia [1997] 3 S.C.R 1010, para. 117
[10] for more information please see: www.eaglelaw.org

C. Indigenous Peoples' poverty is a result of Canada's policies

17. Aboriginal peoples are the poorest peoples in Canada not because Canada is a poor country but because our ownership to our natural wealth has never been politically recognized. Canada has always ranked at the top of the United Nations Human Development Index but when the same criterion is applied to indigenous peoples we rank at approximately 47 while living in a G-8 country.[11] This kind of relationship is a very humiliating experience and is the root of fundamental contradictions that need to be resolved so that as indigenous peoples too can enjoy the natural wealth of our lands like the settlers have enjoyed since Canada became a state.

18. The most recent UNDP Human Development report contains the following quote:
"Even so, one overarching lesson is clear: succeeding is not simply a question of legislative and policy changes, necessary though they be. Constitutions and legislation that provide protection and guarantees for minorities, indigenous people and other groups are a critical foundation for broader freedoms. But unless the political culture also changes – unless citizens come to think, feel and act in ways that genuinely accommodate the needs and aspirations of others – real change will not happen."
The very problem in Canada is that the political will to recognize and implement inherent indigenous rights, that all flow from the right to self-determination, is missing.

19. Indeed, Canada is trying to benefit twice from not recognizing, that indigenous peoples are peoples according to the international law definition that is key to claiming the right to self-determination. Canada settled our land and benefited from our natural wealth and resources because the colonial ruler during those centuries deemed us to be nothing more than savages. British Columbia for example was settled according to the doctrine of "terra nullius", at a time when it was clear that those territories were amongst the ones most densely

[11] Measuring of Well-Being of First Nations Peoples, Daniel Beavon and Martin Cooke, Research and Analysis Directorate, Department of Indian Affairs and Northern Development

populated by indigenous peoples in the whole of North America. So in order to justify the colonial rule they had to say we did not have sufficient organization and laws, despite the fact that many of our people had very elaborate systems of governance and we all had our own laws. Now that we have proven in Canadian courts that the doctrine of terra nullius was wrongfully applied and that we do have Aboriginal Title, the Canadian government declares that we are Canadians and that the government of Canada has exercised our right to self-determination.

20. Canada states that the "Covenant is implemented without discrimination as to race, religion or ethnic origin. All Canadians have meaningful access to government to pursue their political, economic, social and cultural development." This argument is used to circumvent the right of self-determination by indigenous peoples. It is this argument that tries to make the settler government look fair and reasonable and the indigenous peoples look like racists, discriminatory and unfair because we claim our inherent rights that flow from out own nationhood. In this context it is important to examine the complex nature of the relationship between indigenous peoples and settlers.

21. Settlers, when they decide to leave their home country, should not be discriminated as to race, religion or ethnic origin. But this principle cannot be used to justify their free access to the natural wealth and resources of indigenous peoples. References to equal treatment cannot be used be used to ignore or sidestep the very important questions that arise because indigenous peoples have very clear ownership and proprietary interests in their traditional territories. In fact indigenous peoples demonstrated what non-discrimination really means when we allowed foreigners to settle on our lands. It is important for the UN Human Rights Committee to moderate an enlightened discussion between indigenous peoples and Canada, on the key elements in Article 1 of the Convention on Civil and Political Rights in regards to how the indigenous right to self-determination can be distinguished from specific individual rights guarantees, who should never be used to undermine the very concept enshrined in Article 1.

III. WE ARE INDIGENOUS PEOPLES – NOT MINORITIES

22. Canada has decided not to seriously address the concept of self-determination of indigenous peoples under Article 1 but report on "implementation of the Royal Commission on Aboriginal Peoples and Canada's policy on inherent aboriginal rights is included under Article 27".[12] Again this is a deliberate attempt to ignore the special rights of indigenous peoples, for example it is clear that that Article 27 does not have the scope to deal with issues regarding the natural wealth and resources of indigenous peoples. This arbitrary Canadian classification of indigenous peoples as mere minorities is counter productive and does not reconcile the judicial recognition and constitutional protection for Aboriginal Rights in Canada and the right to self-determination at the international level.

23. The International Convention on Civil and Political Rights Article 1 has the scope and elements that the Canadian courts followed when making decisions about Aboriginal Title and Rights. The sovereignty of Aboriginal peoples is the historical reality that gives power to the rights of peoples and energizes the dialogue before the Canadian courts. It also gives indigenous peoples legitimate standing before international institutions. The struggle of Indigenous peoples gives contemporary meaning to de-colonization, in our case of the peoples that remain colonized in their own traditional territories in settler states that are still developing.

24. Canada is a developing settler state because it is clear that the relationship between Canada and the indigenous peoples is still evolving and being developed. The factual disparity between indigenous peoples and settlers has historic roots and has resulted in the current gap in living standard and other demographic statistics that require urgent resolution. Yet the government of Canada does not want to recognize that in order to bridge this gap, a fundamental shift in policy based on the recognition of indigenous rights, especially our right to self-determination will be required. The fundamental change that will have to be accomplished is so significant that outside guidance, for example by the Committee, who has overseen the implementation of the International Convention on Civil and Political Rights, that has guided decolonization, will be required to balance the interests and power of settlers and indigenous peoples in Canada.

[12] CCPR/C/CAN/2004/5 paragraph 9

25. Canadians and indigenous peoples need to grapple with the elements set out in Article 1, because the failure to address the fundamental issue of self-determination, is at the root of the negative aspect of the relationship Canadian and indigenous peoples now experience. The key aspect of Article 1 is that it does recognize the right to self-determination, and the resulting rights over natural wealth and resources. Policies dealing with governance and lands and resources therefore need to be developed by Canadian governments and indigenous nations on equal footing. Article 1 of the International Convention on Civil and Political Rights is listed below:

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

26. The Canadian government has decided to report on questions asked by the Human Rights Committee under Article 1 under Article 27. This illustrates the fact that Canada does not recognize Aboriginal peoples have the right to self-determination. This position is inconsistent with the fact indigenous peoples have Aboriginal Title. It also shows that the existing policy of Canada still is directed toward extinguishing Aboriginal Title. This will be shown in discussion of the report on Indian Land Claims under Article 27. Furthermore, this position reflects the idea that Canada wants to only recognize indigenous peoples as a cultural group or minority. The following is Article 27:

Article 27

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

27. Under Article 27 of the Covenant on Civil and Political Rights, persons who belong to ethnic, religious or linguistic minorities shall not be denied the right to their own culture, religion or language. It is important to see that there is no recognition to land rights in Article 27. This is very important to indigenous peoples because culture, religion and language are directly linked to our land and the ecological biodiversity of our traditional territories. In fact these elements are the essence of the legal evidence we provide the Canadian courts in land right cases that we continue to win. Canada and the provinces cannot recognize aspects of our culture in isolation of our land and proprietary interests because indigenous culture, religion and language would perish if we lost our direct link to the land.

28. Indigenous peoples are not minorities like minorities from an immigration population because we have a pre-colonial link to the natural wealth and resources in our traditional territories. Indigenous peoples do not agree with Canada limiting the discussion to Article 27 because our Aboriginal and Treaty Rights are the source of our right to self-determination. Self-determination is our right to choose how we govern ourselves as peoples and is rooted in our direct link to our territory. Canada cannot arbitrarily and unilaterally as a colonial state party ignore, minimize and circumvent the fundamental issues dealing with our natural wealth and resources. This would undermine the very spirit and intention behind Article 1.

IV. SELF-DETERMINATION OVER OUR NATURAL WEALTH AND RESOURCES

29. The Indigenous Network on Economies and Trade (INET) did successfully submit three amicus curiae briefs to the World Trade Organization (WTO)[13] and one successful submission to the Panel of the North America Free Trade Agreement (NAFTA)[14] in regard to the Canada – United States Softwood Lumber dispute. In the Canada – United States softwood lumber dispute, the United States imposed considerable countervailing duties on the Canadian softwood lumber imports. Canada exports approximately 10 billion dollars worth of softwood lumber to the United States annually, making it the largest export item. Most of the lumber is extracted from the traditional territories of indigenous peoples, especially in the Interior of British Columbia where more than 40% of the exports originate from. Canada appealed the United States countervailing duty ruling before the WTO and NAFTA.

30. INET made amicus curiae submissions to the WTO and NAFTA on the grounds that Canada's policy of not recognizing Aboriginal and Treaty Rights is a subsidy to the Canadian forest industry. The WTO accepted these submissions and in the case of NAFTA our submissions were accepted despite the fact that the Government of Canada in a clear breach of its fiduciary obligation to indigenous peoples submitted a Joint Opposition[15] to NAFTA on behalf of some of the provinces and the forest industry. The acceptance of the amicus curiae submissions has elevated proprietary interests of indigenous peoples as primary aspect of Aboriginal and Treaty Rights to the international level. The WTO is the highest international world trade body and NAFTA is the highest-level trade body for North America. These two bodies have given credibility to the position that indigenous peoples do have proprietary interests in the natural wealth and

[13] WTO United States – Preliminary Determinations with Respect to Certain Softwood Lumber from Canada, WT/DS 236, April 15th, 2002; WTO United States- Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada, WT/DS257/4, January 21st, 2003; WTO Appeal of the Decision in United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada, WT/DS257/4, October 20th, 2003

[14] NAFTA Amicus Curiae on Behalf of the Indigenous Network on Economies and Trade (INET) Secretariat File No. USA-CDA-2002-1904-03, November 12, 2002

[15] Weil, Gotshal & Manges LLP, Washington, D.C., Joint Opposition of Canadian Parties to the Motions of the Indigenous Network on Economies and Trade and the Natural Resources Defense Council for Leave to Participate as Amicy Curiae, November 25, 2002

resources of our traditional territories. These matters can only be appropriately dealt with under Article 1 of the Convention of Civil and Political Rights and not under Article 27.

31. Canada in its submissions was to the NAFTA and WTO tribunals was arguing that there could be subsidy, as the corporations owned the timber as it was growing in the public and indigenous forest. They said that the long-term licences granted by the governments created ownership and free access for corporations to natural resources. As indigenous peoples we had to oppose these arguments because their acceptance would have had a devastating effect on indigenous peoples and their lands, not only in Canada, but in the whole indigenous world. In the end our amicus curiae briefs were accepted and Canada's arguments regarding free corporate access were rejected. Still it remains clear that the federal and provincial governments protect corporate interests over inherent indigenous rights.

32. It is also important to address the issues raised by Canada under Article 27 because despite the fact we are not a minority population Canada's policies and processes aim at the extinguishment of our rights to our land and natural wealth and resources and want to make us into a minority population with no land and no special rights. In particular Canada uses our poverty against us in terms of controlling and manipulating indigenous organizations that were historically created to struggle for our Aboriginal and Treaty Rights.

33. To fight for recognition of our rights is costly, especially litigation of Aboriginal Title cases can cost up to 1 million per year. In Canada many indigenous organizations have become dependent on federal and provincial government funding programs. In fact in Canada all major indigenous organizations do get most, if not all their funding from the Canadian and provincial governments. In the international context none of our organizations would rightfully qualify as non-government organizations (NGO) because they are too dependent on government funding.

34. In this regard the Canadian government does not fund the authors of this document and are volunteers who struggle to have Aboriginal Rights recognized. The services of everyone are based upon our commitment to our peoples.

V. CANADA'S STRATEGIES AND POLICIES TO UNDERMINE INDIGENOUS RIGHTS

A. Funding Used to Manipulate Indigenous Political Direction

35. The federal government through Core and Project Funding has political control over setting the indigenous political agenda. It uses this form of control, manipulation and cooption in order to swing indigenous organizations from talking about Aboriginal and Treaty Rights and talk about accepting delegated authority for federal programs and services. The federal government focuses on programs and services in order to overcome the poverty our people are experiencing. This would make sense if we were a genuine impoverished minority group without Aboriginal and Treaty Rights, but we do have natural wealth and resources. We are not poor. Our natural wealth and resources maintains the economy of a G-8 country.

36. The Canadian and provincial governments do not want to recognize this reality and are trying to have us extinguish our Aboriginal Rights and to tolerate breaking of the treaties. The goal of the federal and provincial government is to maintain their jurisdiction over our land through a land selection process. The land selection process is where indigenous select Indian Reserves and give all the rest of our valuable land to the settler government. We become impoverished by the lack of resources in our Indian Reserve and the settler government becomes a developed, G-8 state. This was acceptable in previous centuries but it is our hope that the international community is prepared to examine this violent and humiliating way of settling indigenous peoples rights.

37. Canada contributes funding in four major areas for programs and services, core funding, project funding and loans to negotiate land settlements. The provinces do contribute to a limited extent in these funding arrangements when it suits their purpose. Despite the fact that some indigenous organizations have limited financial freedom, all funding is given for federal and provincial policy objectives. In fact the credibility of indigenous organizations is in serious question now because our peoples at the grassroots level cannot depend upon the government-funded organizations for political and moral support when struggling for recognition of indigenous rights.

38. The hook the Canadian and provincial government use is money. The federal government provides two kinds of funding.

Core Funding

Core (grant) funding is provided to Provincial and Territorial Organizations (PTOs) and the Assembly of First Nations by INAC and is intended to assist these organizations in maintaining a basic organizational capacity. These organizations must apply each year to INAC for this funding. This funding is limited by its Treasury Board authority to $5.4M and has remained unchanged since 1992.[16]

39. Core Funding Levels For National Aboriginal Organizations (NAOs) is approximately $3.4 million dollars for 2003-2004 with 2 million being allocated to the Assembly of First Nations.

	National Aboriginal Organization	Core Funding Level
1	Assembly of First Nations	2,070,000
2	Inuit Tapririit Kanatami	333,000
3	Congress of Aboriginal Peoples	426,000
4	Native Women's Association of Canada	364,000
5	Pauktuutit-Inuit Women's Association	277,000
	GRAND TOTAL	**3,470,000**

40. Core Funding Levels for Provincial/Territorial Organizations is about $3.5 million dollars in 2003-2004.

Atlantic		
	Atlantic Policy Council	23,296
	Union of Nova Scotia Indians	107,634
	Union of New Brunswick Indians	101,770
	Mi'kmaq Confederacy of Prince Edward Island	0
Quebec		
	Assembly of First Nations -Quebec et du Labrador	312,800
Ontario		
	Chiefs of Ontario	66,159
	Union of Ontario Indians	232,372
	Nishnawbe Aski Nation	189,511
	Grand Council Treaty #3	100,669
	Association of Iroquois and Allied Indians	72,884
Manitoba		
	Assembly of Manitoba Chiefs	179,796
	Manitoba Keewatinowi Okimakanak	122,441
	Southern Chiefs Organization	147,253

[16] Indian and Northern Affairs, DRAFT, Dec 20/04, Reviews of Funding to Provincial Organizations (PTOs) and National Aboriginal Organizations (NAOs) Final Report, October 2004

Saskatchewan		
	Federation of Saskatchewan Indian Nations	458,917
Alberta		
	First Nations Resources Council	0
	Confederacy of Treaty 6 First Nations	126,263
	Treaty 7 Tribal Council	126,262
	Treaty 8 Tribal Council	126,263
British Columbia		
	Assembly of First Nations - Vice Chiefs Office	197,064
	First Nations Summit	325,279
	Union of BC Indian Chiefs	134,538
Yukon		
	Council of Yukon Indians	171,400
NWT		
	Dene Nation NWT	194,900
	GRAND TOTAL	**3,517,471**

41. Core funding is probably the least controlled funding in that the organization can decide what to do with the money because it is a grant. Grants are supposed to have no qualifications on how the organization is supposed to spend this money but as can be seen the grant program has been capped nationally at $5.6 million dollars per year since 1992. These figures do not directly match with the cap but these figures provide a good general understanding about how funding influences indigenous politics.

42. Even of more concerns to indigenous peoples has been the influence the governments have been yielding through Project Funding:

Project Funding

Project funding is provided to PTOs and the six NAOs on the basis of work plans containing specific initiatives required to be completed in a specific time frame. There are detailed deliverables in reference to each initiative. Funding authorities (i.e. projects must be completed during the fiscal year that the commitment was made). Initiatives funded by INAC cover the broad range of activities including: education; governance (broadly defined); organizational capacity; social development (including child and family services and income support); and economic development.

43. Federal Project Funding given to the National Aboriginal Organizations over the last four years is 25 million dollars. The Assembly of First Nations is allocated $15 million dollars of this money.

Org/Year	FY 2001-2002	FY 2002-2003	FY 2003-2004	FY 2004-2005
AFN	10,767,743	8,940,000	10,478,672	15,051,344
CAP	2,297,152	2,881,163	2,649,000	2,940,610
ITK	1,604,322	1,554,322	1,577,333	1,904,479
NWAC	36,620	45,000	40,000	246,193
Pauktuutit	101,740	137,525	189,320	46,923
MNC	1,825,624	2,142,575	3,491,400	5,002,500
TOTAL	16,633,201	15,700,585	18,425,725	25,192,049

44. The Project Funding is allocated to PTOs directly ties the PTOs to meet federal government policy directions and time frame. There is a level of funding is not provided on a per capita basis but based upon the willingness of each PTOs to become engaged in a Project Funding agreement. The primary reporting requirements is to the federal funding agency and not to the indigenous peoples the PTO represents. In some cases the Chiefs elect the PTO leaders and consequently the implications of these Funding Projects are not fully discussed and the consequences are not fully understood by the people. This is especially true when organization's first priority is to obtain funding and not the implementation of Aboriginal and Treaty Rights.

PTO	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004
Federation of Saskatchewan Indian Nations	15,193,000	17,401,000	15,141,000	11,752,000	8,886,000
Assembly of Manitoba Chiefs	15,134,000	15,258,000	6,336,000	11,764,000	1,400,000
Union of Onatio Indians	4,865,000	5,721,000	3,116,000	6,775,000	6,872,000
Grand Council of Treaty #3	3,639,000	4,284,000	3,689,000	2,938,000	1,683,000
Nishnawbe-Aski Nation	3,437,000	5,778,000	2,390,000	4,985,000	4,760,000
Treaty 7 Tribal Council	2,666,000	3,516,000	2,441,000	3,388,000	2,727,000
Council of Yukon First Nations	2,442,000	2,159,000	1,038,000	3,164,000	1,527,000
BC First Nations Summit	2,195,000	2,882,000	1,576,000	3,855,000	3,690,000
Manitoba Keewatinow Okimakanak	1,982,000	1,755,000	1,330,000	2,666,000	2,105,000
Atlantic Policy Council	1,915,000	2,230,000	2,082,000	2,264,000	1,640,000
Confederacy of Treaty Six	1,694,000	1,308,000	1,859,000	3,500,000	2,578,000
Association of Iroquois and Allied Tribes	1,281,000	1,303,000	607,000	888,000	1,205,000
Chiefs of Ontario Office	1,260,000	1,804,000	565,000	1,328,000	1,416,000
Treaty 8 First Nations of Alberta	1,217,000	1,653,000	1,610,000	2,795,000	2,672,000
Union of Nova Scotia Indians	1,138,000	1,024,000	819,000	531,000	197,000
First Natons Resource Council	1,133,000	865,000	456,000	659,000	620,000
Southern Chiefs' Organization	1,082,000	852,000	267,000	537,000	593,000
Union of BC Indian Chiefs	690,000	594,000	585,000	592,000	886,000
Nations et du Labrador	523,000	387,000	504,000	746,000	837,000
Union of New Brunswick Indians	510,000	571,000	57,000	461,000	448,000
Office of the AFN Vice-Chief	394,000	517,000	234,000	339,000	363,000
Dene Nation	129,000	546,000	308,000	445,000	318,000
Mi'kmaq Confederacy of Prince Edward Island	0	0	0	0	0

B. Policies Aiming at the Extinguishment of Indigenous Land Rights

Modified Rights Model

45. The Canadian government has come up with two variations on extinguishment. The first is the "modified rights model" which the Canadian government states is "pioneered by the Nisga'a". The Nisga'a is an "extinguishment agreement". In fact you need only read paragraphs 685 and 696 in the Fifth Periodic Report to see that British Columbia is providing evidence that the Nisga'a Agreement "sets aside approximately 2000 square kilometers" of their land. And are given "$190 million, payable over 15 years, as well as $21.5 million in other financial benefits." And "the Final Agreement specifies that personal tax exemptions under the *Indian Act* will be phased out."

46. The modified rights model extinguishes Nisga'a Aboriginal Title and "the specified lands will be owned by the Nisga'a as fee simple property, including forest resources, subsurface resources and gravel". Fee simple is the highest form of private real property ownership in British Columbia. This means that the Nisga'a are in no better position than any other private landholder in British Columbia. The modified rights model extinguishes the collective proprietary rights of indigenous peoples and makes the indigenous nation own their settlement property on the same legal basis as any other settler or company.

Non-Assertion Model

47. The "non-assertion model" is just a contemporary way saying the same thing as "cede, release and surrender". Canada states that "Under the non-assertion model, Aboriginal rights are not released, and the Aboriginal group agrees to exercise only those rights articulated and defined in the treaty and to assert no other Aboriginal rights." This model is contingent upon what issues are allowed on the negotiation table.

48. The federal and provincial governments have precluded certain matters[17] like immigration, although in our submission immigrants need to respect Aboriginal Rights; international trade, although free trade agreements undermine indigenous

[17] Indian and Northern Affairs, Federal Policy Guide, Aboriginal Self-government, Ottawa 1995

rights; management and regulation of the national economy, although indigenous rights have an inherent macro-economic dimension and indigenous peoples should have an equal say over economic policy; intellectual property, although indigenous peoples hold extensive traditional knowledge; water, although no indigenous peoples in Canada have never ceded their Aboriginal Title to water; remuneration for past and on-going use of Aboriginal land and resources, although we are owed billions in remuneration; and an alternatives to the land selection process, although our people have always rejected that process; as non-starters.

Loan Funding

49. In addition the all negotiation processes are subject to the federal and provincial funding schemes. In British Columbia Canada and the provinces have made loans to all the participants of the British Columbia Treaty Commission process. According to Canada "The interest-bearing and non-interest bearing portions of the loans outstanding at the year end are $48,777,175 and $231,740, 871 respectively. The rate of interest is 5.185 percent per annum for the interest-bearing portion.[18] The province states that "the earliest date at which the loans are expected to become due is 2006".[19] Interest would accrue to approximately $1.5 million dollars per year. This mounting debt will put a lot of pressure on the indigenous peoples to opt for an extinguishment deal. Loans and interest will strengthen Canada and the provincial governments at the expense of indigenous peoples.

50. In fact in the Province of British Columbia Public Accounts Financial Statements have been reporting on Aboriginal Land Claims for at least the last 7 years. It is clear that these Financial Statements assure the economic community that indigenous peoples are borrowing money to negotiate, that they will accept BC Crown land through a land selection process but "there has been little or no progress in negotiations and a final agreement is not anticipated in the near future." It is clear the province is using the British Columbia Treaty Process to

[18] Government of Canada, Summary Report and Financial Statements, Loans, Investments and Advances, Pages 9.35-9.36

[19] Province of British Columbia, Public Accounts 2003/04, Notes to Summary Financial Statements, For the Fiscal Year Ended March 31, 2004, Page 60-61

filibuster negotiations on Aboriginal Rights. Canada and British Columbia have set up the negotiation process to make the Nisga'a type agreement a precedent.

51. There are four aspects to this strategy and they hinge on the position that Canada and the provinces do not recognize Aboriginal Title. This is clear in all legal cases Canada and the provinces always jointly oppose the fact that Aboriginal Rights and Title exist. Regardless of what Canada may say politically the truth comes out in their legal arguments made before the courts. The fact that Canada and provinces do not recognize Aboriginal Rights makes indigenous peoples powerless in negotiations. Simultaneously the Canadian and provincial government carry on "business as usual" and frustrate negotiations.

52. This coupled with using the legal process to arrest and convict indigenous peoples from taking direct action to protect their Aboriginal Rights, escalating loans and loan interest forces indigenous peoples to think the Nisga'a type agreement is possibly the only realistic solution. The real problem with this solution is that it will only perpetuate the problems we have experienced up to now. The record of indigenous peoples is historical evidence of what will happen if we remain under the exclusive jurisdiction of the federal and provincial governments. Recognition of Aboriginal Rights is the mechanism that the Supreme Court of Canada and the Canadian Constitution 1982 have identified as the basis to create a new order of relationship between indigenous peoples with Canada and the provinces.

53. The Human Rights Committee is right in asking Canada to explain how Article 1 applies to indigenous peoples in Canada. It is clear from Canada's report that regardless of what Article they report under the issue of the natural wealth and resources of indigenous peoples is the substance of the discussion. What is important is that Canada cannot be allowed to escape from addressing the issue of self-determination and the disposition natural wealth and resources of indigenous peoples to our mutual satisfaction.

54. The federal government has refused to review its land rights policy since the Delgamuukw decision in order to bring it in line with the direction of the Supreme Court and the Canadian constitution.

C. Canada exports its unconstitutional policies internationally

55. Not only are Canada's policies regarding both land rights and self-government unconstitutional in Canada, they also violate international law, such as the ICCPR. Still Canada uses its good reputation as a country that upholds human rights to try and export its policies that undermine inherent international rights internationally. They use development cooperation funding to try to promote the duplication of Canadian policies and even to facilitate access of corporations to indigenous territories.

56. For example multi-national corporations based in Canada now dominate the mining sector and to try to ensure certainty of their investments, the Canadian government promotes policies that protect corporate over indigenous rights. In the Softwood Lumber dispute Canada even went so far as to argue that corporations own the timber, as it grows in the public and indigenous forest, because the government has given them long-term licences, that puts them in a position as owners of the resource. INET worked with indigenous peoples from across Canada to oppose this argument, because we knew that its acceptance would have devastating effects not only on indigenous peoples in Canada, but around the world. INET's submissions were accepted and Canada's argument negating the existence of subsidies and promoting free corporate access to resources was rejected.

57. The government of Canada is one of the strongest promoters of trade liberalization and free trade agreements. This includes the Free Trade Area of the Americas (FTAA), meant to secure increased corporate access to natural resource, including water and investment security, especially through an investor state chapter allowing international corporations to sue governments. Indigenous peoples in the South, have been leading the struggle to oppose free trade agreements and they have expressed concerns over the government of Canada trying to split their movements, by providing funding for different events and projects all based on Canada's policies and priorities. One example is the funding for the organization of the so-called Indigenous Summit of the Americas to bring together indigenous organizations, to discuss everything but the impact of free trade agreements on their rights. In turn indigenous organizations from across the Americas are organizing an independent indigenous meeting in opposition of the OAS Summit of the Americas and the proposed FTAA.

D. Avoid addressing the fundamental issues

58. In a parallel to its response from the request to the Committee to provide further information on the implementation of self-determination, where Canada said they will just address those issues orally in an attempt to have to avoid dealing with the issues in a meaningful manner. Similarly on the national level, the federal government has engaged in a strategy to primarily talk about programs and services to minimize any discussion about Aboriginal Rights. The federal government will focus on Health, Life-Long Learning, Safe & Sustainable Communities, Housing, and Economic Opportunity.

59. Where legislative tools do exist that are intended to support self-determination, these policies are not implemented to the satisfaction of the indigenous peoples primarily for the reason that opportunities for prior and informed consent (based on the rights in Article 1 (2) are not extended to indigenous peoples. Some examples include the exclusion of indigenous peoples in the federal Access and Benefits Sharing (ABS) policy and other provincial initiatives that work to undermine Article 1(2) rights. A number of other provincial initiatives such as proposed “resource revenue sharing” legislation gets quashed by the government in power which adds to the fire that indigenous peoples in Canada are put under.

60. Indigenous peoples in Canada receive no direct benefits from forestry and mining in their territories. Instead, the federal and provincial governments receive substantial fees, royalties and taxes. Because of this kind of revenue stream, the Canadian government perpetuates a cycle of dependency. Indigenous peoples are forced to survive through the transfer payment system which impedes our ability to be self-determining.

61. Instead of promoting the right to self-determination and protecting the interests of indigenous peoples, the Canadian government continuously take adversarial positions against indigenous peoples in favour of industry or other competing third party interests (many examples of this situation can be provided but they are beyond the scope of this document).

First Ministers Conference – November 25, 2005

62. The First Ministers of Canada will be meeting in Kelowna, British Columbia on November 25, 2005 to put forward the image that Canada is going to expend 2 billion additional dollars and that British Columbia is going to spend 100 million dollars on indigenous issues. None of this money will really reach the vast majority of poor, welfare recipient indigenous peoples but get gobbled up by indigenous bureaucracies. It is kind of ironic that Indian band administrations are learning how to manage Indian Affairs from the very people who have been oppressing us from the very beginning.

63. The Premier of British Columbia Gordon Campbell has taken the week of October 12 (Columbus Day) to tour the provinces and meet with other premiers and Aboriginal leaders in the run-up to the November first ministers' conference on indigenous issues. To pretend that the province of British Columbia is an advocate for indigenous issues, when they are the first to oppose court cases to ensure recognition of indigenous rights is preposterous. The BC Liberal government really is an advocate for corporate control over resources, trade liberalization and privatization and commercialization of resources. Both the federal government and the provincial government have not recognized Aboriginal Title but rather have promoted policies of extinguishment. Only by undermining indigenous rights, can they secure the certainty the corporations request for their investments.

64. Neither the governments nor the corporations remunerate the indigenous peoples for the resources taken from their territories and they are not ready to discuss a fair sharing of the revenues and indigenous involvement in decision making regarding land use. The only thing they have offered to date, is discretionary payments that are allocated by the provincial government to indigenous peoples, who accept the government's authority to make decisions regarding land use. The payments offered are minimal in relation to the value of the resources taken from the respective territories and indeed the payments are not linked to the level of resource extraction. Rather they are budget posts, that the respective ministry allocates on a discretionary basis and in order to secure its exclusive control and jurisdiction. The underlying agenda of promoting corporate rights rather than protecting indigenous rights, became clear when Premier Campbell during his trip across the country to promote indigenous issues, had a meeting with his colleagues, Quebec Premier Jean Charest and Ontario Premier Dalton McGuinty,

exclusively to discuss Softwood Lumber. The three provinces together produce most of the Softwood Lumber in Canada, British Columbia alone covers 40% of the 10 billion a year export item. Indigenous peoples in Canada still receive no remuneration for the forest resources taken from their territories. The 150 million recently announced by the province of British Columbia to deal with indigenous interests, is minimal and not even worth mentioning vis-à-vis the 10 billion dollar Softwood Lumber trade alone.

The "New Relationship" in British Columbia

65. Yet those 100 million are the very amount that has been announced in the Budget Speech of BC Premier Campbell to ensure the building of a new relationship with indigenous peoples. The Premier has been criticized for negotiating this framework without involvement of the public and without involving indigenous peoples on the ground for that matter. Yet he has strategically lured indigenous leaders into the dangerous web or smokescreen of the new relationship, especially by announcing the 100 million which might sound like a lot to indigenous organizations with chronic funding problems and chiefs of Indian bands that are forced to administer the poverty of their own people. This is evidenced by the statement of Chief Stewart Philip, President of the Union of BC Indian Chiefs, who considered 100 million: "Undeniable evidence that the times have changed." It was even reported that he confided that when he accepted the premier's invitation to attend (the budget speech), he had a nagging fear in the back of his mind about one more parade of beads and trinkets20. Clearly 100 million might sound like a lot to the president of an organization like the Union of BC Indian chiefs that has been chronically underfunded because of their historically strong position calling for the recognition of indigenous rights. Many indigenous peoples feel that the integrity of this historically strong position is threatened by becoming involved in the negotiations with a government that maintains the treaty process and a land selection model. They do not want to see the rights of their children and grand-children undermined by accepting funding that amounts to nothing more than beads and trinkets or pocket change if you look at it from the perspective of a government with a surplus or of industry, that both make billions of dollars a year from the resources of indigenous peoples.

[20] For the full article please consult the article by: Vaughn Palmer, published in the Vancouver Sun on Friday, September 16, 2005.

VI. INDIGENOUS PEOPLES ON THE GROUND FACE VIOLATION OF THEIR HUMAN RIGHTS TO ENSURE PROTECTION OF THEIR INDIGENOUS RIGHTS

66. The indigenous peoples presenting this submission build on a historic movement calling for the recognition of indigenous sovereignty and the inherent rights of indigenous peoples. We deeply respect the strong positions of our ancestors and historic leaders and stand strong behind their principles: that we will not give up our inherent rights in our traditional territories and as indigenous peoples we have the right to self-determination. We maintain these values to preserve the rights and interest of our children, grand children and future generations. We also teach our children about the obligations they have towards our traditional territories. Collectively we share in the traditional knowledge that is connected in our traditional territories and the obligation to protect them that comes along with it. We take direction from our elders and aspire to rebuild traditional decision making and governance structures. Our aim is to ensure culturally, environmentally and culturally sustainable development in our traditional territories.

67. Our aim is to ensure culturally, environmentally and culturally sustainable development in our traditional territories. This often puts us in conflict with corporate interests and commercial developments that focus on maximization of profits and exploitation of natural resources. Governments and corporations alike fail to recognize our indigenous right to self-determination and accept our jurisdiction over any developments that happen in our traditional territories and the economies that are developed within them.

68. Due to the lack of implementation of our indigenous rights on the ground and government policies that undermine our indigenous rights, corporate developments are permitted and allowed to go ahead without taking into account indigenous rights and without remunerating indigenous peoples, from whose lands and resources the profits are reaped.

69. Indigenous peoples only have three avenues to try and stop such commercial-industrial mega-projects: litigation, taking action on the ground and going international. The people we work with engage all three strategies. Litigation is costly and time-consuming and most of our people cannot afford it and even if we

are able to keep a case going, the corporations continue to exploit our lands and resources while the litigation continues in some cases for decades. The only way we can protect our lands and resources immediately is by taking action on the ground to assert our Aboriginal rights and in some cases stop development. We try to back our action on the ground with taking our concerns international to garner support and ensure that our peoples' rights on the ground are no longer violated.

70. Exercising our rights on the ground is often the only alternative and it requires the ultimate and very personal commitment of those of our people who take a stand often in the face of blatant racism and threat of criminal prosecution. Because the government's do not recognize our rights, they are also not recognized in most national legislation. As a result when we exercise our rights, government agencies often accuse us of violating national laws. What they forget to mention is that those very laws violate the Constitution of Canada, the highest law in the country that recognizes Aboriginal Rights.

71. In order to intimidate indigenous peoples and keep them from exercising their rights, the executive branch threatens to criminalize their actions and take them to criminal court. Indigenous peoples in Canada continue to be charged with "illegal hunting" or "illegal fishing" when they exercise their inherent right to hunt and fish and earn a livelihood for their impoverished families. People that oppose mega-developments and set up a presence in their traditional territories or block access to sites are often charged with a number of offences, such as blocking a road or obstructing peace officers.

72. The government of Canada and the provinces strategically use the Royal Canadian Mounted Police and provincial police forces to enforce unconstitutional laws and policies and further undermine indigenous rights, when their real role should be to keep the peace in conflict situations. This misguided instrumentalization of police officers can threaten both the life and security of civilians and public order. Furthermore when arresting or detaining indigenous peoples police officers often violate the individual rights of those people. This is documented by a number of charges that have been dismissed and police complaints and coroner investigations that had to be conducted in others.

73. The following is a list of the individual rights violations suffered by indigenous peoples who exercise their rights on the ground. The sections that follow will document specific cases where indigenous peoples have opposed developments and seen their individual rights violated in turn. These are just a few examples of specific human rights violations, put in relation to the relevant articles of the ICCPR.

74. Violations of Article 6 – right to life: Exactly 10 years ago the Ontario the Ontario Provincial police killed an unarmed indigenous activist, Dudley George, who was standing up for the recognition of his people's rights to their traditional territories. A public inquiry is currently underway to determine which politicians and government officials at the hightest level which gave the order or authorization to use lethal force. At the same time in British Columbia an armed stand-off between Secwepemc people and the Canadian army was underway. In this case the government authorized the use of land mines against the indigenous activists, at a time when the government was promoting the Anti-Landmine Treaty internationally. In many cases involving indigenous peoples in Canada the executive force engages excessive force that in many cases threatens the life and in some cases takes the lives of indigenous peoples. We also wanted to point to a very disconcerting number of indigenous deaths in police custody, many of them unexplained and never thouroughly investigated. One recent example is the death of indigenous youth in the Merritt area, while being detained by the police.

75. Violations of Article 7 – cruel and unusual punishment and degrading treatment: Indigenous peoples have reported many incidences of cruel and unusual treatment while in custody. These instances raise a great concern regarding racist tendencies in law enforcement, often resulting in the violation of the rights of indigenous individuals.

76. Violations of Article 9 – liberty and security of the person: Indigenous peoples have the right to be free of arbitrary arrest and detention, yet indigenous peoples are often arrested and prosecuted for exercising their rights. Indigenous activists often have to give up their personal freedom and liberty to secure the protection of their inherent rights or draw attention to the violation of their peoples' indigenous rights. Indigenous peoples who are charged have a right to a prompt trial, but on

many occasions, cases involving indigenous activists are strategically drawn out to impose extensive bail or release conditions on the activists and thereby further limit their freedom for an extensive period of time.

77. Violations of Article 10 – People who are deprived of their liberty awaiting their trial, should be treated as unconvicted persons. Many indigenous activists report discrimination while in custody. One example is that of a mother, who was arrested for her actions to protect her traditional territory from the expansion of a ski resort. At the time she was arrested she had a 4 month old baby, who was only breast feeding and did not take any other food. Yet the baby was forcefully separated from its mother, suffering trauma and sickness as a result. The baby was not allowed to stay with his mother during pre-trial detention, resulting in the violation of both the mother's and the baby's rights.

78. Violations of Article 14 - the right to a hearing before competent tribunals: In many cases Canadian courts lack an understanding of indigenous rights and cultures and in some cases judges even displayed a racist attitude regarding indigenous issues. In some cases where indigenous peoples have asked for expert and oral evidence to be presented to inform the court about their rights and culture, the courts have refused to hear this evidence.

79. Violations of Article 16 – right to recognition everywhere as a person before the law – Indigenous elders remember the times when they did not have a right to vote and attend restaurants and other public places owned by Caucasians. Their lives were and to a great extent are still dominated by the regulations contained in the Indian Act. This also determines registration as a band members and puts important elements of status Indian's rights under state control. Many generations are also impacted by the devastating experience of residential schools, that constituted genocide pursuant to the definition of the UN Genocide Convention, namely a strategic attempt to destroy indigenous culture and languages. Motivated by this experience that so long did not have him treated like a person, an elder from the St'at'imc nation has petitioned both the government of Canada

and the Indian band that administers the Indian Act, to certify that he is a “human being” – a person before the law and they have turned his request down, and failed to recognize his individual and collective rights as an indigenous person.

80. Violations of Article 17 – no unlawful interference with privacy: Indigenous activists are often subject to surveillance, their privacy is invaded and their conversations and actions are illegally surveilled. Indigenous leaders and activists who stand up for their rights are often subject to vicious attacks on their honor and reputation, for example a former chief of the Shuswap Nation was accused of being an “economic terrorist” by the federal member of parliament of his riding, because he took the concerns of his people international. Similarly the local Member of the provincial parliament has publicly attacked the same leader and his family for taking a historically strong position on indigenous rights.

81. Violations of Article 26 – non-discrimination provision: Many incidents across Canada— from Miramichi Bay on the East Coast, to Ipperwash Provincial Park in central Canada, to the interior of British Columbia— show that public authorities and public institutions routinely engage in acts of racial discrimination towards Indigenous people and their communities, particularly those asserting their inherent rights. To enforce policies (often those which discriminate against Indigenous land, treaty and inherent rights as argued above), federal and provincial governments use public authorities and institutions such as
    - the Department of Fisheries and Oceans (DFO) and its enforcement units;
    - provincial police, Royal Canadian Mounted Police and, in some cases, even the armed forces;
    - Land and Water British Columbia, formerly BCAL: British Columbia Assets and Land Corporation;
    - the Department of Indian and Northern Affairs (DIAND)

    Indigenous people who exercise their inherent rights and protect the collective interests of their people in response to enforcement of state-party policy by such public authorities and institution are often criminalized.

A. Stop Sun Peaks Expansion

82. Since 1998, the Secwepemc people in the interior of British Columbia have been asserting Aboriginal title to their traditional territories around Skwelkwek'welt on the basis of the *Delgamuukw* decision (1997), in opposition to the expansion of the Sun Peaks Ski Resort to 6 times its present size. Land and Water B.C. (formerly BCAL), a Crown Corporation, has repeatedly granted leases to accommodate Sun Peaks expansion plans, acting on the basis of the outdated Land Act, which does not recognize Aboriginal Title, and without consulting Indigenous people.

83. The Secwepemc people have responded by setting up the Skwelkwek'welt Protection Centre, including year round camps in the disputed territories. Land and Water B.C. subsequently extended Sun Peaks lease to the Crown lands on which the camps were located, forcing Indigenous people out by injunction. Thirty-eight arrests of Indigenous people from the camps took place from June to December of 2001, with charges ranging from "criminal contempt" to "mischief" to "intimidation and obstruction of a peace officer." In a further effort to protest the denial of their Indigenous rights, members of the Native Youth Movement occupied Land and Water B.C. corporate offices, under the direction of Secwepemc elders; 16 people were charged with contempt, with a number of convictions, including prison sentences.

84. In all cases against Secwepemc people, Sun Peaks and the Province of British Columbia have sought to prohibit Secwepemc people from entering the resort. Some community members have been given 2, 5 or 10 km prohibitions from entering Sun Peaks. Secwepemc people from Neskonlith Indian reserve have also been served tickets for camping in a provincial park on Neskonlith Lake, on a shore opposite their reserve and in the heart of their traditional territories.

85. The Skwelkwek'welt Protection Centres and the cord-wood house on MacGillvray Lake were erected on the basis of Aboriginal title permits issued by the Secwepemc People. Those receiving the permits did not want to be confined to their reserves, where dire social and economic conditions prevail, including inadequate housing for all band members. When the cord-wood house was

ordered destroyed by the provincial government and demolished by Sun Peaks workers on December 10th, 2002, the family's right to housing was violated.

86. In the struggle to stop the expansion of Sun Peaks Resort in Secwepemc territory near Kamloops, British Columbia over 50 people[21] have been charged by the British Columbia government and Sun Peaks Resort and were arrested by the Royal Canadian Mounted Police (RCMP). This political effort is to stop the existing six thousand bed-unit resorts from expanding to twenty-four thousand bed-units because of the damage it will have on the culture of the Secwepemc peoples. For example, Irene Billy, an elder was arrested in July 2002 and charged with Contempt of Court but she was found not guilty because the court found that neither a criminal mind nor criminal acts were prove by the Crown prosecutor.[22]

87. The last three people who were arrested were arrested because the province of British Columbia and Sun Peaks Resort used a press release by the local tribal organization as evidence that the local leadership did not support the establishment of camp in the Sun Peaks Resort area. The local tribal organization later recanted on the press release, still Henry Sauls, George Manuel Jr. and Arnold Jack were arrested in September 2004. The cases against them were later stayed, because of the precedent decision made by the Supreme Court of British Columbia quoted above.

88. In that particular case the RCMP dropped the charges against these three Secwepemc men because the legal documents were not properly prepared and the Crown prosecutor felt the charges of Contempt of Court would be dismissed once again. In meeting in December 2004 requested by the RCMP with the Skwelkwek'welt Protection Society, the executive force made it clear if another camp was established at Sun Peaks Resort arrests would be made again. It was explained that the camps were not demonstrations camps but the effort of the Secwepemc peoples to protect their Aboriginal Rights. When Janice Billy, Spokesperson for the Skwelkwek'welt Protection Center asked where are we to go if we could not go to the Sun Peaks Resort area, one of the RCMP Inspectors said you should just stay on your Indian Reserve.

[21] Provide a list of the arrested people

[22] British Columbia v. Billy, Sauls, Manuel Jr., and Willard 2003 BCSC 55

B. Sutikalh

89. In 1990, the Lil'wat, staged a road blockade in Mt. Currie in opposition to a plan to pave logging roads that run through our community. The Lil'wat community is a band of the St'at'imc people, who are often referred to as the Lillooet Nation, we have lived in the coastal mountains for thousands of years, and we have never ceded or surrendered any of our territory. As a result of our action, 67 protesters were arrested. We refused to give our names or co-operate with authorities.

90. In the following years the resort development firm, NGR Consultants Inc., proposed to build a ski resort in our last remaining untouched valley, the natural habitat of the grizzly bear, mountain goat, and wolverine and many of the natural medicines and berries that we use in this area. NGR would sell our water and destroy the last untouched watershed within our St'at'imc territory. By Spring 2000, it became clear that the ski resort would probably be approved within the year. In response, the women of Lil'wat sent the men into the mountains to set up a blockade and protest camp to stop this resort from being built.

91. The Sutikalh camp—named for the St'at'imc "Winter Spirit" who dwells in the mountains—was set up on May 2, 2000. On June 11, 2000,—chiefs, elders and members of all 11 St'at'imc communities—gathered at Sutikalh and collectively decided to stand together to stop the proposed ski development. The camp has had opposition from loggers, hikers, bikers, hunters, skidoo riders, ATV riders, tourists going as far as death threats and shots fired at the camp. On August 14, 2000, the Environmental Assessment Office approved the Cayoosh Ski Resort.

92. Years have passed, and the camp has endured. On July 27,2005, NGR Consultants applied for an extension on its development permit, which was due to expire on August 14. All of the St'at'imc should have been notified and asked for comment. In the original permit from 2000, it was stated that in order to get an extension, construction had to be substantially started within five years. Al Raine said that the Indian problem is in the hands of the government. The Sutikalh camp has been up for 65 months now, plans to remain to stop the development. The St'at'imc people have said from day one that there will never be a ski resort in Sutikalh, and they say that still, today. On August 11th, 2005 the provincial government granted NGR Consultants an extension. The St'at'imc people continue to man the camp in their territory and are ready to sacrifice their personal freedom to protect their last remaining valley.

C. Tahltan Elders Arrested

93. In September 2005 Tahltan Elders and native youth were arrested in northern British Columbia for standing up for their Aboriginal Rights by establishing a road block protect their sacred headwaters. The Tahltan Elders have declared a moratorium on resource development in their traditional territory until they are consulted and give prior informed approval to all development. The Elders also asked Shell Canada to leave the Tahltan Territory and stop drilling for coal bed methane. Nevertheless, Fortune Minerals was given an Injunction and Enforcement Order to have the blockade removed so they can move equipment to destroy Skeena headwaters of the Talhtan peoples.

94. The Canadian and provincial governments continuously present the view that these political initiatives by indigenous peoples to stop development are illegal measures. They use Injunctions and other legal measures that do not take into consideration Aboriginal and Treaty Rights and purely impose settler, commercial and industrial based criterion for making decisions. The main purpose of this kind of legal tactic is to get the indigenous peoples off the land and in the courts. This allows the government to continue to exploit and earn revenue off indigenous lands. There is no question that indigenous peoples do have legally recognized and constitutionally protected land rights but practically speaking Aboriginal and Treaty Rights are not recognized on the ground. Simultaneously to this blunt effort to break the political spirit of the indigenous peoples to protect their lands, the government engages in negotiation process that have as their underlying policy the assimilation of indigenous peoples and the extinguishment of Aboriginal and Treaty Rights.

95. The governments together with the corporations have influenced the Indian band and especially the Chief Jerry Asp, to support mining, although his own people and elders oppose it. Adding further insult to injury, a Canadian mining corporation has invited the chief to Guatemala to promote mining in Mayan indigenous territories. Both the companies and the governments use such visits to promote Canadian policies and of course no mention is made of the opposition of the Thaltan people themselves to mining their territories and the further violation of their rights when they were arrested for trying to stop the development.

D. Nuxalk Nation

96. The traditional territories of the Nuxalk Nation, are situated along the Central Coast of Britsh Columbia, they cover many smayustas or fjords, each the responsibility of a traditional family, that in turn is headed by a traditional chief. They are all connected by their deep belief in the sovereignty and traditional ownership of the Nuxalk Nation. These chiefs have important obligations towards their people and in turn towards their territories which they have to protect. The threats to their lands and waters are many from logging, to mining and fish farming. House of Smayusta of the Nuxalk Nation has struggled against Interfor, fish farming and mining.

97. In the case of Nuxalk opposition to logging in the Valley of Ista, in the Great Bear Rain Forest, 6 band councillors opposed the forestry operations and 5 endorsed them, but the federal department for Indian and Northern Affairs (DIAND) backed the minority decision endorsing the logging plans. DIAND and the minority band council even laid charges against Nuxalks exercising their Aboriginal Title and rights. Often DIAND policy and practices exacerbate, or even promote, divisions between Indigenous people prioritizing short-term program monies and those seeking to protect long-term Aboriginal title interests. This was a deliberate attempt to undermine traditional indigenous leadership and with it the inherent rights that these families hold.

98. Still the traditional chiefs and the people went and stopped road construction for over one month. There were 22 arrests and all were charged with criminal contempt because they tried to protect one of their last remaining valleys. The logging went on while some of the chiefs were in jail and while the trials went ahead and stringent conditions were imposed on the Nuxalk. Still they returned the following year, again to stop the logging and this times the resulting trials went on for 3 years.

99. Today the House of Smayusta opposes fish farming because it destroys marine ecosystems and has a devastating effect on their indigenous salmon stocks and their other traditional staple food the ooligans. They also oppose mining and any other activities that destroy their environments and violate Nuxalk sovereignty.

E. Pilalt Nation at Cheam

100. The Pilalt people, live in the Cheam community along the Fraser River and for many years they have been a target for the federal Department of Fisheries and Oceans (DFO) because they continue to maintain and exercise their inherent right to fish. Fisheries officer have been aggressively provoking Pilalt fishers, ramming their boats and trying to swamp boats. Then they go to the police and press charges against the Aboriginal fishers who are only defending themselves. The Pilalt people have also been subject to racial profiling and propaganda to give the general public the impression that Aboriginal fishermen deplete the fish stocks rather than large-scale commercial industrial fisheries. DFO have taken Pilalt people right off the river to jail, they have seized their boats and have even tried to pull one fisher out of his boat while he was still at the controls of his boat, thereby putting his life at risk. During another instance they worked in concert with the RCMP, went to the beach to arrest someone, and although they had the fellow in handcuffs, they still threw him on the ground and pepper sprayed him. Aboriginal fishermen in turn have had to go to court for at least six years in big numbers. Trials have been drug out for months to keep imposing stringent release and bail conditions on the fishermen.

101. Another problem the Pilalt nation faces is the desercration of their sacred mountain in order to accommodate the 2010 Olympic Games. The provincial government has vowed to get more ski hills in BC, without consultation they are trying to approve construction in one area the Pilalt use for many purposes such as spiritual, sustenance, culture and other uses. Many indigenous peoples oppose the 2010 Olympic Games because they fear that the governments will try to hide the fact how the related developments and government policies continue to violate indigenous and human rights.

F. Wunnumin Lake First Nation

102. Wunnumin Lake First Nation has been struggling with their fight to hold on to territorial integrity and right to self-determination. After issuing a moratorium on mining exploration activity on their territory, they continue to be ignored by mining exploration companies. Canada and Ontario have a vested interest in supporting the mining industry, this is evidenced in the many concessions and policy directions provided for them (ie. “Operation Treasure Hunt” in Ontario).

VII. ABORIGINAL WOMEN – VICTIMS OF COLONIALISM

103. The Human Rights Committee asked in its List of Issues in paragraphs 12 and 23 has raised aboriginal women but Canada did not respond to this issue:

"12. According to certain information, Aboriginal women are five times more likely to experience a violent death than other Canadian women. It is reported that about 500 Aboriginal women have been murdered or been reported missing over the past 15 years, and that these cases have not yet been solved. Please provide statistical data and indicate what measures have been adopted at the federal, provincial, and territorial levels to address this issue."

"23. Please provide information about any action adopted by the State party in order to remedy the discriminatory effects of the Indian Act against Aboriginal women and their children, and in particular to address the issue of second- and third-generation loss of reserve membership if an Indian woman marries outside her community (previous conclusions, para. 19)."

104. There are more than 500 missing and murdered Aboriginal women in Canada, largely from the western provinces. Vancouver and Edmonton. The most vulnerable areas have been inner-cities, where the women are prostitutes. A number serial killers have been convicted over the years. These are committed by white men who hunt down vulnerable Native women, apprehend and viciously beat or kill them. The subsequent criminal investigations are either late or flawed; media ignore the slaughter or under-report it; public reaction is apathetic or non-existent; some crimes are not punished; accomplices are not prosecuted. The women were almost all drug addicts and prostitutes, they began disappearing as far back as two decades ago, and police took a long time to make a significant arrest. There are a number of places where there is suspicions of activities by serial killers.

105. Vancouver: The disappearances of prostitutes, about half being native women, in the downtown eastside of Vancouver began in the early 1980's. By 1999, 30 prostitutes, were missing from a four block corridor of Vancouver's downtown eastside. At this time, there were no crime scenes or bodies. By 2003, the number of missing women in the downtown eastside was above 60. In the early 90's, the dismembered body of a native woman was found in a dumpster in the downtown eastside. The brutality of this murder, and the lack of any serious police investigation, sparked the annual Valentines march that is now held every

year. The purpose of this march is to honour the missing and murdered women in the downtown eastside, to create public awareness, and to apply pressure on politicians and law enforcement to find these women, and to solve any murder cases. The organizers of this march work closely with the loved ones of the missing and murdered women in the downtown eastside.

106. Edmonton: The RCMP's Project Kare tries to find answers to more than five dozen women missing and murdered in Alberta. In Edmonton's case, there still have been no arrests. Inevitably, questions arise about the attention - and personnel - that police put towards finding answers and making arrests regarding the huge number of missing women. Project Kare has only been set up recently, replacing the former "high-risk missing persons project." Project Kare involves only the RCMP, not the Edmonton city police, even though many women disappeared in Edmonton. We are working in harmony with Edmonton (city) police services but they are not represented on the project," said Alberta RCMP spokesman Const. Al Fraser. Like the Vancouver missing women joint task force, Project Kare is slow to get rolling. "We're getting it set up right now," said Fraser. "We just moved into the investigative stage from the analytical." So far, only three RCMP members - an inspector, staff sergeant and sergeant - are working full-time on the project, "putting together infrastructure and going through applications for people of expertise," said Fraser. Recently, JoAnne McCartney, a former vice officer who now runs a program aimed at getting hookers off the street, said Project Kare may be a "public relations exercise" to calm anxious families and secure government funding. She said she had hoped the new task force would be a joint venture by RCMP and Edmonton Police.

107. Highway 16. Prince George to Prince Rupert: Highway of Tears: The 720-kilometre stretch of highway between Prince Rupert and Prince George in the northern interior of British Columbia has come to be known as the "Highway of Tears" after a number of Indigenous women and girls were assaulted, disappeared or were found murdered in communities on or near the highway in the 1990s. Between 1988 and 1995, five young women -- Alberta Williams, Delphine Nikal, Ramona Wilson, Roxanne Thiara, and Lana Derrick - went missing along that stretch of highway. It was not until the first non native woman disappeared along this same stretch of highway that the media gave some attention to these disappearances/killings.

VIII. THREATS TO INDIGENOUS LANGUAGES & CULTURES

108. In regard to Aboriginal Language Human Rights Committee asked in paragraph 24 for the national strategy.

"24. What is the national strategy for the preservation, revitalization and promotion of Aboriginal languages and cultures, and what recommendations, if any, have been adopted by the task force of 10 Aboriginal people.

109. In Canada a number of indigenous languages and cultures are in danger of extinction due to the impact of the forestry industry on traditional lifestyles, particularly in the far north regions where there is a push for natural resources in "untouched" wilderness areas.[23] The language connects the land and the people. The language contains the mental, physical, and spiritual connectedness of indigenous peoples to the land. It protects and maintains all forms of indigenous knowledge, It keeps the people whole and connected to the Creator. It maintains the responsibility to the land. The language contains traditional ecological knowledge needed to protect biodiversity and it is used to transmit all forms of knowledge to future generations.

110. For example, Secwepemctsin, the language of the Secwepemc, is one of the Interior Salish languages of the large Salishan language family. The Secwepemc language, culture, and way of life are being severely endangered and on the verge of extinction. The onslaught of colonization and forced attempts at assimilation and acculturation inflicted devastating atrocities on the Secwepemc way of life. Their lands, culture, and language were systematically attacked and destroyed. The oppressive and paternalistic efforts of the Canadian government and various churches to suppress language and culture were almost successful; however, remnants of the language and culture remain intact. Secwepemctsin is in extreme endangerment throughout the Secwepemc Nation. In 1991, out of a total of 7,597 members in the Nation, there were 308 speakers of the language (3.9%).

[23] Canada's Assembly of First Nations have undergone a study that illustrates the fact that of Canada's 53 indigenous languages, only three – Cree, Inuktitut and Ojibway are strong enough to be ensured survival into the next century. Other languages are at risk by 66%, endangered by 30%, declining by 25%, or in a critical situation by 11%.