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BULLETIN OF THE FIRST NATIONS STRATEGIC POLICY COUNSEL

SMOKE & MIRRORS-The Kelowna 'Commitments':
First Nations and the Federal Election 2006

L to R: Stephen Harper, Paul Martin, Jack Layton, Gilles Duceppe, at Leaders English Debate in Vancouver. (CP PHOTO/Fred Chartrand)

By Russell Diabo

Following the First Ministers' Meeting (FMM) on Aboriginal Issues held in Kelowna, B.C. on November 24, 25, 2005, there seems to have been little critical analysis by the Canadian mainstream media, or Aboriginal media for that matter, on the outcomes of the FMM, including the critisism of the process and outcomes.

Most of the media coverage focused on the FMM event and the $5.1 billion in federal funding commitments for the identified areas of spending (education, health, housing, economic opportunities, relationships) on Aboriginal peoples, not just for First Nations.

The lack of media attention on Aboriginal issues following the Kelowna meeting is not surprising since the federal election started about one week after the FMM was held in Kelowna, placing the FMM commitments into question.

Special Chiefs' Assembly

On December 6-8, 2005, a Special Chiefs' Assembly was held in Ottawa, Ontario, and of course the main agenda item was to obtain the ratification of the Chiefs-in-Assembly for the process and outputs of the FMM.

Of course National Chief, Phil Fontaine, in an almost hour long speech, predictably berated any critics of the FMM process and outputs while calling for endorsement by the Chiefs of the Kelowna commitments.

The secondary agenda item of the AFN Assembly was to maintain the support of the Chiefs-in-Assembly on AFN promoting First Nations participation in the federal election process.

To this end, all four parties were invited to the AFN Assembly, and had representatives make presentations to the Chiefs-in-Assembly, all parties presented.

Bernard Cleary, Aboriginal Affairs Critic for the Bloc Quebecois told the AFN Assembly that his party would be releasing an Aboriginal platform within days and that it would be based upon the principles previously set out by the former Quebec Premier Rene Levesque.

Pat Martin, Aboriginal Affairs Critic for the New Democratic Party told the AFN Assembly that his party had delivered $1.2 billion of the monies announced at the Kelowna meeting and that the Liberals shouldn't get credit for all of the money announced. Mr. Martin reminded the Chiefs that the federal budget didn't include new money for housing or post-secondary education until the NDP amended the federal budget. Mr. Martin confirmed the NDP would support the Kelowna commitments should they have a role in the next Parliament. Mr. Martin also indicated that the NDP would be announcing an Aboriginal platform within days.

Special points of interest:

- **FMM "Kelowna Commitments" mired in federal & First Nation politics**
- **Analysis of FMM Media Coverage**
- **Indigenous Coalition Make submission to UN Human Rights Committee on Canada's Denial of self-determination**

Inside this issue:

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Jim Prentice, Aboriginal Affairs Critic for the Conservative Party told the AFN Assembly that he did not understand the critics who say the Conservative Party can't work with First Nations. Mr. Prentice went into a review of the Conservative governments that: entered into historic treaties with First Nations; amended the **Indian Act** in 1951; gave the right to vote in federal elections in 1960; established the **Indian Claims Commission** and the **Royal Commission on Aboriginal Peoples** in 1990-91.

Mr. Prentice went on to say that while his party supports the '***Communique***' that came out of the Kelowna meeting, but he cautioned that the FMM was a "***work-in-progress***" because the outputs of the FMM aren't clear as to who is responsible to do what and for whom, Mr. Prentice did not reference the federal funding commitments.

Irwin Cotler, Minister of Justice, Government of Canada, told the AFN Assembly of the Liberal commitments that were made by his government, including the **May 31, 2005, Canada-AFN Political Accord** and the **Kelowna commitments**.

On the third day of the AFN Assembly the Chiefs did endorse the Kelowna process and commitments through a resolution, which was negotiated over the course of the meeting and adopted by consensus, with the exception of the Quebec Chiefs' who did not take part in the vote.

"the Quebec Chiefs would not be participating in the vote on the resolution supporting the Kelowna meeting, because they do not agree with the process or the outcomes"

Prior to the vote taking place on the resolution supporting the FMM outcomes, the Chiefs from Quebec stood behind the **Quebec Vice-Chief, Ghislaine Picard**, who read out a statement which made it clear the Quebec Chiefs would not be participating in the vote on the resolution supporting the Kelowna meeting, because they do not agree with the process or the outcomes. The statement also indicated that "***for the time being***" the Quebec Chiefs would remain part of the AFN structure.

On the second day of the AFN Assembly the '***Iroquois Caucus***' (representing several Indian Act elective Councils in Ontario and Quebec) had also read out a statement indicating that they would represent themselves in discussions with governments. However, when questioned on the floor by **AFN Northern Vice-Chief, Bill Erasmus**, as to whether it affected their membership within AFN, **Chief Angie Barnes from Akwesasne**, replied 'no'.

So, while consensus was achieved on the vote at the AFN Assembly, it doesn't seem to mean that the Kelowna commitments are not without its critics among the Chiefs, among others like those who demonstrated outside of the FMM in Kelowna (National Association of Friendship Centres, Grassroots Peoples Coalition, Urban First Nations Citizens).

Liberal-NDP Alliance

As far as the Kelowna commitments go, it is clear that the Liberal Party and the NDP are both endorsing the FMM process and outputs, while the Conservative Party seems to be limiting its support to the contents of the FMM '***communique***'. The Bloc Quebecois did not have any presence in Kelowna, nor have they indicated so far whether they would support the FMM commitments in a new Parliamentary session.

During the AFN Assembly, **National Chief, Phil Fontaine**, called on the Chiefs that were willing to participate in federal electoral politics to get their people out to strategically vote for Liberals, or NDP in electoral ridings where the NDP may have a chance to win.

In the last session of the minority Parliament there is no question that the NDP have pushed the Liberals into amending the federal budget for social policy reasons, which included Aboriginal peoples.

It was **Charles Angus, NDP M.P. (Timmins-James Bay)**, who helped to bring to national attention the horrible living conditions of the Crees from Kashechewan in northern Ontario.

For those First Nation individuals who vote, it will likely be either the Liberal Party or the NDP that gets the support of First Nations' voters. However, the vast majority of First Nations peoples do not vote in federal or provincial elections. There are many reasons for this, which we don't need go into here.

'Election 2006' conclusion from page 2

Election 2006

It seems that the outcome of the January 23, 2006, federal election will put in place another minority Parliament. The question remains whether it will be a Liberal or Conservative minority, and whether or not the NDP can at least keep their existing seats, let alone gain seats.

If the Liberals form the next government they will continue separating rights (May 31, 2005 Canada-AFN Political Accord) from programs (November 25, 2005 Kelowna Commitments), and focus on process over substance, using the AFN and Provincial-Territorial Organizations to assist with implementation of existing federal assimilation policy (self-government & land claims) and programs.

If the Conservatives form the next government they will likely, as most governments do, carry out a review of government policies, programs and operations. For First Nation organizations such as AFN, it will likely mean a review of "***Status Indian***" programs.

Shortly after the Mulroney Conservatives came into power after beating the Liberals in 1984, a secret Cabinet document on Indian and Native Program Review publicly leaked in 1985. The report was nicknamed "***The Buffalo Jump of the 1980's***", symbolically meaning that if the federal Cabinet accepted the recommendations of the report, it would be like metaphorically herding Native peoples to their cultural death over a cliff.

After the report became public, the Mulroney government had to retreat from the '***Buffalo Jump***' recommendations due to the widespread Native and public outcry. When Jim Prentice made his presentation to the AFN Chiefs' Assembly, he failed to mention this chapter in Conservative-First Nations relations.

The Bloc Quebecois will likely hold a significant number of seats in the next Parliament, possible becoming the official opposition party. The BQ Party will have a major role to play not only for First Nations in Quebec, but for the rest of Canada too. Some of the BQ Party Platform contemplates acting on proposals for amending the **Indian Act**.

Conclusion

Regardless of the outcome of the federal election, First Nation peoples will need to strengthen themselves locally, nationally and internationally. First Nations peoples may not be able to count on their leaders to protect First Nation Inherent, Aboriginal and Treaty rights.

It seems that the even if the local Chief and Council wants to do the right thing for their community members and advocate for Inherent, Aboriginal and Treaty rights—and let's face it, not all do—they are up against not only the Crown governments (federal, provincial, & municipal), but they will likely be pressured by AFN National Chief, Phil Fontaine, his AFN Regional Vice-Chief, and/or the head of the Provincial Territorial Organization (PTO), to tow the Liberal Party line for funding and cooperation. All First Nations funding may be in question if the Conservatives win the election

It is unfortunate, but it seems that the Liberal Party of Canada has essentially purchased the cooperation of most of the First Nations leadership across the country, to the detriment of the rights of the First Nations membership.

While the AFN Renewal Commission (comprised mainly of Fontaine supporters) may try, and give the impression that they are promoting increased democracy by recommending that, the AFN National Chief be voted into office by all Status Indians across Canada. The reality is, the day after such an election was held, the AFN National Chief would still be accountable to the federal government for continued funding, and make no mistake, just like at the band office, the terms and conditions of AFN's funding is determined by the federal government, be it Liberal or Conservative.

Outside of Canada, the Paul Martin government has been using AFN to filter and select First Nation representatives to participate at international fora, including UN meetings to advance positions which are consistent with the Government of Canada. This is not good for First Nations because representatives of Indigenous Peoples from other countries are becoming more suspicious of "***Canadian***" Indigenous representatives who seem to be watering down international Indigenous positions and emerging international norms, as a result of such practices.

The real "***gap***" that needs to be closed it seems, is the one between First Nations leadership and membership on community decision-making and accountability, Chief and Councils need to seek more direction from their people. The change should come from the community members themselves not from some law (FNGA) from Ottawa (Parliament), or '***national institutions***' peopled by a co-opted brown bureaucracy doing the bidding of the federal government.

So don't be fooled by First Nation leaders trying to convince you to vote in this federal election, regardless of which party wins, you can bet the federal government will be fighting against a generous interpretation of Inherent, Aboriginal or Treaty rights. The First Nations struggle for survival will go on after this election and the one after that.

Land Claims and Treaties and Bands, Oh My!

First Ministers' Meeting coverage begins and ends with official story

Protesters marching on FMM. (Photo by GPC)

Grassroots Peoples' Coalition protest outside the first ministers meeting. Signs read: "Stop subsidizing corporations with our Indigenous rights"; "Keep your programs, we want our LAND"; and "Cold Lake Alberta: Oil-gas self government, no deals!" photo: GPC

“indeed, the **CBC**, the **National Post**, *the* ***Canadian Press*** and others ignored the grassroots perspective completely--the information is readily available for those who look.”

GLOBEANDMAIL.COM

Logo of the Globe & Mail Newspaper

by Dru Oja Jay, The Dominion, Dec. 9, 2005

When those with decision making power and access to the media come to a consensus, it is often easy to conclude that their account reflects reality--that, to the extent that one understands the official story, one understands the situation itself. While the usual suspects may not dispute such an account, dissent can usually be found by those willing to look.

The First Minister's Meeting in November was, according to media coverage, an "historic summit" held in Kelowna, British Columbia where $5 billion in spending was announced to "alleviate poverty" and "***improve the quality of life***" of Indigenous people in Canada. The plan, it was noted, focuses on housing, health care, education, economic development, and relations between natives and provincial and federal governments.

Reporting typically presented a positive outcome, despite difficulties in reaching agreement. A **Globe and Mail** report, for example, referred to a "***feud***" between the **Assembly of First Nations (AFN)** and the **Congress of Aboriginal Peoples (CAP)** over whether wording would include natives without government-recognized status.

Criticism of the process was tempered by an overall impression that progress was being made. "***The government is doing the honourable thing, but it does have the stink of desperation to it,***" NDP native affairs critic Pat Martin told the CBC, referring to the imminent fall of Paul Martin's Liberal government.

In a brief foray outside of this narrow range of views offered by the political establishment, the **Globe and Mail** made mention of some deeper criticisms of the process. The **Globe's Bill Curry** quoted **Arthur Manuel of the Grassroots Peoples Coalition (GPC)** as saying that "***The minute you recognize our economic and treaty rights, our poverty would disappear immediately.***" The **Globe** report also noted that the deal signed in Kelowna made no mention of treaty rights.

While the media failed to provide the minimal context for Manuel's remarks--indeed, the **CBC**, the **National Post**, the **Canadian Press** and others ignored the grassroots perspective completely--the information is readily available for those who look.

"***The federal government has co-opted the Assembly of First Nations... as Aboriginal and Treaty rights are traded off for the modern day equivalent of 'trinkets and beads',***" Manuel wrote in a GPC communiqué.

In the analysis of Manuel and many others, the federal government and Canadian corporations have made hundreds of billions of dollars on resources and land that, by law, belongs to Indigenous peoples. By one estimate, the value of oil revenues from unceded land in Alberta totals over $70 billion for the last 12 years.

There was, in fact, considerable dissent about the meeting.

One has to search the website of CBC North, however, to learn that "***about 200 bands from across Canada***" boycotted the meeting. "***It's as if the agreements were already prewritten with the AFN in Ottawa,***" **Bill Namagoose of the Cree Grand Council** was quoted as saying.

Another layer still obscures understanding

'FMM Coverage' conclusion from page 4

of the situation: the band system itself. The band council system was imposed in 1884, with the Indian Advancement Act. Traditional systems of government were outlawed. Typically, traditional government held chiefs as spokespeople rather than decision-makers, and decision-making power rested with the people of the nation. By imposing a system against the will of the affected communities, the federal government transferred control to the Ministry of Indian Affairs.

To this day, the Federal government controls band funding, and can withdraw it as it sees fit. A resident of Grassy Narrows, a community in western Ontario, told independent journalist Macdonald Stainsby that "***The council and the chief make a good living, and get a very good income. In this very poor community, that's why people join the council. They have no real power, but they are scared to risk their funding.***"

In a communiqué sent after the meeting, Manuel raises yet another major issue not mentioned in media reports. Since Lester Pearson, the federal government has insisted on calling its funding to band councils "***humanitarian assistance***", instead of its legal obligation under Canadian law. Manuel writes:

We view programs and services as part payment from the Canadian and provincial governments using and benefiting from our lands. The AFN and [others] have let the Canadian and BC government off-the-hook by unlinking programs and services from Aboriginal and Treaty Rights.

Why aren't these challenges to the most basic assumptions upon which the plan to "***lift natives out of poverty***" is based reported in the media?

Is it because the claims are outlandish? Probably not. The 1996 Royal Commission report came to essentially the same conclusions outlined above.

According to the Commission,

Aboriginal peoples' right of self-government within Canada is acknowledged and protected by the constitution. It recognizes that Aboriginal rights are older than Canada itself and that their continuity was part of the bargain between Aboriginal and non-Aboriginal people that made Canada possible.

The remaining explanation is that instead of understanding things as they are, journalists chose the shortcut of understanding things the way the political establishment presents them. Whether journalists were unable to look beyond the official line, were not allowed to, or didn't want to, is a analysis for another day--analysis that requires insider access. That Canada's journalists told a woefully incomplete story, however, is a matter of the public record.

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CBC Logo

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Logos of National Post and Canadian Press

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

Arthur Manuel, Spokesperson, Indigenous Network on Economies and Trade (INET), during session of United Nations Forum on Forests, May 2004. (Photo by R. Diabo)

"Our people have a history of calling for the recognition of our nationhood and our Aboriginal Title to our lands and resources."

I. INTRODUCTION

This submission has been prepared by indigenous peoples from across Canada. **[Indigenous Network on Economies and Trade, Nishnawbe-Aski Nation, House of Smayusta, Pilalt Nation, Sutikalh, Swelkwekwelt Protection Centre]** 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 are scattered throughout this area.

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 . 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, was **1910 the Chiefs of the Interior of British Columbia** joined to present a **declaration to Prime Minister Laurier** to make it clear that they never considered reservations as a settlement, but called for recognition of their inherent land rights. 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 said to control the lives of status Indians from the cradle to the grave, 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.

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**

'UN Submission' continued from page 6

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.

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 **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.

George Manuel was elected as the founding President of the World Council of Indigenous Peoples in 1975.

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

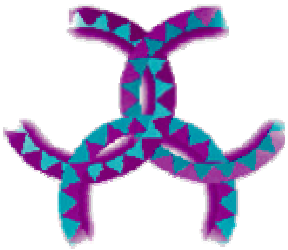
A. CANADA'S FAILURE TO RESPOND TO THE COMMITTEE REQUEST

"The Canadian government does not recognize that Aboriginal peoples have the right to self-determination"

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***" 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.***"

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 fora, the Government of Canada will present information on this specific issue at the oral presentation of this report.***" 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.

Canada has even inscribed its opposition to indigenous nationhood or their recognition as



'UN Submission' continued from page 7

peoples at the outset of its national policy on self-government:

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.

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…

"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"

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 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 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.

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. .

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.

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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.

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.***" 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

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 level of government does not want to cede any power to the other level 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 level of government routinely argues that it falls into the responsibility of the other level of government. For example it is argued that land management falls into the competence of provinces, and the 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 levels of government firmly agree on, is that they do not want indigenous peoples to be recognized as a third level of government, although Section 35 of the Canadian constitutions forms the platform for the recognition of indigenous jurisdiction as a third level of government and thereby the full implementation of the right to self-determination.

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.

The Constitution Act 1982 being signed into law by Prime Minister Pierre Trudeau and Queen Elizabeth II, April 17, 1982.

"The one issue that the two levels of government firmly agree on, is that they do not want indigenous peoples to be recognized as a third level of government"

First Ministers Meeting on Health, Sept. 2004.

DFO boat ramming a Mikmaq boat at Burnt Church.

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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. The protected uses must not be irreconcilable with the nature of the group's attachment to that land.***"

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

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. 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.

"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"

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.

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 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.

Grizzley APC was one type of equipment used in 1990 by the Candian Army against Mohawk communities.

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.

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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

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***". 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.

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.

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 find ways to balance the interests and power of settlers and indigenous peoples in Canada.

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

Canadian Army using teargas on Mohawks of Kahnawake, Sept. 1990. (Photo by Linda Dawn Hammond)

"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"

Kiowa Helicopter was another type of equipment used by the Canadian Army against Mohawk communities in 1990.

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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.

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**:

"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"

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.

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.

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

The **Indigenous Network on Economies and Trade (INET)** did successfully submit three amicus curiae briefs to the **World Trade Organization (WTO)** and one successful submission to the **Panel of the North America Free Trade Agreement (NAFTA)** in regard to the

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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**.

Logo of the World Trade Organization (WTO).

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 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 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**.

Nevertheless, it is 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.

"To fight for recognition of our rights is costly, especially litigation of Aboriginal Title cases can cost up to 1 million per year"

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.

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

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

National Chief Phil Fontaine shakes hand with Prime Minister Paul Martin at start of Canada-Aboriginal Summit in Ottawa, April 2004. (Photo by R. Diabo)

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and resources. We are not poor. Our natural wealth and resources maintains the economy of a G-8 country.

The Canadian and provincial governments do not want to recognize this reality and are trying to have us extinguish our Aboriginal Rights. 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 have, developed, G-8 state. This was acceptable in previous centuries but it appears that the international community is prepared to examine this violent and humiliating way of settling indigenous peoples rights.

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.

"the credibility of indigenous organizations is in serious question now because our peoples at the grassroots level cannot depend upon the government-funded organizations"

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.

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	

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

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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
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

"These figures do not directly match with the cap but these figures provide a good general understanding about how funding influences indigenous politics"

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 under-

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standing about how funding influences indigenous politics.

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.

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

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 pre 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

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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	394,000	517,000	234,000	339,000	363,000
Vice-Chief					
Dene Nation	129,000	546,000	308,000	445,000	318,000
Mi'kmaq Confederacy	0	0	0	0	0
of Prince Edward Island					

B. Policies Aiming at the Extinguishment of Indigenous Land Rights

Modified Rights Model

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 this 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.***"

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

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.

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

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process, although our people have always rejected that process; as non-starters.

Loan Funding

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. The province states that "***the earliest date at which the loans are expected to become due is 2006***". 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.

"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"

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

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.

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 government. 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.

Haida Elders in Supreme Court of Canada, March 2004. (Photo by R. Diabo)

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.

C. Canada exports its unconstitutional policies internationally

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 coopera-

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tion funding to try to promote the duplication of Canadian policies and even to facilitate access of corporations to indigenous territories.

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.

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**.

"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"

D. Avoid addressing the fundamental issues

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.

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.

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.

Instead of promoting the right to self-determination and protecting the interests of indigenous peoples, the Canadian government continuously take adversarial positions against

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National Chief Fontaine with several Premiers at FMM in Kelowna, Nov. 25, 2005. (Photo by R. Diabo)

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

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.

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.

"The BC Liberal government really is an advocate for corporate control over resources, trade liberalization and privatization and commercializati on of resources"

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.

UBCIC President, Stewart Phillip, signs deal with AFN, FNS, B.C. & Canada, Nov. 25, 2005. (Photo by R. Diabo)

The "New Relationship" in British Columbia

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 con-

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sidered $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 trinkets. 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.

Algonquin Chief Jean Maurice Matchewan getting arrest ed by the Surete du Quebec at peaceful logging blockade in Quebec, Oct. 1989.

VI. INDIGENOUS PEOPLE’s ON THE GROUND FACE VIOLATION OF THEIR HUMAN RIGHTS TO ENSURE PROTECTION OF THEIR INDIGENOUS RIGHTS

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.

“Indigenous peoples only have three avenues to try and stop such commercial-industrial mega-projects: litigation, taking action on the ground and going international”

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.

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.

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.

Indigenous Elders going to the United Nation in Geneva to begin the process of UN scrutiny of Indigenous Peoples issues, 1977.

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

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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.

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.

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.

"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"

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**.

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 highest 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 thoroughly investigated. One recent example is the death of indigenous youth in the Merritt area, while being detained by the police.

Ontario Provincial Police at stand-off with First Nations at Ipperwash Provincial Park, 1995.

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.

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

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activists and thereby further limit their freedom for an extensive period of time.

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.

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.

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.

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.

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;

RCMP arrest First Nations protester opposing the expansion of the Sun Peaks Ski Resort in B.C.

"public authorities and public institutions routinely engage in acts of racial discrimination towards Indigenous people and their communities, particularly those asserting their inherent rights"

Dudley George was shot and killed by Ontario Provincial Police in 1995, while he was defending First Nation burial grounds. The circumstances around the shooting are now the subject of a provincial inquiry.

BULLETIN OF THE FIRST NATIONS STRATEGIC POLICY COUNSEL

Advancing the Right of First Nations to Information

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The First Nations Strategic Policy Counsel is a collection of individuals who are practitioners in either First Nations policy or law. We are not a formal organization, just a network of concerned individuals.

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Russell Diabo, Publisher and Editor, First Nations Strategic Bulletin.

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- 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.

[NOTE: This is an edited, incomplete reprint without the footnotes. Should you want a copy of the full UN Submission with footnotes, please contact: amanuel@telus.net]