



Aboriginal Title Alliance

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Memorandum

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Human Rights Committee Secretariat
8-14 Avenue de la Paix
CH 1211 Geneva 10
Switzerland

Attention: Kate Fox/Sindu Thodiyil

Dear Human Rights Committee Members:

RE: CANADA 6TH PERIODIC REPORT ARTICLE 1 ICCPR AND INDIGENOUS PEOPLES

In Canada's 6th Periodic Report to the UN Human Rights Committee Canada does not make any comments on Article 1 of the International Covenant on Civil and Political Rights (ICCPR). The Aboriginal Title Alliance feel that Canada should have made comments on Article 1 in regard to Canada's activities regarding Indigenous Peoples. The United Nations Human Rights Committee in the 2005 List of Issues asked Canada:

QUESTION 1: Please provide information on the concept of self-determination as it is applied to Aboriginal peoples in Canada, including Métis people, as promised in paragraph 8 of the periodic report. (Previous conclusions, § 7)

Canada replied to this question in a document titled "Canada's Responses to the List of Issues, Presentation of the Fifth Report on the International Covenant on Civil and Political Rights, Human Rights Committee, October 2005".

The United Nations Human Rights Committee did not make any comment on Canada's 2005 response to this question regarding Article 1 on self-determination and Indigenous Peoples. Canada basically said that Indigenous Peoples exercised self-determination as individuals in the same way as all Canadians and the self-determination was being negotiated under the UN Declaration on the Rights of Indigenous Peoples. Thus the exercise of self-determination by Indigenous Peoples as Peoples was not recognised.

The UN Declaration on the Rights of Indigenous Peoples was adopted by the United Nations in October 2007. In the Declaration it clearly says in Article 3: “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

Indigenous Peoples must be allowed to dispute Canada’s comments on self-determination especially on Indigenous land rights. While Indigenous Peoples land rights are put under Article 27: Religious, cultural and linguistic rights in Canada’s 6th Periodic Report, Indigenous land rights are more than a religious, cultural and linguistic aspect of our lives but goes to the very heart of our right to self-determination. Indeed in Canada’s October 2005 reply on Indigenous self-determination said that not all Indigenous Peoples would be entitled to self-determination acknowledge that some Indigenous Peoples within existing States could qualify as Peoples under Article 1. Indigenous Peoples in Canada need to have the right to explore what Article 1 means to the Indigenous Peoples in Canada.

Section 35 of the Canadian Constitution 1982 clearly states in Section 35 that the federal and provincial governments will recognize and affirm Aboriginal and Treaty Rights. Under Section 37 of the Canadian Constitution 1982 Canada agreed to have Constitutional Conferences to basically define what Section 35 meant. They had 4 meetings and they failed to come to an agreement. Canada assumed that the Supreme Court of Canada would assume the definition that could not be negotiated politically.

The real problem is that the Supreme Court of Canada cannot decide issues of Indigenous Peoples right to self-determination. In the *Tsilhqot’in Nation v. British Columbia*, 2014 SCC 44 the Supreme Court of Canada recognized that Indigenous Peoples had Aboriginal Title on the ground but also found that the province could “infringe” on Aboriginal Title. Canadian case law is deeply ingrained in the distribution of powers between the existing federal and provincial governments as defined by Canada’s first constitution titled the British North America Act 1867.

In the BNA Act 1867 Indigenous Peoples were colonized by having all our lands become federal or provincial Crown Land. Indeed Indian Reserves are only 0.2% of Canada. This means that Canada and the provinces have jurisdiction over 99.8% of our Aboriginal and Treaty lands. This is contrary to Article 1 (2) of the ICCPR because under this system Indigenous Peoples cannot enjoy their natural wealth and resources and is the basis of our systemic impoverishment. What Indigenous Peoples want to do is fully define what Aboriginal and Treaty Rights means in Canada’s Constitution 1982 under Section 35, but Indigenous Peoples should not be exclusively subject to Canada’s arbitrary rule and the limited to the capacity of the Supreme Court of Canada to deal with Indigenous Peoples right to self-determination.

Indigenous Peoples would like to address the fact that Section 35 of the Canadian Constitution 1982 is a key part of our right to self-determination under Article 3 of the United Nations Declaration of Indigenous Rights and our right to self-determination under Article 1 of the International Covenant on Civil and Political Rights. That Canada by continually monitored in the application of Article 1 with regard to Indigenous Peoples and that the United Nations Human Rights Committee listen to Indigenous Peoples from Canada on this matter.