150+ YEARS OF COLONIZATION = RACIAL DISCRMINATION

SHADOW REPORT BY THE INTERIOR ALLIANCE ON CANADA'S ONGOING COLONIZATION OF INDIGENOUS PEOPLES TO THE UN CERD COMMITTEE

JULY 2017

This submission is dedicated to Secwepemc leader Arthur Manuel (September 3, 1951 – January 11, 2017) who often travelled to Geneva to appear before UN human rights bodies, including CERD. He was an active member and supporter of the Interior Alliance and impressed on its member nations the importance of connecting their struggle for recognition of indigenous land rights from the ground to the international level. Before his unexpected passing, he impressed on all of us the importance of intervening in Canada's periodic review before CERD in the summer of 2017. The Interior Alliance is committed to keeping this important work going. His life and legacy has also been honoured by a call from Indigenous Activists to UNsettle Canada 150!

This submission is being made by the Interior Alliance, comprised of Indigenous Nations from the Interior of British Columbia, regarding ongoing attempts by the Government of Canada and the province of British Columbia to extinguish indigenous land rights (Aboriginal Title), rather than recognize indigenous territorial governance and other related discrimination against Indigenous Peoples by Canada.

Our submission will first speak to the colonial underpinnings of Canada's legal system and dealings with Indigenous Peoples, resulting in the ongoing dispossession and oppression of Indigenous Peoples, creating a deliberate vicious circle of dependency which is based in racism and discrimination against the Indigenous Peoples of these very territories. As Canada celebrates 150 years of Confederation, including the adoption of the *British North America Act*, now the Canadian Constitution, 1867, Indigenous Peoples lament 150 years of Canadian colonization. This submission will not only speak to these persistent colonial underpinnings, but also provide recommendations to recognize our underlying indigenous title and decision-making authority regarding our territories and resources.

This submission is also a follow-up on an earlier early warning and urgent action submission that was jointly made in April 2016 by Indigenous Peoples from British Columbia and demonstrated the violations of indigenous and human rights under the British Columbia Treaty Commission (BCTC) Process and the Canadian Comprehensive Claims Policy (CCP). The early warning and urgent action subcommittee then followed up with a letter to Canada dated October 3, 2016 asking questions of Canada to be answered by November 14, 2016. It seems that Canada submitted a response to our early warning urgent action submission and the questions on December 23, 2016. The committee references this in a communication dated May 17, 2017, where it notes that the issue will be taken up during Canada's periodic review in August 2017. The Indigenous Nations who have submitted the early warning urgent action submission have not been provided with a copy of it and hereby request such and the opportunity to make a specific response in regard to Canada's submission once provided. \

I. INTRODUCTION

Racism is one of the essential tools of colonialism and without understanding the workings and effects of racism, one cannot fully understand Canadian colonialism. How else can you condone the seizing of a continent by one race from another, if not by a theory of racial superiority? Indigenous peoples have been portrayed as lesser beings so that natural law could be used to sweep them aside.

Historically no treaties were signed in most parts of British Columbia and the province was "settled" under the colonial doctrine of discovery which is woven throughout the Canadian legal system and jurisprudence of the Supreme Court of Canada up to today and is reflected in Canadian policy and the reality that Indigenous Peoples face on the ground. This not only constitutes racial discrimination, it violates our indigenous and most fundamental human rights. International oversight is required.

Especially in the Interior of British Columbia, indigenous territories are large, and Indigenous Peoples have maintained mixed use economies requiring large tracts of land to sustain indigenous ways of life. This submission has been prepared by the Interior Alliance, bringing together Interior Salishan speaking Nations, namely the Secwepemc, St'at'imc, Nlaka'pamux and Sylix. Their territories span from the Coastal Mountains separating them from the Westcoast and Coast Salish speaking peoples, to the Rocky Mountains and the areas to the East where treaties were signed. Their territories reach into the United States to the South and border on Dakelh and Tsilhqot'in territories to the North, including the area where the first declaration of Aboriginal Title by the Supreme Court of Canada was made in 2014.

The history of colonization of our territories has been brief, spanning two hundred years or less. Our peoples in the Interior have never given up our title to our territories and our jurisdiction. In a presentation to Prime Minister Wilfrid Laurier in 1910, our ancestors spoke about this history of jurisdictional authority, which persisted after the settlers arrived:

> "When they first came among us there were only Indians here. They found the people of each tribe supreme in their own territory and having boundaries known and recognized by all."

This indicates, as our indigenous laws dictate, that it is our respective tribes or nations who collectively hold title to our vast territories and have the responsibility to look after them. The Interior Alliance nations have historically worked together and continue to work together for the recognition of our jurisdiction and land rights. As our ancestors noted in 1910:

> "They set aside small reservations for us here and there over the country. This was their proposal not ours, we never accepted these reservations as settlement for anything, nor did we sign any papers or make any treaties about same. They thought we would be satisfied about this, but we never will be until we get our rights."

In early colonial times Indigenous Peoples, especially in the Interior of BC, had remained in control of our respective territories. For example during the Fraser Canyon war of 1858 Indigenous Peoples from the Interior, including the Nlaka'pamux and Secwepemc, pushed back US miners, while the newly appointed Governor of the province of British Columbia retreated to Vancouver Island. It was mainly after 1871, once British Columbia joined Canadian Confederation (established in 1867 – which is why Canada has been celebrating its 150th birthday), that laws became more oppressive. The federal Indian Act, in its first version from 1876, was used to restrict Indigenous Peoples to reserves and strategically dispossess us of our territories. Similarly, the federal Fisheries Act and its Pacific Salmon Regulations of 1886 prohibited Indigenous Peoples from trading salmon and thereby undermined our indigenous economies. The following is a brief summary of some of the colonial acts and laws, some even sources of the Canadian Constitution, that still underpin the Canadian legal system.

II. CANADA'S COLONIAL LAWS AND POLICIES APPLY TODAY

This section provides the historical legislative background in regard to how Canada and British Columbia continue to use 'legal' instruments for gaining control over unceded Indigenous territories. It includes some pertinent examples of how the Canadian colonial legal system has been used as an instrument by successive governments in Canada to advance the dispossession, oppression, and dependency of Indigenous Peoples in their territories. The government actions outlined here have revealed themselves as a deeply engrained pattern of political, legal, and regulatory procedures used for the maintenance of 'legal' and coercive

systems in Canada. This has and continues to serve its objectives of marginalizing indigenous peoples from their territories while keeping the people in a state of dependency and poverty.

1763 Royal Proclamation*:* Observing claims-making protocols within the *Doctrines of Discovery,* King George III's *Royal Proclamation of 1763* continues as foundational law in the Canadian Constitution to serve as evidence of Great Britain's early claim of sovereignty in the Americas. The *Royal Proclamation* forms the basis of the legal relationship between Indigenous Peoples and the Crown. It supports the formation of Canada's *Indian* policies that claim control and ownership of indigenous peoples and lands. However, it also establishes protections for indigenous lands and indigenous rights. "…by protecting their persons and property and securing to them all the possessions, rights, and privileges they have hitherto enjoyed and are entitled to, most cautiously guarding against an invasion or occupation of their hunting lands, the possession of which is to be acquired by fair purchase only…"

1846 Oregon Boundary Treaty: Acting upon the premises of the *Doctrines of Discovery,* Britain and the United States reached agreement amongst themselves through the *1846 Oregon Boundary Treaty* which created the border at the 49th parallel on the west coast of the continent. This was in the midst of what was known as the fur trade era. The un-relinquished Indigenous territories in the area now known as *British Columbia* were divided by the establishment of this border by the foreign powers.

1858 formation of the Colony of British Columbia: The formation of the Colony of British Columbia was in response to the discovery of gold and the efforts toward annexation by the United States. This timeframe became known as the gold rush era and included the massive depopulation of indigenous peoples (70-90%) resulting from the 1862 spread of smallpox. British settlement was facilitated without the benefit of land treaties to counter American incursions. This meant that the British official and blatantly neglected the outstanding indigenous land issue that they were legally bound to address prior to settlement.

1867 British North America Act, Section 91(24): The formation of Britain's *Indian* policy had been formulated prior to confederation and this became Canada's approach through the *1867 British North America Act (BNA).* The *BNA* handed Britain's presumed authority over Indigenous Peoples and lands over to the *Dominion of Canada*. *Section 91 (24)* of the *Constitution Act* of 1867 provides that the federal government has the legislative jurisdiction over *"Indians and lands reserved for the Indians."* The primary goals of Canada's *Indian* policy switched from the ideals of protection of Indigenous Peoples and their lands as stipulated in the *Royal Proclamation* to place their focuse upon assimilation policies.

1871 British Columbia joins Canada through the 'Terms of Union' Agreement: The colonial government of British Columbia was intent on denying the requirement to recognize and address the outstanding indigenous land issue through treaties, despite this having been the British legal practice for close to a century. The contentious *Article 13* of the *Terms of Union* was framed to give the mistaken impression that the indigenous land issue had been addressed

in a 'liberal' manner through treaties. It states, *"The charge of the Indians, and the trustee and management of the lands reserved for their use and benefit, shall be assumed by the Dominion Government and a policy as liberal as hitherto pursued by the British Columbia Government shall be continued by the Dominion Government after the Union."*

1876 Indian Act: In 1876, the Dominion Government consolidated all its pieces of legislation referring to *Indians* into one document, the *Indian Act*. This document was the government's attempt to answer for its jurisdiction and authority over *Indians and lands reserved for Indians,* as described in the *1867 BNA Act,* flowing from the *Royal Proclamation.*

Canadian Constitution, Section 109: Section 109 of the *Canadian Constitution* is the mechanism by which Canada handed over jurisdiction of lands and resources to the provincial governments. It states, "All lands, mines, minerals, and royalties belonging to the several provinces of Canada, Nova Scotia, and New Brunswick at the Union, … shall belong to the several provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, ***subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same"*** (emphasis added). This is contentious since all previous legislation had positioned the federal government of Canada with a fiduciary trust for Indigenous Peoples and lands. Furthermore, the other interest in the land of the province of British Columbia are the unceded indigenous lands that have no treaties and which are designated by the *Royal Proclamation* as being reserved and protected for the *Indians,* forbidding encroachment, until *acquired by fair purchase.*

1927-1951 Indian Act Amendment: In response to effective lobbying by Indigenous Peoples this amendment prohibited Indigenous Peoples from organizing around the land issue, hiring lawyers and approaching Privy Council about the outstanding land issue. While Indigenous Peoples in British Columbia had been pressing the governments on the lack of treaties and the foreign occupation of their territorial lands, they were met with changes to legislation that neglected the fiduciary obligations of the government on behalf of the Crown. This legislative amendment stayed in place for 24 years, until the Privy Council in London was disconnected from Canada as an avenue for redress.

1969 Trudeau White Paper: In 1969, then Prime Minister Pierre Trudeau, father to the current Prime Minister Justin Trudeau, set out the Liberal government's policy to assimilate Indigenous Peoples into mainstream Canadian society. This galvanized indigenous resistance, which was successful in ensuring that the policy was rejected. Nevertheless, the current Liberal government's policies are based on the same foundation. Canada refuses to talk about the indigenous right to self-determination, apart from saying that we exercise it as part of the Canadian polity: as Canadians under Canada. Justin Trudeau is avoiding to make the necessary connection between his policies on Indigenous Peoples and recognition of Indigenous land rights. He is continuing to build on processes under the federal comprehensive claims policy that aims at the extinguishment of Indigenous land rights.

III. DISPOSSESSION, OPPRESSION AND DEPENDENCY

The Indigenous Peoples of the Interior were dispossessed from our homelands on the basis of *terra nullius* and the colonial Doctrines of Discovery and made wards of the colonial state aimed at the political destruction of independent indigenous nations, along with cultural termination and assimilation[1]. The *British North America Act, 1867* (BNA Act) created the federal dominion of Canada from a group of colonies. It still defines the operation of the government, legislature, and judicial system. The BNA Act unilaterally provided the federal government powers for "Indians, and Lands reserved for Indians" (s. 91(24)), under which the Canadian parliament passed the Indian Act.

The *Indian Act* imposed the institution of reserve lands and elected band councils to undermine our traditional governance and dispossess us of our land. All Indian reserves in Canada add up to just 0.2% of the whole territory claimed by Canada. To make the disconnection complete it also implemented other devastating policies such as Canadian Indian Residential Schools where children were forcefully removed from their families; banning the practice of indigenous religious ceremonies; and restricting indigenous access to the justice system. While we hold inherent indigenous land rights over our territories, under the reserve lands created by the *Indian Act*, we are restricted to 0.2% of the territory claimed by Canada, which entrenches our poverty through dispossession, dependency, and oppression.

Canada's current official policy on Indigenous land rights beyond the reserve lands, the Comprehensive Claims Policy, which extinguishes Indigenous land rights, has been found in violation of international human rights standards under the Convention on the Elimination of All Forms of Racial Discrimination (CERD)[2], and the International Covenants on Civil and Political

[1]Report Royal Commission on Aboriginal Peoples. Vol. 1. Page 7. 1996.
[2]International Convention on the Elimination of All Forms of Racial Discrimination: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx

Rights (ICCPR)[3] and Economic Social and Cultural Rights (ICESCR)[4], yet it remains the only basis for negotiations that the government will engage in.

Canada's unofficial and *de facto* policy on indigenous land rights is forceful removal through the executive branch, via the RCMP, along with the criminalization Indigenous land and water protectors. The criminalization of indigenous and human rights defenders for upholding their inherent title and rights to unceded territories constitutes a human and indigenous rights violation, which has to cease. We are concerned about the inhuman repercussions and human rights violations resulting from Canada's *de facto* Indigenous land right policy. Indigenous Peoples who assert their indigenous land rights are forcefully removed, while multi-national corporations are granted access to our lands and resources.

For example, in November 2016, Prime Minister Trudeau and his cabinet unilaterally approved the Trans Mountain Expansion pipeline project proposed by US based multi-national Kinder Morgan despite opposition from Indigenous Peoples along the pipeline route: from the tar sands where destructive bitumen extraction could go up by 40%, through our territories in Interior British Columbia, to the proposed terminal in Tsleil-Waututh territory. The federal government unilaterally approved the original Trans Mountain Pipeline in 1951, when Indigenous Peoples were prohibited from organizing on land issues and holding our ceremonies. The original pipeline went into operation in 1953 without the consent of the Indigenous Peoples in the Interior. Now, once again the federal government has approved the proposed expansion of the Trans Mountain pipeline without the consent of Indigenous Peoples.

Secwepemul'ecw is the largest indigenous territory that the Kinder Morgan pipeline expansion project is proposed to pass through, covering up to 518 km of the pipeline route. The federal and provincial governments and Kinder Morgan have failed to engage with the Secwepemc

[3]International Covenant on Civil and Political Rights; http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx.
[4]International Covenant on Economic, Social and Cultural Rights:
http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

collectively, as the proper title and rights holders. Their infringement of our laws, our spirituality, and our relationship to the land can never be accepted or justified.

Kinder Morgan has signed deals with a few Indian Band Councils. However, Indian bands have only delegated authority from the federal government on Indian Reserve lands, which currently cover only 0.2% of the territory claimed by Canada, and which entrench our poverty through dispossession, dependency and oppression. Indian Band councils have no independent decision-making power regarding access to our Secwepemc territory as a whole. The Secwepemc collectively are the only decision-making authority regarding our lands and waters.

The British Columbia government has recognized at the National Energy Board hearing that the proposed project is not safe for land or water, yet they still approved it. Even under Canadian colonial law, Indigenous Peoples have more power than the provinces regarding pipeline approvals, since our rights are protected under Section 35 of the Canadian Constitution. The Supreme Court of Canada, in the Tsilhqot'in decision warned governments and investors that the only way to ensure legal and economic certainty is to get the consent of Indigenous Peoples. Kinder Morgan does not have the collective consent of the Secwepemc.

The Kinder Morgan pipeline is not simply a threat to our land it is a threat to the entire planet. It carries bitumen from the Alberta tar sands, which are one of the largest greenhouse gas emitters and the largest construction project in the world. This commercial industrial megaproject has had devastating impacts on us all. The proposed pipeline stands to accelerate the extraction and climate change impacts. If the proposed Kinder Morgan Pipeline Expansion project goes through, tar sands exploitation could increase by 40%. The world cannot afford this destructive increase in capacity[5]. Indigenous land and water defenders have already vowed to stop the project and they need international monitoring and oversight to ensure their human rights are not undermined.

[5] Adapted from declaration by members of the Secwepemc nation at a Secwepemcul'ecw Assembly off-reserve on the land to take action under Secwepemc law against colonial corporate development impacting Secwepemcul'ecw, available online at: https://www.secwepemculecw.org/

Canada's Minister of Natural Resources recklessly stated that the Canadian Government will call in government forces, including the Canadian army, to contain protests against the Kinder Morgan Pipeline Expansion instead of acting in a mature and responsible manner[6]. The Minister of Justice of Canada, who is responsible for implementing human rights law and Aboriginal Justice for the State of Canada, also serves as the Attorney General of Canada and is responsible for the Royal Canadian Mounted Police (RCMP). The Minister should call off the RCMP and ensure they are not involved in indigenous land disputes, which must be resolved on the basis of international human and indigenous rights standards, including seeking indigenous Free Prior Informed Consent (FPIC) to any developments in their respective indigenous territories.

In 2015, the Truth and Reconciliation Commission issued 94 calls to action. In call to action number 25, it called for the federal government to establish a written policy regarding the independence of the Royal Canadian Mounted Police to investigate crimes in which the government has its own interest as a potential or real party to civil litigation. This is clearly the case in regard to litigation that could be brought by Indigenous Peoples regarding Aboriginal Title or the violation of the duty to consult. Instead the government has been protecting the interests of multi-national corporations, and has used executive forces to grant them access. On the other hand, Indigenous Peoples have asserted their jurisdiction and indigenous laws on the ground through cultural activities, blockades, and direct-action, to protect the culture, environment, and land. In turn, the government resorts to the judicial system through injunctions based on colonial laws and the RCMP to forcibly remove indigenous land and water defenders. Typically, they lay criminal charges, so that indigenous activists are often charged with criminal contempt of court, where others are routinely just charged with civil contempt. Based upon the balance-of-convenience, where courts often favour jobs and economic interests over indigenous concerns to protect land and indigenous land uses and economies, injunctions are almost always issued, alongside enforcement orders. This will then result in the

[6]Maloney, R. *Jim Carr's Remark About Using Military at Kinder Morgan Protests were 'Reckless': NDP. The Huffington Post Canada*. Dec. 2, 2016. Url: http://www.huffingtonpost.ca/2016/12/02/jim-carr-military-kinder-morgan-ndp_n_13375946.html

forceful removal of Indigenous Peoples from the areas subject to the proposed development. If indigenous land and water defenders then refuse to accept conditions not to return to the area and therefore their territory, they might not be granted bail and have to remain in court until their hearing. Convictions for criminal contempt of court are more likely to result in jail time. In the 1830's, US President Andrew Jackson forcefully removed the Cherokee from their territory on the genocidal Trail of Tears, after the United States Supreme Court recognized Cherokee land rights. Canada's forceful removal of Indigenous Peoples back to the confines of Indian Reserves are modern manifestations of a thousand trails of tears.

In addition to the right to be free from racial discrimination and prosecution under CERD, Indigenous Peoples have the inherent right to self-determination, which is also recognized under international human rights law. Canada is also a signatory to the ICCPR and ICESCR, which includes the right to freely –as in free from the influence of colonial governments and multi-national corporations—determine our political status and freely pursue our economic, social and cultural development. This fundamental international legal principle is also enshrined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)[7]. It is further expressed through the principle of free, prior and informed consent FPIC in UNDRIP and international environmental agreements. At the 10th Anniversary session of the UN Permanent Forum of Indigenous Issues, Canada claimed to fully support FPIC. But then they clearly violated international human rights law, especially FPIC, through the unilateral approval of the proposed Kinder Morgan Trans Mountain Pipeline expansion project without the consent of the Secwepemc and other Indigenous peoples. In addition, so-called reconciliation cannot happen in Canada until indigenous land rights are recognized, undomesticated indigenous self-determination is achieved, and the doctrines of discovery and the colonial underpinnings of the Canadian legal system are abandoned. Increasing programs and services will only minimally and temporary close the gap between Indigenous peoples and Canadians. Indigenous land rights and indigenous decision-making regarding access to indigenous lands and resources have to be recognized on the ground.

[7]United Nations Declaration on the Rights of Indigenous Peoples. https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement

IV. THE CUMULATIVE EFFECT OF PERSISTENT RACIAL DISCRIMINATION BY CANADA ON INDIGENOUS PEOPLES

After more than 150 years of colonialism with inherently racist laws and policy application enforced and threatened by state police, many Indigenous Peoples are at a state of desperation to improve the lives of our children and grandchildren despite racial discrimination by the laws and policies of Canada.

As clearly understood by the Committee and recognized by *General Recommendation No. 23: Indigenous Peoples: 18/08/97*, Indigenous Peoples the world over continue to be: "discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises." This aptly describes the state of Indigenous Peoples in Canada.

It is clearly understood by the Committee in its familiarity with UNDRIP that the continued existence of Indigenous Peoples as Peoples is dependent upon the continued exercise of their cultural, spiritual and economic practices on our lands. Unlike any other racial group, Indigenous Peoples identity and existence is a symbiotic relationship with their lands.
The committee is familiar with the wholly ineffective "aboriginal land claims" processes of the Canadian *Comprehensive Land Claims Policy* and *British Columbia Treaty Commission*, from no later than the consideration of Canada's 11th and 12th periodic reports at the 49th session and its concluding observations. As you will observe in this shadow report, as in proceeding submissions, there is still no remedy for the lack of appropriateness (regarding modified and non-assertion of rights) or timeliness (extreme financial burden) of these processes.

Despite the Affirmation and Recognition of Aboriginal and Treaty Rights in Section 35(1) of the *Canadian Constitution Act, 1982*, and the recognition of Aboriginal Title by the Supreme Court of Canada (SCC) in *Delgamuukw v. B.C. 1997*, including the recognition of an "inescapable economic component" of Aboriginal Title, Indigenous Peoples continue to be persistently impoverished on their own homelands, two decades later.

Through the application of the *Canadian Constitution Act, 1867*, Sections 91(24), whereby the state has legislative authority over "Indians and lands reserved for Indians," and through Section 109, whereby all lands and economic benefits from lands are granted to the Provinces; the Canadian State and the Provincial Governments work in concert to extort us as Indigenous Peoples of our lands and economic benefits with the by-product of cultural assimilation and the deprivation of future generations from their identity wrested in the land.

"Lands reserved for Indians" comprise 0.2% of the landmass claimed by Canada. These lands were often placed in the least economically viable locations. Further, application of policies on these lands encumber economic activity to hamper competition with off-reserve economic activity. The result is a level of socio-economic status far below that of comparable rural Canadians, and health status far below that of Canadians. The committee has also been aware of this since the 49th session. A wide gap remains to this day.

Through federal policies and the lack of an effective remedy to address land claims, the State government continues the oppression of Indigenous Peoples through forced impoverishment on their own lands. With the recognition of the existence of Aboriginal Title in *Delgamuukw* by the SCC, and subsequent finding in *Haida Nation v. B.C (2004)* by the SCC that there exists a "duty to consult" Indigenous peoples if there is a possible negative impact on an asserted Aboriginal Right, the result is a challenge to the ability of the Provinces to exercise Section 109 of the Constitution, and continue to derive near all economic benefits from lands.

The Canadian settlers seized our land under section 91(24) of the *British North America Act, 1867* and the provinces entered onto our lands under section 92, under which provincial authorities claim the right to licence the cutting down of our trees, allocating our lands to the settlers and the digging of mines and damming of our rivers.

V. PROVINCIAL AND FEDERAL PROCESSES THAT VIOLATE INTERNATIONAL HUMAN RIGHTS LAW

Province of British Columbia (BC) Regulatory Processes and Agreements

The Province of BC has been compelled to develop agreements with Indigenous Peoples to continue to gain access to our lands in the form of Forest Consultation and Revenue Sharing Agreements (FCRSAS), Strategic Engagement Agreements (SEAs) and Reconciliation Framework Agreements (RFAs). All of these agreements are designed to gain access to Indigenous lands, or lands in which Aboriginal Rights are exercised. However, all of these agreements require that the Indian bands recognize the "Statutory Decision Maker" of the Province has the final approval of all permits and activities on those lands. This, in exchange for a miniscule amount of money when compared to the revenue generated from access to our lands and resources. The Indian Bands which have been signing these agreements (of multi-year terms) do not in themselves have the authority to relinquish indigenous rights for mere consultation at the mercy of the Statutory Decision Maker. The title holders are not individual bands but to people as a whole.

The Province of BC has continuously used numerous legislative methods to deny Indigenous Peoples their lands and resources and to gain provincial control and authority over these lands and resources. For example, the Province of BC has a consistent record of going to extreme lengths through legislative and regulatory processes to achieve their goals. The BC regulatory processes have been developed by the provincial government to assert their authority over Indigenous lands and resources. This provincial government process provides another example of how regulatory means are used to not only create divisions between Indigenous peoples but also to usurp Indigenous lands and resources without ever having addressed the relevant groups through negotiations or treaties.

While Indigenous lands in BC have not been subject to either treaties or negotiations, and as such, remain as Indigenous title territories, the provincial government of BC has developed numerous legislative and regulatory processes to gain authority over these, including through FCRSAs, RFAs and SEAs. These are some of the processes developed for ensuring continued provincial control over Indigenous resources. While the names of these regulatory processes use words meant to convey positive relations and agreements, the actual common denominator in each of them ensures provincial authority is maintained, while simultaneously and decidedly neglecting any meaningful recognition of the outstanding Indigenous title to the unceded lands and resources. The Province of BC touts to have signed 400 incremental agreements with Indian Bands including Reconciliation Agreements that do not address Title and Rights but give the province open access to lands and resources. Some are being extended to 25 years and by the time they end the lands and resources are depleted of value.

The *British Columbia Water Act* provides another example of how the Province of BC uses legislation to establish their jurisdiction and authority of the natural resources in unceded Indigenous territories. Once the Province holds authority over the water, then this resource is no longer a consideration in their discussions with our Indigenous Nations. The province of BC uses a permitting system which makes the holder of the permit have private property-like ownership over the water without Indigenous peoples ever having been consulted or informed. Indigenous Peoples have never consented to the Water Act which aims to appropriate our waters.

The Crown claims jurisdiction over our water. Our water is no different to us than our land. The claim of jurisdiction is based on the premises of the *Doctrines of Discovery*, which hold that when European nations "discovered" our lands, they were given sovereignty and title over those lands, regardless if other people were already living on that land. The legacy of the *Doctrines of Discovery* has required that we must defend our Title and Rights to our land, and now we are required to do the same for our water.

The British Columbia Treaty Commission (BCTC) Process

With the recognition of the existence of Aboriginal Title by the SCC in *Delgamuukw*, and the declaration of title in *Tsilhqot'in Nation v. B.C.* 2014, why would anyone sign away our rights for pocket change?

Canada continues to deny the recognition of Indigenous Peoples' land rights and Aboriginal title to our lands. It continues to administer policies on lands reserved for Indians which encumber economic processes, and fund services to Indians at a level which is not on par with Canadians. Canada continues to fail to provide an adequate mechanism to settle aboriginal land claims.

The result of this impoverishment is to accept a small amount of money in exchange for unfettered access by business and industry to Indigenous lands to extract economic benefits.

Likewise, it has resulted in the continued participation in Comprehensive Land Claims and the BCTC by Indian bands despite the glacial pace of their negotiations. In many cases businesses and industry merely want to do business regardless of whom grants access and benefits, however they are bound by the provincial permitting authority. The federal government, through non-recognition of Indigenous Title in practice, continues its economic oppression of Indigenous Peoples, forcing a situation of granting another government, the Province, rights to our lands. This is a pure case of racial discrimination.

Today our territories and our people stand to be torn apart by federal policies and the joint federal and provincial BCTC process that aim at the *de facto* extinguishment of our land rights. It is also negatively effecting the neighboring tribes who we have been working together with to secure recognition of our land rights and jurisdiction on a territorial basis since the colonial encounter.

The BCTC process is a 20+ year old process between Canada and British Columbia that aggressively seeks to extinguish Aboriginal title by 'negotiations' with federally appointed Indian bands which are part of the imposed *Indian Act* system. This element of the Canadian

Indian Act system serves to obscure the Indigenous forms of governance and collective ownership of Indigenous territories. For the Interior Alliance Nations (St'át'imc, Sylix, Secwepemc and Nlaka'pamux), the BCTC process has caused several significant problems including the impending threat of extinguishment of some of our Indigenous title to our territorial lands.

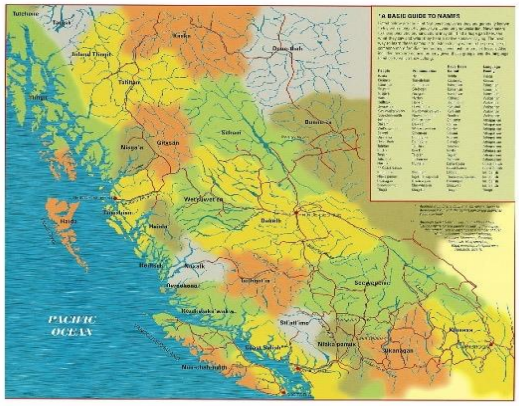
In addition, as Indian bands enter into this inequitable process it causes all forms of internal strife for those who are not willing to participate in a process which does not recognize their Indigenous form of governance and their collective land ownership. For example, the April 4, 2016 submission to the UN CERD detailed the impact of the BCTC treaty process with its overlaps onto neighboring Nations territories. The primary objective of the BCTC treaty process and the underlying Comprehensive Claims Policy is to extinguish indigenous land rights (Aboriginal Title). This would lead to the overall extinguishment of Indigenous Peoples as unique peoples of the world and is the reason that most Interior Alliance Nation member communities do not participate in the BCTC process. Both the Province of BC and Canada do not offer any viable alternative to the BCTC process for those that do not want to extinguish their title.

Using the long-established approach of "divide et impera" (divide and rule) the governments have allowed smaller groups, such as Indian bands or conglomerates of them, to join negotiations under the BCTC. Under the federal Indian Act, Indian bands just have delegated authority over the area that is restricted to Indian reserves. It is a clear conflict of interest for the federal government to negotiate with entities under their jurisdiction and control because they are also funded by the federal government, over larger territorial issues. In addition, to participate in the BCTC, Indian bands or the groups participating in the negotiations, have to partially fund their participation in the process by loans owed to the federal government. Indian bands cosign those loans and are responsible for paying them back even if the negotiations are unsuccessful, therefore resulting in an uneven and unfair negotiation environment. If the loans become due without a settlement, it would put the respective bands in third party management which means that the federal government through Indigenous and Northern

Affairs Canada (INAC) would appoint a third party manager and thereby directly run their affairs. This weighs heavily on many bands and in many cases forces them to remain in a process that violates their indigenous and human rights.

Under the BCTC all that is required to enter into the negotiation process is a band council resolution by the Chief and Councils of the respective bands who want to join the negotiations and access loans. It does not even take a vote of the membership of the respective band, let alone the overall nation as the appropriate title and rights holder. No formal vote is required until the agreement in principle stage, but in the meantime the groups and bands take on substantive loans that tie them to the BCTC process.

Traditional Territories & BC Treaty Map
Divide and Rule



British Columbia Traditional Territories

British Columbia Treaty Overlap Map

The first map enclosed here gives a general indication of the territories of the larger nations, acknowledging that some boundary areas are fluid like colours, rather than using sharp dividing lines. On the other hand as the below map created by the BCTC shows the process has created overlapping claims invited in part by the fact that they let smaller groups and Indian bands submit larger claims overlapping with territories of other groups or nations that are not participating in the treaty process as can be seen in the South Central Interior of British Columbia. The second map illustrates the divide and rule approach.

When they join the process the groups just have to attach a map of the area that they claim, without having to substantiate it with research. Actually, none of the funds that are borrowed have to be spent on territorial research to substantiate the claim that they are bringing. Under the Comprehensive Claims Policy if adjacent nations claim exclusivity, the overlap lands default to the Crown which is a strategic policy that benefits the Crown.

Since the negotiations are based on a land selection model and effectively a percentage formula where a small part (around 5% or less) of the land that is claimed is granted back in settlement lands, the resulting effects is that groups are enticed to claim larger territories so they can get larger settlement areas. What is clear is that this formula and approach clearly benefits governments (which is why they have set it up in the first place) because that way they can leverage a larger area for extinguishment and modification of rights (the extinguishment/modified rights area becomes proportionally bigger and since that is over 95% of the territory they stand to gain so much more than what the groups negotiating would receive as settlement lands). Of course, those settlement lands are in the larger territories of the respective nations in the first place and Aboriginal Title should be recognized on a territorial basis as mandated by the Supreme Court of Canada and international human rights law.
By "buying into" the land selection and modified rights process, the respective groups and bands of course stand to negatively affect the collectively held Aboriginal Title and rights of the larger Nation. First of all, neither under indigenous law, nor under Canadian constitutional law, would they be allowed to release territorial rights, but the Canadian and provincial governments will still use the agreements to claim exclusive control over the vast extinguishment and modified rights areas. They will also use the overlap issues between Indigenous Nations that are deliberately fabricated and created by their policy and process to claim that governments have to maintain exclusive jurisdiction over all indigenous territories, because they claim that Indigenous Peoples cannot agree on their territories. To this Indigenous Peoples and nations say that their indigenous laws address issues of delineation of territories, as set out by our ancestors in 1910, they had "their own territory and having boundaries known and recognized by all." It is the government policy, formula and process, clearly aimed at "divide and rule" that has deliberately created these problems to benefit governments.

VI. ONGOING WARNING: NSTQ Extinguishment negotiations

The following is an example of ongoing extinguishment negotiations with a provincially established society called NStQ (Northern Secwepemc te Qelmucw) which threatens to extinguish Aboriginal Title over part of Secwepemcul'ecw. It has also been a focus of the early warning urgent action submission by Indigenous Peoples from British Columbia to CERD. The committee has indicated that this issue would be considered at the current periodic review of Canada.

Secwepemc (Shuswap) territory is the largest indigenous territory in British Columbia. It spans the distance between the coastal mountains and the Rocky Mountains and centres around the Fraser River and some of its tributaries such as the Thompson rivers, which used to abound in salmon, but have constantly been declining due to mismanagement of our lands, waters and resources by the federal and provincial governments.

The Secwepemc have never ceded, surrendered, or given up our sovereign title and rights over the land, waters and resources within Secwepemcul'ecw. We have lived on our land since time immemorial and have never been conquered by war. We collectively hold title and governance regarding Secwepemcul'ecw and the collective consent of the Secwepemc is required for any access to our lands, waters and resources. The Secwepemc collectively are the decision-making authority for Secwepemcul'ecw lands and waters. The Secwepemc are committed to upholding our collective and spiritual responsibility to look after the land, the language and the culture of our people. Secwepemc law is the highest law of the land.

In the case of the Secwepemc Nation, Canada entered into negotiations with 4 out of a total of 17 bands in the Secwepemc Nation. These bands have taken on millions in loans and monies not available to others who oppose the negotiations under the CCP or Secwepemc bands who are not part of the negotiations.

Even under Canadian Aboriginal Law, it is recognized that Aboriginal Title is collectively held and it cannot be held by Indian bands, but rather the proper Aboriginal Title and rights holder has to be determined. The proper rights holder is determined on the basis of the respective indigenous laws and in most cases is the respective indigenous nation[8]. This is definitely the case when it comes to the Secwepemc Nation, which collectively holds Aboriginal Title throughout Secwepemcul'ecw according to Secwepemc Law.

Under Secwepemc Law, Secwepemc people can exercise their rights to hunt, fish and gather foods throughout their territory. Title to the whole territory is collectively held by the Secwepemc people. So any land selection agreement would negatively affect collectively held Secwepemc title.

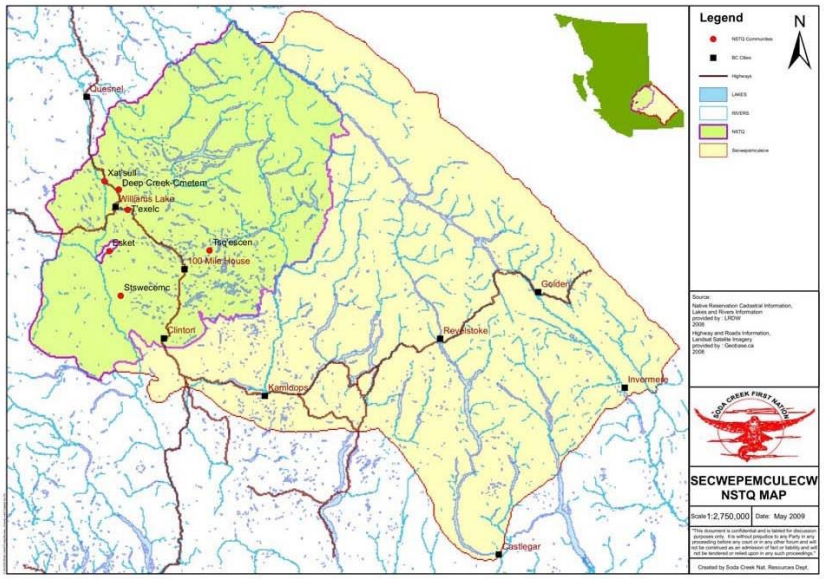
It is therefore in violation of Canadian constitutional law and Secwepemc law for the federal and provincial governments to be negotiating with a small group of Indian bands regarding what amounts to a large part of Secwepemcul'ecw. The four Indian bands have formed the Northern Shuswap Tribal Council, which is just a provincially registered society which does not represent the Secwepemc people as the proper Title and rights holder. This group self-describes as:

> "We are the Northern Secwepemc te Qelmucw (NStQ), meaning the Shuswap people of the north. We are located in central British Columbia in the Cariboo Chilcotin Region. We are 4 of the 17 Shuswap bands that are known as the Secwepemc Nation." [9]

Even by their own definition, they are just 4 out of 17 Secwepemc bands and part of the larger Shuswap Nation, yet they are negotiating as the Northern Secwepemc te Qelmucw (NStQ) just for the four Indian bands, who in turn have co-signed the loans for the negotiations and holding them hostage to the monies owed. In this case, each band owes millions of dollars, and they have been proceeding through the different stages of the British Columbia treaty process,

[8] McNeil K, Aboriginal Title and Indigenous Governance: Identifying the Holder of Rights and Authority, Presentation at Determining Access Conference, Thompson Rivers University, Kamloops, February 15, 2016
[9] Definition taken from cover page of the Northern Shuswap Tribal Council home page: http://northernshuswaptribalcouncil.com/

recently entering the final stage before voting on a final agreement that the governments would use to claim full control over the areas being negotiated. We refer to these areas as "Extinguishment or modified rights zones" affecting a vast part of Secwepemc'ulecw and beyond as depicted on the enclosed map.



As can be seen on this map that is even entitled Secwepemcul'ecw (meaning Secwepemc territory) NStQ Map, the darker green area depicts the potential extinguishment/modified rights zone within the larger Secwepemc territory, the green parts also reach beyond into some neighbouring indigenous territories, including the St'at'imc.

In 2016 the NStQ member bands held a vote on the agreement in principle at the penultimate stage of the process that in part gave rise to the early warning and urgent action submission. It has resulted in grave concerns not just being raised by the Secwepemc people who stand to see their territory fragmented, but also by the neighboring St'at'imc people whose territory is also being claimed in part by the NStQ and stands to become an extinguishment/modified rights zone.

This not in accordance with indigenous law nor Canadian constitutional law, where any agreement that could affect their territory would require their consent and deepest consultation. Instead all the federal and provincial governments have done is send them letters showing the NStQ claim area and therefore the potential extinguishment/modified rights zone and asking the St'at'imc to raise any concerns with them. They also refer to "non-derogation clauses" to be included in the agreement, suggesting that it will not affect any rights established

by other nations. This is clearly misleading and aimed at creating a false sense of security, when indeed what it does is shift the burden to the negatively affected Indigenous Peoples to prove their Title in court, while the government accepts the claim areas of those groups ready to participate in the process at face value without any requirement of research, since the governments stand to gain the most in terms of control over the extinguishment/modified rights zones.

It is against this backdrop that the vote on the NStQ Agreement in principle proceeded on February 11, 2016, which was the focus of the early warning and urgent action procedure, since it is the penultimate step before a vote on the final extinguishment/modified rights agreement.

There were no in-depth consultations with the St'at'imc or other neighboring Indigenous Peoples and for that matter with the Secwepemc people as a whole regarding the agreement in principle. Indeed, Secwepemc people who are not band members of the 4 bands set to vote on the extinguishment/modification of Secwepemc Title, were not allowed at information meetings and in some cases the Royal Canadian Mounted Police was used as an enforcer to keep them out of these meetings which should have been open to all Secwepemc, since they are the proper Title and Rights holder. As a matter of fact, the agreement in principle was not even made available to the Secwepemc Nation as a whole or neighbouring nations for review or comments and even some of the band members of the 4 bands in the negotiations were not given access to the very agreement they were supposed to vote on.

It is only at this penultimate stage of the process that a vote of the membership is required and while it is supposed to be a vote on the agreement in this case the Chief and council of the respective bands claimed that all they need is an endorsement to proceed with the negotiations. There are more than 10,000 Secwepemc who are members of the Secwepemc nation, yet they were not all able to vote on the Agreement in principle (AiP), nor is it foreseen that they will be able to vote on the final agreement, although it stands to negatively affect their rights.

The vote on the AiP was limited to 4 Indian Bands:

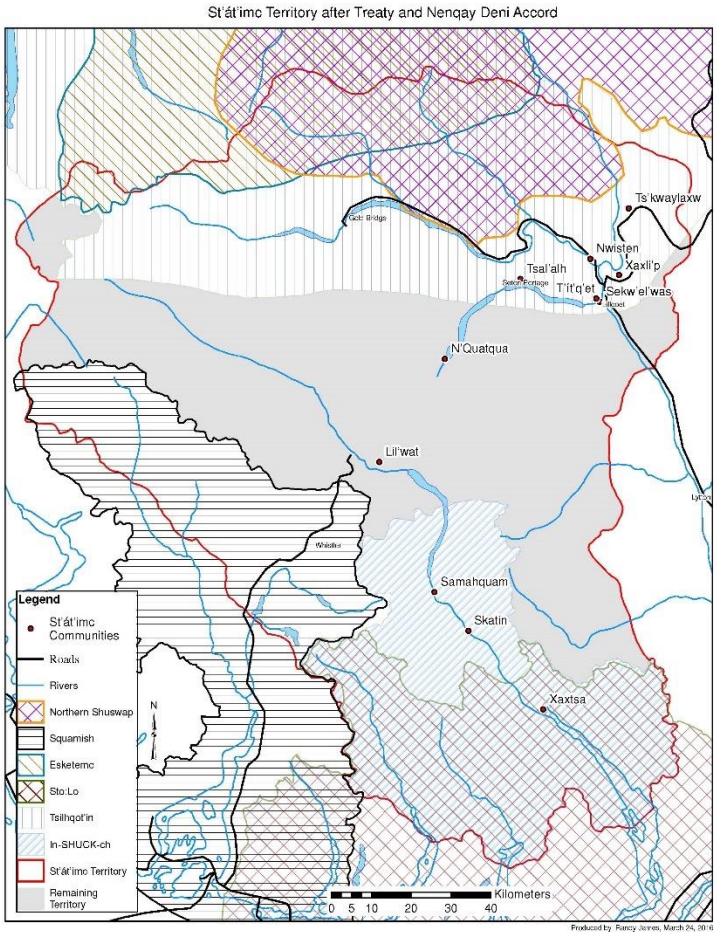
- Canim Lake with a registered population of 606, 458 of them were counted as eligible voters, only 125 voted in favour and 84 against
- Soda Creek with a registered population of 426, 336 of them were counted as eligible voters, only 90 voted in favour and 48 against
- Canoe Creek/Dog Creek with a registered population of 746, 582 of them were counted as eligible voters, only 113 voted in favour and 72 against
- Williams Lake has a registered population of 789, 385 of them were counted as eligible voters, only 87 voted in favour and 74 against.

It should be noted that one of the Northern Secwepemc bands, Esket, in March 2016 had a vote whether they wanted to remain in the treaty process and 230 voted “no” with only 58 voting in favor of remaining the in the process. Still their rights stand to be negatively impacted by the agreements the NStQ continue to negotiate (note the tiny area around Esket set out on the NStQ map). So far even in relation to eligible NStQ member band voters only a small percentage of the members voted in favor of the treaty and in relation to the membership in the Secwepemc Nation as a whole, only 5% of the people voted in favor of the AiP, yet the negotiations of a final agreement are set to continue on the basis of that vote.

It raises very serious concerns in regard to any vote on a final agreement, similar to other cases, where the process has not been transparent and slanted in favor of a yes vote, rather than being transparent, providing all the information and letting all the people who are affected participate. The Committee on the Elimination of Racial Discrimination has raised similar concerns in regard to other votes and processes under the BCTC and addressed questions to the government of Canada which they have failed to answer.

VII. SPECIFIC CONCERNS OF THE ST'AT'IMC NATION

The St'át'imc people are an indigenous people whose territories are now encapsulated within the area now known as the Interior of BC (see map at the end of this section). The St'át'imc have never surrendered or ceded their inherent jurisdiction and ownership of their territorial homelands in any way, shape, or form. Instead, the St'át'imc have remained adamant that they maintain full ownership and authority over their territory.



The enclosed map shows how St'at'imc territory is claimed by other groups in the BCTC standing to negatively affect St'at'imc Aboriginal Title and Rights.

Following the early contact and fur trade era, the ensuing assertion of sovereignty by British Europeans (later delegated to Canada), indigenous ownership of the traditional territorial lands in British Columbia was explicitly denied by provincial and federal governments. As British colonization progressed, the St'át'imc along with all indigenous peoples in BC, have attempted to communicate with all possible levels of government in order to reach equitable

understandings regarding the outstanding indigenous land issue in British Columbia. These strenuous attempts continued once Canada became delegated through the *British North America Act, 1867* to assert sovereignty on behalf of the Crown.

There has been a legal standard of recognizing Aboriginal title in British law dating back to the Royal Proclamation of 1763 which is a source of the Canadian Constitution. However due to persistent and powerful denial processes by colonial, provincial, and federal governments, legal recognition was officially neglected for generations.

After over 100 years of official denial by colonial, provincial, and federal governments of indigenous land rights, the courts attempted to address the matter through the 1973 *Calder* case. The foundation of the Canadian court system assumes Crown sovereignty and jurisdiction and this is paramount in how the outstanding indigenous land issues are managed within that realm. It took the provincial and Canadian court system 45 years of lands claims cases before they were finally able to reach the legal recognition of Aboriginal Title in British Columbia in 2014.

The slow progress provides evidence of the governments' pattern of denial, delay, and avoidance of addressing the outstanding indigenous land issue in BC. Within the policymaking realm of federal and provincial government, the BCTC process was developed whereby indigenous ownership of lands is extinguished. New terminology such as "modified rights" provide the appearance that extinguishment no longer occurs, yet the land is transferred over to government ownership and jurisdiction as a path toward perfecting the Crown's assertions of sovereignty.

Several serious concerns regarding this inequitable BCTC process have been brought forward previously and yet continue to be implemented by the provincial and federal governments in BC and Canada. Of serious concern are the government strategies of dividing indigenous groups through these types of governmental processes. Traditionally Indigenous Peoples have clear

understandings amongst themselves about their territorial boundaries as well as the areas which they shared amongst themselves.

Of particular concern to the St'át'imc is the land base areas being put into the BCTC "treaty" process that extend over into St'át'imc territorial land base by neighboring indigenous groups involved in the process. The governments and neighboring indigenous groups involved in negotiations that overlap in this way are required to consult with those impacted. Other than a letter offered at this very late stage of the process, there have been no consultations to the St'át'imc from either the treaty group or the governments. Letter writing does not meet the court standards or directives for meaningful consultation for this matter.

Also of serious concern is the manner in which the government BCTC "treaty" process allows for lands to be chosen for negotiations. As documented above, this is done through unsubstantiated map submissions as part of the application to participate in the BCTC. Rather than being research based or evidence based, potential treaty groups select areas on a rough sketched map often extending into the neighboring nations' territories.

There are no viable options other than legal court action to counter the BCTC "treaty" process about these overlaps into St'át'imc territory. As negotiations with the outside First Nations progress, the eventual outcome will be the extinguishment of significant portions of St'át'imc territory without the St'át'imc having been involved in any negotiations to this effect. This enables a serious lack of transparency to the process.

The BCTC process has several claims that overlap to St'át'imc territory threatening the integrity of St'át'imc collective ownership of un-surrendered lands. These include the surrounding treaty groups: Northern Secwepemc te Qelmucw, Katzie First Nation, Squamish Nation, and internally the In-SHUCK-ch Treaty Society. Another government process that impacts and impinges upon St'át'imc territory is the Tsilhqot'in Accord process that the provincial government is carrying out with a neighboring First Nation under the regulatory process called Strategic Engagement.

The strategic engagement process involves an agreement between the Tsilhqot'in and the provincial government whereby they will carry out negotiations over a significant portion of our land base including six of our Indian Reserve communities.

The total area of our territorial land base is 21,686 km². The BCTC treaty process aims to extinguish 10130 km² through negotiating processes of which we as the St'át'imc people are not involved in. The Tsilhqot'in Accord process with the provincial government is using regulatory means to take over 6649 km² of St'át'imc territory. These processes not only overlap our territory without our consent or involvement, but they also overlap each other.

The government process enables overlap from other Indigenous Peoples in negotiation processes, without viable consultation or options, serve to subtract 14015 km² from our territory. This would leave the remaining territorial land base at 7671 km² without us ever entering into the governments' BCTC treaty process or the strategic engagement process.

VIII. NEED FOR ONGOING INTERNATIONAL OVERSIGHT AND SUPPORT BY CERD:

The problems of Canada continuing to (attempt to) extinguish Aboriginal Title and rights under the modified rights model and non-assertion model has to be dealt with if peaceful and mutually agreeable solutions are to be found. The frustration by the stone walling of the Canadian government is at a critical level. It is apparent that Canada's position is to stonewall Indigenous Peoples until they accept the existing policy as being the only road forward. We have heard Indigenous leaders say that the modified rights model in the Nisga'a Final Agreement is the best we can expect. It is that kind of thinking that has made Indigenous nations subject to divide and rule.

It is imperative that the United Nations under the auspices of the UN human rights treaties, including CERD and the UNDRIP, help Canada decolonize its relationship with Indigenous Peoples.

Some of these matters were supposed to be addressed under the *Constitution Act, 1982* and also before the Supreme Court of Canada but not in the context of Canada decolonizing its relationship with Indigenous Peoples. In the case of the *Constitution Act, 1982,* Canada adopted section 35 (1) which stated that the federal and provincial governments will recognize and affirm existing Aboriginal and Treaty Rights. The Constitution also had section 37 (1) which called Canada to have Constitutional Conferences on Aboriginal matters:

> Section 37(1) provides that a constitutional conference composed of the Prime Minister and the ten provincial premiers shall be held within one year after the Part of the Act containing that section comes into force, that is, within one year of April 17, 1982. Subsection (2) provides that the conference convened under subsection (1) shall have included in its agenda "an item respecting constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada," and further that "the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on that item."[10]

Canada had four Constitutional Conferences on Aboriginal matters but unfortunately they were unsuccessful in reaching agreement between the parties. The Canadian government at the time basically said that these matters would then have to be decided by the Supreme Court of Canada. Indigenous Peoples do not accept that assumption, because the Supreme Court of Canada is just as deeply entrenched into the colonial structure as the governments when it comes to Indigenous Peoples' right to self-determination. Canada was given a chance to resolve these human rights problems under the section 37 (1) Constitutional Conferences on Aboriginal Matters but those Constitutional Conferences failed. This does not mean that this failure demotes our human rights to the sideline but elevates our rights to be overseen by the human rights bodies created to oversee the implementation of the international human rights treaties signed onto by Canada.

[10] The Constitutional Rights of the Aboriginal Peoples of Canada, Kent McNeil, Supreme Court Law Review, Aboriginal Rights [Vol. 4:255 1982]

It must be clear that from a human rights position that section 35(1) of the Constitution cannot be read without also acknowledging Canada's failure to reach an agreement with Indigenous Peoples at the section 37 (1) Constitutional Conferences. Section 35(1) and section 37(1) clearly link up with the human rights responsibilities of Canada regarding matters under Article 1 of the International Covenant on Civil and Political Rights and under ICERD.

Canada was asked by the United Nations Human Rights Committee how it was implementing article 1 on self-determination with regard to Indigenous Peoples in the List of Questions in 2005. Canada does agree that Indigenous Peoples can have the right self-determination in an existing state but it must be decided on a case-by-case basis. Nevertheless, there are no full discussions of what self-determination could mean at the section 35(1) constitutional level. Furthermore, Canada is not entertaining any constitutional talks on Aboriginal matters. International human rights pressure needs to be put on Canada so Canada will take the initiative to talk to Indigenous rightful titleholders and fundamentally change their policies.

Canada must move from the extinguishment and assimilation policies to recognition and affirmation policies defined by the Canadian Constitution and international human rights for Indigenous Peoples in Canada. The problems set out below have Indigenous Peoples fighting Indigenous Peoples because Canada wants one group of Indigenous Peoples to unilaterally extinguish collectively held Aboriginal rights to Indigenous territories. Canada should be asked to remove themselves from any table that extinguishes fully or in part the Aboriginal rights of Indigenous Peoples. The Supreme Court of Canada recognizes these rights exist and UN human rights bodies have told Canada not to extinguish Aboriginal rights. The ongoing problems brought before CERD provide evidence on what is happening at the Comprehensive Land Claims tables in Canada right now and why international oversight is required.