



## International Human Rights Association of American Minorities

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**Submission of observations for consideration by the**

### **Committee for the Elimination of all forms of Racial Discrimination**

On the occasion of the

**87<sup>th</sup> Session of the**

International Convention on the Elimination of All Forms of

Racial Discrimination,

With respect to

**Norway**

## **Summary**

Three Atlantic salmon farming companies registered and headquartered in Norway are currently operating a hundred open-net-cage feedlots on the coast of British Columbia, Canada, in unceded, unsurrendered Indigenous Peoples' territories, waters and homelands. They do so without the consent of most of the Peoples' whose lands and waters they operate in, relying solely on Canadian licensing and regulation, and their business exacts a huge environmental cost which is paid only by the Peoples who live there and those who depend on the salmon that must migrate past these farms.

Norway expresses a race-based double standard of discrimination when Norway shelters these companies which ignore the Indigenous Peoples and their laws and rely on Canadian law and enforcement agencies which are in widespread violation of Indigenous Peoples' rights.

The Indigenous Peoples, whose right to their homelands and to their self-determination has been almost completely denied and suppressed by Canada, suffer the impact of those industrial salmon farming operations without so much as the opportunity to be consulted about it and to be accommodated for those impacts. That opportunity is supposedly "law" in Canada, but it is rarely implemented on the ground and Norwegian business operations in British Columbia rely heavily on this type of human rights violation which lowers the cost of doing business, and in most cases makes their business possible in the first place. The process of "consultation and accommodation" in Canada, when it happens, reaches a standard lower than that described in the UN Declaration on the Rights of Indigenous Peoples concerning free, prior, and informed consent.

Norway's indulgence of these Norwegian-headquartered companies and their indifference to Indigenous Peoples, their rights, homelands, and food security, is an expression of racial discrimination.

Norway is complicit in Canada's violations of Indigenous Peoples' rights and Norwegian registered companies benefit from the non-consensual exploitation of the unceded, unsurrendered lands of the Indigenous Peoples.

## **I. Norway's Extra-Territorial Obligations**

1. Extraterritorial obligations are supported by the language of the Charter of the United Nations, and this language supports the application of extraterritorial obligations in all other treaties.
2. Article 55 of the Charter states in relevant part:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: ...

3. Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

3. Article 56 requires that “All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.”

4. Furthermore, these articles take precedent over any other international instruments, including bilateral and multilateral agreements.

Article 103 of the Charter of the United Nations states:

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

5. The International Law Commission has adopted Articles on Responsibility of States for Internationally Wrongful Acts. These articles are based on conventional and customary international law and international law jurisprudence. The Articles do not recognize a condition related to jurisdiction for a State to be held responsible for an internationally wrongful act, such as human rights violations, but rather whether an act that violates international law can be attributed to a State.<sup>i</sup>

6. The Articles also recognize that there may be shared responsibility for an internationally wrongful act, in other words while the State in which an internationally wrongful act occurs may also be liable and held accountable for that act, other States that have contributed to that internationally wrongful act share responsibility and consequently can be held accountable.

Specifically, Article 16 states that:

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) That State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) The act would be internationally wrongful if committed by that State.

7. Furthermore, the Articles on Responsibility of States for Internationally Wrongful Acts address violations of peremptory norms, which could include gross violations of human rights.

Article 40 considers serious breaches of peremptory norms as those that involve “a gross or systematic failure by the responsible State to fulfill the obligation” in question. And Article 41 addresses consequences for such serious breaches, including cooperating “to bring to an end through lawful means any serious breach within the meaning of Article 40” and mandates that “no State shall recognize as lawful a situation created by a serious breach within the meaning of Article 40, nor render aid or assistance in maintaining that situation.”<sup>ii</sup>

## **II. Canada's human rights violations which create subsidy to salmon farming operations in British Columbia**

8. In 2014 Norway sold its shares in CERMAQ, one of the largest salmon farming companies in the world, for \$800 million. That company's holdings in British Columbia had been enriched by operations which were subsidized by human rights violations of the Indigenous Peoples. Currently the companies headquartered in Norway and operating in British Columbia bring financial returns to Norway.

### **II.a. Canada's denial of Indigenous Peoples' rights**

9. Canada proclaims to the international community of states that it will rely on its Constitution, which recognizes "aboriginal rights," instead of peremptory norms in international law, which are developing rapidly with respect to Indigenous Peoples' rights. However, when interpreting international obligations, Ian Brownlie explains that, "A state cannot plead provisions of its own law or deficiencies in that law in answer to a claim against it for an alleged breach of its obligations under international law."

10. Canada's racist policy of recognizing "aboriginal rights," occasionally and entirely selectively, as a construct of the unilaterally defined "special relationship" between Indigenous Peoples and the British Crown and successor state is well known to be illegitimate and repugnant, being based on the racist Doctrine of Discovery, particularly as that Doctrine was imported from the USA in the M'Intosh decision of 1823 into the Supreme Court of Canada ruling on St. Catherine's Milling in 1898.<sup>iii</sup>

11. This racist policy serves to oppress the Indigenous Peoples as the alternative to proper recognition of those Peoples' rights to own their homelands and territories, their rights to self-determination, and to freely dispose of their natural wealth, and not only to alienate the lands to the Crown – as Canada insists through its policy on Aboriginal rights. This and other actions are violations of the Indigenous Peoples' rights. These violations are well documented and have been the subject of recommendations to Canada from the CERD, the CSECR and the Human Rights Committee.<sup>iv</sup>

12. Canada's denial of Indigenous Peoples' rights creates disregard for the land in general and it licenses land use with very little accountability environmentally. Indigenous Peoples' standards of environmental protection are not in force: but Indigenous Peoples have the internationally recognized right to consent to developments on their territories, among many other relevant rights such as the right to self-determination and the right in no case to be deprived of their own means of subsistence.<sup>v</sup>

## II.b. Puppet Governments

13. Some First Nations (Indian Bands constituted by Canada's Indian Act – a unilateral invasion of Indigenous Peoples' governance structures which is entirely financed and enforced by Canada) have elected leadership who cooperate with the Norwegian salmon farms. The companies sometimes reach financial accommodations with willing First Nations, but they are most likely "willing" because these Aboriginal organizations are deeply impoverished by the Canadian denial of all their other economic rights.

14. These representatives are not the proper Indigenous Peoples' rights holders, however, they are on the state's federal payroll, employees of Canada, and as such are not vested with any power that is not prescribed and delegated by the state itself. They merely enable the Indian Act to function. The Supreme Court of Canada has even recognized that the proper title holders are the people themselves in the recent court proceedings under *Tsilhqot'in*, SCC 2014.

15. The use by the salmon farmers of the occasional willing representative of the Indian Act Bands allows them to cheaply buy the appearance of cooperation because of conditions among Indigenous Peoples of enforced poverty and powerlessness, and the prevailing conditions of Indian Act Bands to be incorrectly recognized as the legitimate governance structures of the Indigenous Peoples.

## II.c. Failure to consult and accommodate with Peoples

16. The Supreme Court of Canada ruled that it is necessary for the state government to consult and accommodate Aboriginal people wherever Aboriginal rights may be adversely affected. In *Haida* 2004: the duty to consult arises when government knows about, or ought to know about, the potential existence of an aboriginal right or title and contemplates a decision that might adversely affect it.

17. Canada does not practice that type of consultation and accommodation on the ground unless it meets overt resistance from Indigenous communities to state-licensed developments. Usually Indigenous Peoples would then be forced to take court action, within Canada, to sue for recognition of their rights to consultation and accommodation. This well-known issue gave rise to a question by Human Rights Committee member Dr. Seibert-Fohr recently during Canada's 6<sup>th</sup> review under the Covenant on Civil and Political Rights 114<sup>th</sup> Session, July 8, 2015:

“We are aware that consent is not happening in all areas although the Supreme Court of Canada acknowledges this right. As a consequence, Aboriginal peoples are forced into long court processes to protect their rights. Is it true that the state allows developments to continue in cases where consent has not been acquired?”

“I wonder why the government uses the term “engagement,” there is no legal definition for that term, instead of “consultation”? And why is there no legal framework for consultations with Aboriginal peoples? We know there are frameworks for public consultations regarding environmental assessments, this could be possible for consultations with Aboriginal peoples too.”

18. Canada and British Columbia have from time to time consulted with Indian Bands through their Indian Act leadership in areas directly proximal to the salmon farming operations on the coast. However, almost the entirety of the populations of Fraser watershed salmon stocks migrate past the open-net-cage salmon farms on the coast, as juveniles when they leave the interior rivers to go to sea and when they return to spawn, and the impacts to those salmon runs have been identified severally in the form of dead juvenile Fraser salmon killed by sea lice at the location of the farms; escaped Atlantic salmon half way up the Fraser River; returning adult salmon found dying before spawning, in their terminal interior streams, of diseases rampant in the salmon farms and shown to have originated from the farms. There has been no consultation whatsoever between the state or the companies with the interior Indigenous Peoples concerning the impacts of the salmon farms on their rights to fisheries and their own means of subsistence provided by those inland fisheries.

### **III. Demonstrations of conflict between Atlantic Salmon Aquaculture and Indigenous Peoples’ rights**

19. Throughout a decade of Indigenous protest and court action, Norwegian salmon farmers operating in British Columbia must have noticed that the economic viability of their operations was meaningfully subsidized by the Canadian government’s suppression of Indigenous Peoples’ rights.

20. Mass demonstrations outside the British Columbia legislature in 2009; mass marches to the state Inquiry into the salmon decline, 2010; petitions, declarations and hand-delivered statements concerning the lack of consent by Indigenous Peoples were headline news in British Columbia from 2009 to 2012.<sup>vi</sup> Indigenous Peoples led a complaint to the Organization for Economic Cooperation and Development, and to NAFTA, and identified Canada’s violations of the UN Code for Responsible Fisheries.<sup>vii</sup>

21. The 2012 report and recommendations of the Cohen Commission of Inquiry into the Decline of Fraser River Sockeye in 2009 did not include a recommendation for state recognition of Indigenous Peoples’ rights.

#### **IV. The Impact of Norwegian salmon farms on the wild salmon and then on Indigenous Peoples in British Columbia**

##### **IV.a. Decline of wild salmon since 1994**

22. The Fraser River watershed had historical salmon runs in the number of 100 million salmon in a year. In 2009, the total number of returning salmon was estimated at about 1 million.

23. After the Cohen Commission of Inquiry into the Decline of Fraser River Sockeye, 2010-2012, evidence presented and analyzed failed to identify an exact cause or causes for the decline. The political nature of that report is easily deduced – as it did not, for example, make any meaningful recommendations on culpable activities such as clear-cut logging in headwater areas; commercial over-fishing in mixed-stock fisheries, preventing the selective conservation of at-risk populations; the lack of regulation or enforcement in the sports fishery which buys at least 250,000 salmon retention stamps, accounting for an unknown catch amount; the placement of mines and urban development in headwater areas. All these activities account for some 80% of the BC economy. The fact that the Commission’s report did include specific recommendations for changes to the operation of salmon aquaculture operations along the wild salmon migration route was significant. In key areas, there were to be no new farms, leases no longer than one year, and an investigation to determine whether farms were posing more than a minimal threat to migrating sockeye salmon – and to close them if they were. These recommendations have not been implemented.

24. However, the first major failure of the Fraser sockeye salmon runs occurred in 1994, one salmon generation after the introduction of Atlantic salmon farms in 1989 and 1990 along the wild salmon migratory route. Copious other evidence and scholarly articles indicate that local wild fish stock decline is imminent once open-net cage salmon aquaculture is introduced, on average by 70% according to the 2008 Ford Myers report.

25. Norwegian salmon farmers already know of the disastrous environmental impacts of open-net-cage salmon farming from first-hand experience in Norway. Auditor General Jørgen Kosmo released a report on the salmon farming industry operating in Norway. The report identified the aquaculture industry’s environmental challenges to include high numbers of escaped fish which compete and breed with wild salmon and reduce genetic diversity; the prevalence of sea lice remaining at a high level along large parts of the coast (sea lice are a threat to juvenile wild salmon); extensive losses of salmon in the farms due to disease; significant environmental impact, particularly in areas with extensive, high density aquaculture production creating large amounts of untreated discharges from the farms of nutrient salts, organic material and chemicals discharged into the marine water, agents which have been shown to harm nature.<sup>viii</sup>

26. All of these problems are now in effect on the west coast of British Columbia, but state environmental regulations do not commit the businesses to effectively clean up or restore the areas in which they operate, if that clean up and restoration is even practicable. Indigenous

Peoples' regulations would not permit such a threat to the wild salmon, or if they did: Indigenous Peoples have the right to consent to developments in their territories and to benefit economically from those developments.

27. Norwegian companies know that environmental regulations in British Columbia are less rigorous than in Norway.<sup>ix</sup>

#### IV.b. Economic impacts to Indigenous Peoples

28. The impact of the decline of salmon stocks to the Indigenous Peoples has been catastrophic. Although poverty stricken for a century, the Indigenous communities could at least rely, until 20 years ago, on the salmon to eat. (Except when Canadian Fisheries programs officers arrested their people for fishing, etc.)

29. Before the advent of the colonial commercial seine fisheries on Fraser salmon, and before Indigenous Peoples' main economic activities were criminalized by the colonial state, the Nlaka'pamux people could produce one million whole dried salmon in a season from a set of fishing locations in the mid-Fraser. This was a very significant economic activity. The Fraser salmon stocks will not regenerate if they continue to have to swim past 100 fish farms on their way out to sea and on their way home to spawning grounds, as they do today.

#### IV.c. Environmental degradation in Indigenous territories and waters

30. The cumulative impact of the environmental degradation caused by the salmon farms has not been calculated. Suffice to say that clam beaches near the farms are now awash in toxic chemicals used to treat the Atlantic farmed salmon in the open marine waters; whales' migratory patterns have been totally disrupted in the Broughton Archipelago and elsewhere because of sonar devices used to keep them away from the farms; crayfish and other crustaceans have been found dying from deformities caused by the application of the chemical SLICE which is applied at the farms to reduce sea lice; wildlife including seals and sea lions are killed by salmon farmers and also die when they attempt to access the farm salmon through the net pen cages; sea bottoms below the salmon pens are suffocated by the waste produced by the farm salmon. There are no mechanisms in place to remedy any of these problems, except that the salmon farms pay a tax to the province of British Columbia which is allocated to salmon enhancement programs.

#### IV.d. Cultural impacts of the salmon decline to Indigenous Peoples

31. The Fraser sockeye, and salmon generally, are often called the "lifeblood" of Indigenous Peoples in British Columbia. Several Indigenous Peoples actually call themselves the Salmon People.



32. Presently the catastrophic decline of salmon stocks have resulted in Canadian restrictions on Aboriginal fisheries, and self-imposed fishing restrictions by the Indigenous Peoples who are determined to conserve the salmon even at immediate cost to their way of life, which are so crippling that for the last decade the traditions connected to salmon have declined along with the food security of Indigenous Peoples.

**V. Proposed questions on these themes for the state party Norway:**

33. How will Norway ensure that Norwegian companies operating in Indigenous territories abroad will respect Indigenous Peoples' rights?

34. For instance, will the government devise a system of accountability to ensure that salmon farming operatives based in Norway and working in British Columbia, in unceded, unsurrendered Indigenous Peoples' territories and homelands, will engage with Indigenous Peoples whose rights to food security, traditional foods, consensual development and environmental integrity as well as the right not to be deprived of their natural wealth, are presently being negatively impacted by these salmon farming operations?

35. Will Norway hold Norwegian companies to the standard of achieving free, prior, informed consent with the Indigenous Peoples whose waters are occupied by the salmon farms? This may result in operational changes including relocating the farms to areas away from the wild salmon migration route; building closed-containment farms; ensuring that diseased fish cannot come in contact with wild salmon, or escape and interbreed with wild salmon, or that contaminated and chemical toxins are not dumped in marine areas?

36. Based on its experience with a majority state-owned Atlantic salmon farm, under the name CERMAQ, in the unsurrendered and unceded Indigenous Peoples' territories and coastal waters of British Columbia, and having benefitted by the subsidy to that company afforded by the Canadian government's practices of racial discrimination concerning denial of Indigenous Peoples' rights, having sold its shares in that company for some \$800 million, will the state government of Norway share the details of its experience of this widespread racial discrimination in Canada with the CERD – if it feels that Canada is not in compliance with the provisions of the Convention?

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<sup>i</sup> See, International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, Arts. 1, 2 and 3 (adopted by the ILC in 2001).

<sup>ii</sup> UN Commission on Human Rights resolutions 1993/77 and 2004/28

<sup>iii</sup> Tonya Gonnella Frichner, *The "Preliminary Study" on the Doctrine of Discovery*, 2010

<sup>iv</sup> Concluding Observations of the Committee for the Elimination of all forms of Racial Discrimination: Canada, 2007 and 2012. Concluding Observations of the Human Rights Committee: Canada, 1999 and 2006. Concluding Observations of the Committee for Economic, Social and Cultural Rights: Canada, 2006

<sup>v</sup> UN DRIP, Articles 29 and 32

<sup>vi</sup> For example: September 2010, a delegation including dozens of Indigenous Peoples travelled to the Cohen Commission by canoe down the Fraser River and across the Salish Sea, protesting the outbreak of diseases introduced by the Atlantic farm salmon among wild salmon populations. February 16, 2010, a delegation of Indigenous Peoples and Canadian opponents of open-net-pen salmon farming delivered a petition to King Harald of Norway at the Norway-Canada Olympic hockey game. Chief Bob Chamberlin, Chairman of the Musgamagw-Tsawataineuk Tribal Council, stated: "Norwegian-owned salmon farms operating in our traditional territorial waters are killing wild salmon and strangling the lifeblood of our whole culture. There are 29 fish farm tenures in the territory of the Musgamagw-Tsawataineuk and these operations are in opposition to the Government of Norway's support of the UN Declaration on the Rights of Indigenous People. Norway is a proud nation, but Norwegian salmon farming companies are bringing Norway into international disrepute." 2009 - Complaint filed with Organization for Economic Cooperation and Development concerning Norwegian salmon farming operations and their environmental impacts in Canada and Chile. Resolution lay with the National Contact Point of Norway, but did not include respecting Indigenous Peoples' rights. 2009 - Get Out Migration demanded the removal of open-net-pen salmon farms, Norwegian owned almost entirely, from the wild salmon migration between the mainland and Vancouver Island. The march traversed the entire length of Vancouver Island, led by salmon biologist Dr. Alexandra Morton and heavily supported by Indigenous Peoples from beginning to end. 2008 - International Declaration Against Unsustainable Salmon Farming named Norwegian salmon farming businesses.

<sup>vii</sup> "Indian Nations Call for NAFTA Investigation on Harm to Wild Salmon From Industrial Fish Farms in British Columbia," October 2014, by the Center for Biological Diversity and Kwikwasu'tinuxw Haxwa'mis. OECD Case 166, including in the result: "In the joint statement, Cermaq admits to have taken insufficient account to the precautionary principle in meeting social and environmental challenges. The parent company also takes responsibility for its subsidiaries' activities abroad"

<sup>viii</sup> Document 3:9 (2011-2012) *The Office of the Auditor General's investigation into the management of aquaculture*, submitted to the Storting on 6 March 2012.

<sup>ix</sup> *British Columbia vs. Norway: A Comparison of Aquaculture Regulatory Regimes*, May 31, 2005 by The Environmental Law Centre Society, University of Victoria