

The Ongoing Assault on Indigenous Peoples and the Need for Remedy

1. International Law and Canada's Lack of Jurisdiction

At the founding of the colony of British Columbia in 1858 by Great Britain, there were few international agreements to govern its progress with respect to the rights of Indigenous Nations and Peoples. The European imperialists had decided they would Christianize or kill whatever people they discovered in the Americas, and so destroy the nations – not recognize them or treat with them except as a little used, and reversible, tactic in a winner-takes-all land race. There were fewer mechanisms of remedy to which the international community would admit Indigenous Peoples, perhaps only the British Privy Council or Queen Anne's Standing Committee of 1704 – to which indigenous recourse was always blocked by the colonial and British governments.

Great Britain was guided in its establishment of the colony only by the European colonial powers creation of and adherence to the doctrine of discovery, which demanded that it not be pursued over the claimed soil of a Christian Prince, and by its previous Executive Order to the Thirteen Colonies on the Atlantic side of North America, The Royal Proclamation of October 7, 1763. The latter instructed Governors there to refuse settlement on lands unsurrendered by or treated for with the Indian Nations, "with whom We are connected, and who live under Our Protection," stipulating that they "should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to, or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds..."

That said, Britain did not invoke the Proclamation in its directions to Governors of British Columbia, and authorized invasion of the Indian nations in any way which was expedient to the removal of precious resources for the benefit of British and other companies, as well as individual settlers. It relied on the latter to occupy the lands in fulfillment of Britain's claim to sovereignty over the vast area which had been dubbed "British Columbia" – largely sight unseen. One of the first of the Indigenous Peoples to be disturbed and displaced was the Lil'wat, whose territory was traversed by 30,000 gold miners in the summer of 1858, and whose food caches were emptied by the miners to the point that great starvation followed in the winters of 1858 and 1859.

The deliberate and methodical introduction of the smallpox virus among Indigenous Peoples on the coast and in the interior of British Columbia has now been well documented in *The True Story of Canada's "War" of Extermination on the Pacific* by Tom Swanky. He concludes that the leadership of the colony were speculating in land, and registered their pre-emptions of lands along the coast exactly two weeks after a certain boat had visited them – a boat carrying a smallpox infected passenger. Smallpox takes two weeks to break out, and the only doctor in the colony was engaged in the land grab. Vaccinations did not come to aid the Indigenous, nor was treatment made available, nor was the critical concept of quarantine for infected people made clear. The Lil'wat lost some 90% of their people to this epidemic by 1864.

When the new Pacific colony joined Canada in 1871, its leadership should then have been burdened by that country's Constitution: the British North America Act of 1867. The relevant

part of that Act, Section 109, provides that the provinces (one of which British Columbia had just become) had jurisdiction over the lands within their borders, subject to “Other Interests” in the same. The Other Interests, within the meaning of the Act, should have included the Indian Interest—but it did not. Certainly the Líl’wat gained comparatively little, in the form of work as wagon train operators and the like, from the removal of tens of millions of dollars in gold, nor did they collect the usual tolls from the intense traffic across their lakes and through their trails.

Instead, in 1876, Canada compiled existing legislative instruments and elaborated upon them to create its infamous Indian Act. This instrument, unlike the other Constitutional materials which pertained directly to the Indigenous Nations and Peoples, was applied vigorously in British Columbia. Without treaties, with only the equivalent of martial law and an armed occupation, the Premiers, police and settler people of British Columbia enforced that Act upon the Nations, criminalizing them for social, cultural, political and religious expression and vital economic practices, incarcerating them on Indian Reserves, imposing permits for travel, and prohibiting them from owning land.

The Indian Reserves and the absence of treaties persist today, along with an Indian Act legislating all political processes, laws and policies related to Indigenous Peoples. Using that Act, Canada actively and exclusively administers their every decision. Often this is done with the enthusiastic cooperation of the elected “Band Chief and Council,” likewise an imposed Indian Act prescription, who are employees of the Canadian government and agents in right of Canada – rather than agents of their people’s self-determination.

While Canada’s Supreme Court has very recently begun to identify and define “aboriginal title” and other “aboriginal rights,” the practice of these is withheld – pending Indigenous release of them in exchange for similar, modified rights defined and authored by Canada, or, at a minimum, acceptance by the Band Council of a Framework Agreement delimiting the exercise of those rights and identifying Canada as the source and regulator.

Neither British Columbia’s nor Canada’s courts will allow the question of jurisdiction to be raised. The Líl’wat attempted to do so in 1990, asserting the fact that they have never surrendered their jurisdiction over themselves and their lands. Their argument was not rejected, it was refused hearing.

2. Despoliation

After a century and a half of this repression, Indigenous Peoples in what is now called British Columbia are impoverished not only by the punitive, institutionalized discrimination against them in all aspects of the larger colonial economy and culture; but their lands have been despoiled beyond recognition and the people become dependent on the new economy of their homelands - now possessed and controlled by foreigners - for food, water and basic necessities.

While Indigenous Peoples were policed off the lands by the government, Game Wardens being a ubiquitous presence on Indian Reserves until the 1970’s, private individuals and companies set up the most elaborate, extensive and plundering resource extraction models found anywhere on the planet.

It took the newcomer’s industrial approach only two decades, from 1871 to the early 1890s, to bring the world-famous Fraser River salmon runs to a crash. To “mitigate” the crisis, Indigenous Peoples’ fishing stations were destroyed by government officials from the coast to the top of the watershed, and their fishing practices outlawed and heavily penalized. By the time aboriginal fishing rights were recognized in 1990 by *Sparrow* in the Supreme Court of Canada, the government had entered a new era of salmon resource: industrial open-pen salmon farms

situated on the wild salmon migration route along the coast. Today the sockeye salmon have declined to 1% of historical numbers, while Chinook, Coho, Chum and Steelhead salmon are too few to measure in such terms: they are counted by the dozen returning to their natal streams. Aboriginal fisheries are tightly restricted, closely monitored and rigorously punished when catch limits are exceeded.

The Líl'wat fishing villages and stations at Lillooet Lake and on the Birkenhead River are abandoned by all but the most desperate members, as the once plentiful Chinook are nearly extinct – in spite of the Band Council's handsomely funded but fruitless engagements with the Pacific Salmon Station and the Department of Fisheries and Oceans on concepts around restoration of these fish.

The deer, elk and moose which sustained Indigenous Peoples in the interior have been decimated by clear-cut logging of their old growth forest homes, and the ensuing explosion of non-native hunting access to their habitat by logging road. Today, remaining herds of mule deer are captured and collared with radio transmitters so that biologists working for Indigenous organizations can track their migration routes and "prove" to provincial resource licensing officers the critical areas requiring protection. Provincial legislation protecting such animals is nothing more than a wordy Wildlife Act rendered meaningless by the final clause which states that none of the precautionary measures listed are enforceable if they render operations "impracticable," i.e., costly. No restoration program for ungulates exists in BC.

Hydroelectric facilities, dams, generating stations, substations, roads and transmission lines, have caused the extinction of moose and elk in the Líl'wat homelands, as well as several runs of salmon. No restoration programs are in play. Dams in British Columbia have flooded hundreds of thousands of acres of the most food-productive valley bottoms, notably in the Bridge River north of Líl'wat, and at Daisy Lake south of Líl'wat. Those impacts cannot be mitigated even within generations. Electrical generating stations located in Indigenous communities have brought rates of cancer in the human residents to levels which exceed any other rate in the province, particularly in Shalalth, north of Líl'wat. Transmission lines and the toxic defoliants used to keep them clear have scarred Líl'wat homelands and ruined innumerable gathering places for food and medicine.

The dyking of the Lillooet River and lowering of Lillooet Lake, for the support of non-native agricultural concerns in Pemberton and in the Fraser Valley, have caused the extinction of untold species in Líl'wat lands.

Highways running through the territory have ruined water sources, salmon streams, vital plant life, and have dissected communities with streams of continual traffic.

Logging operations have extracted such an impossibly large amount of forest that BC's forestry industry has collapsed, as of the 1990s, to leave a gaping hole in the settlers' economic fabric. Whole lakes are filled in by the silt running off the slopes, such as at the head of Lillooet Lake in Líl'wat. Access to suitable trees for building is non-existent, as the prospect of cutting down those few old trees which remain is unthinkable, and places where such trees still grow in number are high in the mountains and inaccessible.

Private ownership by settlers of critical areas throughout Líl'wat territory has barred access to unusual and unique places for gathering of ceremonial and building materials.

Non-native recreational use of areas such as Whistler, in the Líl'wat lands, have resulted in the total ruination of places once home to summer villages, so dense was their food production. The Líl'wat do not benefit from the world famous economy of Whistler, except in some employment as hotel cleaners and food service attendants – which jobs are sought more than they are found by people desperate for money.

Where in the past the Líl'wat would trade for essential goods with people of the coast, such as eulachon grease, those resources are also so scant that the coastal people do not have enough to trade.

Líl'wat heritage on the land, their sacred places and ancient ruins, are by no means protected. The bluffs west of Líl'wat were blasted and turned to a quarry; the home of the Wolf People further up Pemberton Valley is used as the site of a disc golf course by non-natives; whole graveyards were washed away during the lowering of Lillooet Lake; the smallpox burial grounds at Ure Creek have been defenced from logging operations over and over again, at incredible cost to families and individuals; the Home of the Winter Spirit, Sútikalh, is the site of a provincially approved development application for a 500 unit ski resort. Al Mackie, an officer with the Heritage Branch of the BC Ministry for Community, Sport and Cultural Development, explained the dysfunctions of Canada's Heritage Act this way:

The Act is substantial. We have trouble with the Crown prosecutors, who won't prosecute for (contravention) of the Act. They say there is little likelihood of conviction, and that the case is not of enough public importance to go through the courts.

The Act does not distinguish between disturbed and undisturbed sites - both would be protected. The real problem we have is with property owners or developers who purposefully destroy archaeological sites.

Mr. Mackie described the purposeful destruction of Indigenous heritage sites as a homeowner's precaution against having to restrict their building or use of the place according to the Heritage Act. This activity is also a well-used tool of industry.

These affronts to the Líl'wat have never been accepted quietly.

3. A Legacy of Resistance

Since 1887 the social and economic ceremonies of gathering for the purpose of potlatch, or giveaway, where changes in social roles, land transactions, bequests and marriages were formalized, were forbidden. Singing, dancing and drumming in gatherings was prohibited. This affected the Líl'wat almost immediately, as an Indian Agent was stationed on their Reserve soon after the position was formalized by Canada, at British Columbia's request, in 1888.

In 1920, the Superintendent of Indian Affairs for Canada, Duncan Campbell Scott, amended the Indian Act to make attendance by Indigenous children at Indian Residential Schools compulsory and otherwise punishable by incarceration of their parents. Líl'wat children attended residential schools until the 1970s, after which time the community women had orchestrated the takeover of a day school within the community and the children were brought home.

But during these difficult times, little old Líl'wat ladies found ways to carry on under the nose of the Indian Agents and the RCMP. When children were home from residential school, their grandmothers would sneak them out across the back river to the sweat lodges, under cover of darkness, and teach them the songs. They also had to be wary of their zealous neighbours, eager to work for a Christian God and turn the remnant heathens over to the Indian Agent.

In 1925 the election of a single Chief in each Indian Reserve was required by the Indian Act. This Chief would be the single voice of the community to the Indian Agent, rather than each of the family heads and particular Chiefs retaining their own responsibilities. The family heads and hereditary Chiefs, and the Chiefs of the various communal areas of Líl'wat, as well as all those

revered advisors among the elder women, worked together to select the one Chief, and he would be accountable to them. They managed to continue this communal response to the government's divide-and-conquer strategy for some decades before the smallness of the Reserve began to aggravate the rebounding population; before the younger generation had lost their language in Indian Residential School; and before half the population left home in search of employment and a house to live in.

In 1968, Chief Edward Thevarge Senior, "Chiefy," of N'Quátqua, a neighbouring community closely aligned with Líl'wat, traveled to New York and Ottawa with the North American Indian Brotherhood, attempting to advance his people's cause of freedom and justice. Líl'wat people fundraised and supported that trip.

In 1969, Líl'wat Chief Adam James brought his community into the formation of the Union of BC Indian Chiefs – a union with the express purpose of supporting all Indigenous Peoples to achieve their own self-determination and to restore their own independent governance. In 1976, Líl'wat warriors confronted Department of Fisheries and Oceans officers as they were busily destroying the fishing nets of the old ladies and widows who used a particular area at Lillooet Lake. They were notified by a runner and immediately went to the lake, physically stopped the officers, and a roadblock ensued.

There is a small building on Highway 99 which runs through Líl'wat: it is known simply as "the roadblock house," because that is what it is. It was built for the sole purpose of staging the blockade of the highway.

When in the 1970s the government prohibitions against singing and dancing in public had been lifted, and realization of this change had reached Líl'wat, the grandmothers' success in their secret sweat lodges became apparent. At the roadblocks which dominated the attention of the community throughout the 1970s and 80s, people sang their songs and that music was the source of immense strength in the face of Emergency Response Teams, police dogs, mass arrests, police brutality and lengthy incarcerations without charges.

During the 1980s, the people voted four times for a return to their traditional family head system of governance, in Band General Assemblies. The overwhelming majority votes were never implemented.

In 1990, the Oka crisis in Quebec was echoed in BC by demonstrations, including in Líl'wat, and at least one roadblock. There was a massive blockade of a logging road in Líl'wat territory, where 63 people, representing all the Líl'wat families, were arrested (brutally), charged, and most spent at least five weeks in jail because they would not give themselves an English name for the court. The ensuing five months of trial, in which their defense pertaining to the court's lack of jurisdiction on unceded lands was not allowed to be argued, was so illuminating that it provides the substance of "Prisoners of Democracy: The Líl'wat right to an impartial tribunal," a Master of Laws thesis submitted by their lawyer, Lyn Crompton, who abandoned her practice in protest. *Prisoners of Democracy* exhaustively documents the court's partiality.

In 1994 Líl'wat Watchmen blockaded a logging road being built to access the smallpox burial grounds at Ure Creek. They were jailed and fined, and again their argument concerning Líl'wat jurisdiction was not allowed.

In 1995, the Gustafsen Lake standoff saw thirty-one days of shooting leading to four injured—three of them RCMP -- and a dozen arrests. The refusal to leave the Sundance grounds was supported by Líl'wat citizens who faithfully attended their trial in Vancouver over about seven months— at that time a four hour drive away.

By 1990, the split among the Líl'wat people had broken the surface. While people were blockading a logging road, the elected Chief was negotiating with the logging company and ac-

cepted a cheque in compensation for the damage they intended to make to the smallpox burial grounds at Ure Creek. The fissure appeared along the following line: the Chief approached the roadblock waving the cheque and cried, "I've got the money," and the amazed roadblockers found themselves obliged to explain that, "It's not about the money, it's about the land."

Those Líl'wat who resist development of their territory are now marginalized; only a few have the will and the courage to speak out -- those who believe in the land, who can still recall how, because its richness, they never had or needed much money before, and who want their future generations to be able to live with the land, as Líl'wat, the same way previous generations have done for millennia, or at least to be in charge of any their own development. Any resistance to development of the territory which is put up by those members of the elected Chief and Council, or their families, or the Band staff, can be quickly overcome by the provision by the developer of a fraction of a percent of the profits anticipated by the project.

Examples of this type of capitulation are easy to provide. Before the 2010 Olympic Winter Games in Whistler, the province hurriedly made a series of agreements with First Nations along the highway between Vancouver and Whistler. The Strategic Land Use Planning Agreements were key to BC's showcasing of the country as "open for business" – and the international community is aware enough, by now, that Indigenous participation of some kind is a prerequisite. The SLUPAs were finalized with Líl'wat; with In-SHUCK-ch, southeast of Líl'wat; Squamish, to the southwest; Tsleil-Waututh and Musqeam at Vancouver. In the Líl'wat SLUPA, the Band Council signed off on a map of their territory that marked a pattern of protected areas which was precisely the inverse of the traditional map which had been created over many years by Líl'wat watchmen and identified the most important areas to protect.

In accepting the role of one of the Four Host First Nations for the 2010 Winter Games, the Chief and Council approved the Resort Municipality of Whistler's expansion of its boundaries – an admission of municipal boundaries which had never before been made by Líl'wat. They received the equivalent of a total value of \$17 million dollars as a Host First Nation, some in the form of cash, some in training opportunities, some in a contract to supply cement highway barriers, and some in a couple of hectares of land in fee simple within the Whistler boundaries.

The Chief and Council voted to accept a settlement of \$10 million dollars from BC Hydro, the provincial utility, for impacts caused by its facilities. In the same agreement, they guaranteed that no Líl'wat would ever try to negotiate for the return of BC Hydro facilities or water licenses – it appears that a perpetual release of those were made in exchange for a symbolic payment of \$1 to the community.

The Chief and Council accepted a Forest and Range Agreement with the province, guaranteeing that all their economic interests in the territory had been accommodated by the province in regard to logging. They received a quarterly per-capita payment for five years in exchange.

The list of concessions made by the Mount Currie Indian Band Council, now the Líl'wat Nation Council, is extensive. But it is all consistent in one regard: the deals are made behind closed doors and then a "community consultation process" orchestrated by outside consultants is carried out, invariably resulting in poorly informed community support.

Indigenous people are now often in a situation where some of the front-line of resistance must be put up against their own kind.

4. Reparations for forced assimilation, including the Indian Residential Schools.

The only way that the above capitulation could have been accomplished in what was once considered the most militant Indigenous community in British Columbia is by a combination of

duress and the detachment of the younger generations from their traditional lands. Forced attendance at Indian Residential Schools and then public schools accomplished the latter.

The impacts of Indian Residential Schools (IRS) on the Líl'wat are hard to estimate. Suffice it to say that the incidence of sexual abuse among students is assumed to be 80% by former students who reflect on the incidents they are aware of among their school fellows. The incidence of physical, mental and emotional abuse is close to 100%. Countless testimonies of former students attest to the vengeance they wreaked on their own children as a result of the trauma they suffered as children, themselves. Perhaps 60-75% of former students did not survive to raise them for very long, particularly among the men, many having died in a state of post-traumatic stress, in alcohol induced accidents, fights, suicide, and drug overdose.

The effect of the removal of all children from the communities certainly resulted in almost total alcoholism among the parents. It also made the regular economics of gathering berries, harvesting fish, trapping, hunting, tending gardens and the general running of households impossible without the help of the older children – who then missed an education in their traditional skills and knowledge of their lands. The loss of the Ucwalmícwts language is directly attributed to IRS, although many elders continue to work tirelessly to restore it. The loss of language results in an inability to practice traditional governance.

Today, Canada's Truth and Reconciliation Commission (TRC) and the Indian Residential Schools Settlement Agreement (IRSSA) have been promoted at home and around the world as Canada's atonement for the genocidal impact of its Indian Residential Schools. To most former students, this assertion is unacceptable. There is no confusion in their minds that the effect of IRS was not merely on the individual level.

When Indigenous people hear that the TRC and IRSSA are being referred to as "reparations," they are thunderstruck. That is not true at all, because what was paid in the "Common Experience Payments" and the "Individual Assessment Process" was compensation to individuals, based on how many years they spent at a residential school, for "loss of family life and culture," and for "serious physical, sexual, emotional and mental abuses." Reparations, on the other hand, are made to *groups* of people, or countries, and are usually associated with the fallout after war. The word "reparations" does not appear in the Indian Residential Schools Survivors' Settlement Agreement, nor in any of the correspondence, documentation or promotion of that Agreement.

In widespread promotions of the IRSSA, there are key points which are extremely misleading for anyone unfamiliar with the true character of Canada's TRC. They are: the assertion that residential school survivors were properly represented in the signing of the Indian Residential Schools Survivors' Settlement Agreement (IRSSA); that former students shaped the Agreement; and that there is no difference between the Truth and Reconciliation Commission (to document personal testimony of crimes done to former students as children, or to their children - a Commission which has no mandate to find fault, or to prosecute those guilty of crimes) and justice in progress.

Promotions of Canada's TRC are not balanced with any of the glaring contradictions whatsoever: that the Commission has no legal force or power to even subpoena named suspects revealed during its collection of testimony; that the Commission was delayed by almost two years because of the resignation of all three Commissioners who were first appointed; that the budget of \$60 million is hopelessly inadequate, even to complete a single part of the mandate – to open an archive; that the former students had very little awareness of the creation of the AFN's class-action suit – much less participation in development of it; or that the participation of former students in the TRC is going to reach a maximum of perhaps 10% or less. Of 650 First Nations, 68 were visited by the TRC and of over 90,000 former students only 6,000 statements are projected

to be received by the end of the TRC mandate. To say nothing of the fact that the TRC's chosen methods, holding huge public events where former students speak about their experiences in residential school, make unwary former students in attendance physically ill.

The modern day seizure of indigenous children and the placement of those children with non-native families, fitting the description of Article 2 of the Genocide Convention, carries on widely and regularly in spite of the Prime Minister of Canada's apology to former Indian Residential School students where he promised such a thing would never happen again in Canada. And contrary to the international principle requiring non-recurrence. Loni Edmonds, a Líl'wat mother of six, has lost all her children to the state for reasons which do not warrant that punishment. She cannot see them, she knows the children are being abused in their new locations (several different households), and she has no recourse. One in seven Indigenous children province-wide are victims of the same.

5. Refusing Indigenous Jurisdiction Over Child and Family Law

I grew up in Mt Currie (Líl'wat), it used to be called Creekside then, in the 1950's. I remember how it used to be conducted before the Ministry of Children and Families. They would gather, very tight-knit communities in those days. If a problem came up with the way a child was being raised, wherever the problem was happening, if the parents were reluctant to change their ways, mainly in respect of discipline, the grandmothers of the community would move in. They would sit down with the parents, and this was common practice, and it was time to let the auntie or uncle or grandparents take over the child. And the family was behind this.

And the parents, as much as they didn't like it, there was nothing they could do about it, this is just the way it went.

The parents would be all distraught, especially the mother, because the child has been taken away. But they're just going across the street. And the family all gets together and they help out.

When the child becomes of age they take them hunting, fishing, berry picking; the teaching starts, the discipline starts, but in a real nice way, it's not harsh. And children grew up knowing what self-respect is, what respect for others is, knowing those basic traits as to what it is to be a decent human being.

Tmícwus, Roger Adolph, Xaxl'ip

Mr. Adolph gave this account of traditional upbringing and family care while he was advocating for the transition to delegated authority for Child and Family services, the Aboriginal People's Family Accord (APFA), or the Child and Family Jurisdiction Agreement between regional groups of First Nations and British Columbia. He believed the program was a good one and would see the return of responsibilities for children and families to the communities they belonged to.

That Accord was rejected by most Chief and Councils, with whom negotiations over the program were conducted, on account of the British Columbia government's refusal to surrender control over actual policies; their condition that First Nations release the federal government from its fiduciary obligations – with nothing more than a renewable five-year financial plan with the province; and their failure to engage in an appropriate manner with the indigenous nations, but instead only pursue convenient regional service delivery boundaries which crossed languages and cultures.

APFA was one of a group of seven initiatives to have Indigenous Peoples relinquish their claim on the Government of Canada's fiduciary obligations to them. It was one chapter of the Ab-

original Horizontal Framework (AHF).

The AHF is the invention of Canada's Federal Treasury Board: it is the most recent in a historically dynamic series of attempts to reduce spending to Indigenous Peoples under the Indian Act. This is a strange objective, even if only because the Indigenous have a standard of living which correlates to that of people in impoverished developing countries, rather than to the average Canadian. As it stands, Canada has many obligations to Indigenous Peoples. The AHF divides these into seven categories: Health, Education, Governance, Lands, Safe Communities, Economic Development, and Housing. In each of these areas the federal government aims, through a tailored "jurisdiction" agreement with First Nations, to transfer responsibilities for service delivery to the individual First Nation – with nothing more than a renewable five-year financing agreement with the province in which the First Nation presently finds itself. In accepting a jurisdiction agreement, the First Nation releases Ottawa from further obligations and takes on the responsibilities for service delivery themselves. If every First Nation in Canada signed a jurisdiction agreement in each of the seven categories, there would be no more federal relationship with the Indigenous Nations. And likely soon the inability to fund service delivery.

6. Canada's "Success" = Indigenous Extinguishment

The Horizontal Framework is only one of multiple attempts by Canada, and the provinces, to eliminate the need for treaties by achieving piecemeal arrangements for matters which would otherwise be resolved by nation-to-nation treaties which provide for the self-determination and other internationally recognized human rights of Indigenous Peoples to govern their own affairs on their own homelands.

The piecemeal approach reduces First Nations to municipalities, by assigning their authority over various aspects of their national lives to provincial responsibilities and funds, which needs will be met or not according to provincial spending priorities, determined by voters, and merely receiving funds for their various programs in the same way that municipalities receive provincial funding for the various programs and services they deliver. By accepting this type of arrangement, First Nations extinguish their aboriginal rights, within the meaning of Section 35 of Canada's Constitution, in exchange for scheduled financial transfers which supposedly meet their needs to deliver the same services that Canada delivers in recognition of its outstanding debt to the Indigenous.

The Lil'wat adamantly oppose the idea that they should function as lower levels of government, authorized to manage their Indian Reserves within British Columbia. They are a people, with a homeland and culture, and refuse to lose their identity, becoming merely a culturally assimilated racial minority within a dominant culture which they never accepted nor supported to overtake their lands and jurisdiction. They reject the value systems which have been encrypted in the colonial government's criteria for oversight of all forms of life.

Importantly, Canada seeks to have Indigenous Peoples accept provincial authority to fund their programs, without any recognition of their overall jurisdiction and land ownership -- a form of consensual extinguishment. The AHF is a suite of legislative initiatives in point. The most recent concerns Health; here, the province has taken a different approach than they did with the Children and Family jurisdiction and the Education Jurisdiction approaches: they have simply gone ahead and built the entire infrastructure for the transfer without consulting anyone more than their embedded Indigenous advocates who are on government payroll.

Provincially, British Columbia alone in Canada is uniquely home to a majority of Indigenous Nations and Peoples who have never made a treaty with the Crown. Schemes and programs

in BC to alienate the Indigenous rights are nearly beyond count.

The Forest and Range Agreements (FRA), now called “Forest and Range Opportunities (FRO)” since the Huu-ay-aht people successfully challenged the incoherence of the program designed to limit government responsibility to accommodate aboriginal rights in their forested lands, arose immediately after the Haida pressed litigation and won for all aboriginal people the right to be consulted and accommodated, “when a Crown actor has knowledge, real or constructive, of the potential existence of aboriginal right or title and contemplates action that that might adversely affect it.” *Haida*, Supreme Court of Canada, 2004. FRA or FRO agreements merely give a per-capita fund to Indian Bands when forestry operations will impact their territories – usually before a forestry plan exists – eliminating the government responsibility to protect their rights, or further consult and accommodate.

“The New Relationship” was a singularly insincere declaration made by British Columbia in 2007 that

We are all here to stay. We agree to a new government-to-government relationship based on respect, recognition and accommodation of aboriginal title and rights. Our shared vision includes respect for our respective laws and responsibilities. Through this new relationship, we commit to reconciliation of Aboriginal and Crown titles and jurisdictions.

When British Columbia uses the word “reconciliation” like this, they mean it quite literally and legalistically: that the aboriginal titles will be released and modified and made to conform to the Crown titles and jurisdiction. Since this statement was made, and the \$100 million trust fund that accompanied it has been mostly re-invested in British Columbia’s resource-based economy, examples of success in this “New Relationship” are indistinguishable from examples of agreements where the Indigenous accept money and economic ventures in exchange for releasing and indemnifying the province, Canada, and anyone else for past harms to their titles and rights.

The Fisheries Framework Agreements, required by Canada before Indigenous Peoples can access their fisheries, identify the federal government as the decision maker on the fisheries.

The attempted Recognition and Reconciliation Act of BC, 2009, might have induced First Nations to recognize provincial authority over matters of Indigenous Peoples’ rights. It was rejected overwhelmingly by all the Indigenous Peoples and nations, during a last-ditch effort made by the First Nations Leadership Council to “consult and accommodate” with the people before continuing its whole hearted and vociferous support of the provincial legislation.

Hydro Settlement Agreements have been successful with impoverished First Nations in British Columbia. The meaning of a Settlement Agreement is that particular First Nations accept money in exchange for their people’s loss of lands which had been foundational to their way of life. In the case of the Líl’wat, their case against the provincial utility was reduced to ashes in 2011. The St’át’imc Nation Hydro Agreement of 2011 excluded Líl’wat in the main, but, perhaps because of their legal counsel, the Líl’wat Nation Band Council decided to accept a \$10 million dollar payout in perpetual compensation for their losses to the hydroelectric concern.

The British Columbia Treaty Commission is the highest option for comprehensive negotiations of aboriginal title and rights – but it does not discuss aboriginal title and has the effect of modifying aboriginal rights out of existence. UN Committees have responded to Indigenous complaints about the Commission, and the money they have been loaned to participate, this way:

While acknowledging the information that the “cede, release and

surrender” approach to Aboriginal land titles has been abandoned by the State party (Canada) in favour of “modification” and “non-assertion” approaches, the Committee remains concerned about the lack of perceptible difference in results of these new approaches in comparison to the previous approach. In line with the recognition by the State party of the inherent right of self-government of Aboriginal peoples under section 35 of the Constitution Act, 1982, the Committee recommends the State party to ensure that the new approaches taken to settle aboriginal land claims do not unduly restrict the progressive development of aboriginal rights. Wherever possible, the Committee urges the State party to engage, in good faith, in negotiations based on recognition and reconciliation, and reiterates its previous recommendation that the State party examine ways and means to facilitate the establishment of proof of Aboriginal title over land in procedures before the courts.

UN CERD, 2007, in response to Canada’s report

8. The Committee, while noting with interest Canada’s undertakings towards the establishment of alternative policies to extinguishment of inherent aboriginal rights in modern treaties, remains concerned that these alternatives may in practice amount to extinguishment of aboriginal rights (arts. 1 and 27).

The State party should re-examine its policy and practices to ensure they do not result in extinguishment of inherent aboriginal rights.

CCPR/C/CAN/CO/5 20 April 2006

Human Rights Committee, Eighty-fifth session, Concluding observations of the Human Rights Committee: Canada

16. The Committee, while noting that the State party has withdrawn, since 1998, the requirement for an express reference to extinguishment of Aboriginal rights and titles either in a comprehensive claim agreement or in the settlement legislation ratifying the agreement, remains concerned that the new approaches, namely the “modified rights model” and the “non-assertion model”, do not differ much from the extinguishment and surrender approach. It further regrets not having received detailed information on other approaches based on recognition and coexistence of rights, which are currently under study.

Concluding observations of the Committee on Economic, Social and Cultural Rights, Thirty-sixth session Geneva, 1-19 May 2006. Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant; Canada

Anti-treaty groups have sprung up among Indigenous nations where Final Agreements are being pursued, and even blockaded voting stations; litigation has been launched neighbouring communities in opposition to each of the four “modern day treaties” which have been finalized; grassroots activists published three newspapers in attempts to hand tools to the bamboozled members of communities where their Chief Negotiators, earning six figure salaries, have told them elaborate lies about the results of the process; affected individuals have traveled to the UN

in Geneva to complain.

7. Seeking Judicial Recourse Through International Mechanisms

As has been amply demonstrated above and in the Appendices below, judicial recourse through Canadian courts has been ineffective in individual instances, and more generally as it relates to issues of jurisdiction, impossible to achieve. Where, then, are the embattled and victimized indigenous nations entrapped in British Columbia and Canada to turn? Not recognized as states, they have no access to the International Court of Justice. While CERD has been helpful in monitoring the ongoing gulf in well being between indigenous nations and other Canadians and rightfully critical of Canada, its mandate of racial discrimination is not an appropriate avenue for pursuit of the right of self-determination. As at this writing, the Lil'wat/IHRAAM have pursued a Petition at the Inter-American Commission of Human Rights, which in turn has engaged the Petition by requiring Canada four times (with a fifth in attendance) to respond to it and IHRAAM's subsequent Observations on Canada's responses. IHRAAM remains hopeful for further IACHR action on this Petition. Should it strike new ground by addressing its contents as it relates to jurisdiction, then perhaps a new avenue of international recourse in this regard has opened up.

Nonetheless, this does not preclude the requirement of further initiatives on the international level, as called for in our Conclusions and Recommendations.

8. Conclusions and Recommendations

It is clear that engagement at the global level is required if the justice needs and rights of indigenous nations are to gain any traction. To that end, we have submitted the following recommendations:

1. An Optional Protocol for the Genocide Convention
2. Inclusion of treaties with Indigenous Nations within the purview of the Vienna Convention on the Law of Treaties
3. Creation of an International Mechanism to address conflicts and grievances between states and indigenous nations
4. Creation of a voluntary fund to support government, public and indigenous peoples' awareness of their rights, and to support indigenous legal action at the international level where rights are contravened.

In addition to the above suggestions applicable to indigenous nations globally, we suggest that the indicated pattern of historical and ongoing systemic abuse opens Canada to the possibility of investigation under UN Special Procedure 1503.