

With the Non-Governmental Organization

International Human Rights Association of American Minorities

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Concerning Lil'wat rights to enjoy and transmit to future Lil'wat generations the Lil'wat language, culture, traditions of governance and customary land titles

UN Convention for the Elimination of all forms of Racial Discrimination

LÍL'WATMC REPORT

on the occasion of

CANADA'S REVIEW BY THE UNCERD COMMITTEE, 2017

June 2017

I. ABOUT LÍL'WAT

The Líl'wat people have always lived in their territory. It is the place where the waters meet. Beyond Líl'wat, the waters flow away again, into neighbouring countries. This area is approximately 200 km north of Vancouver, beginning at Whistler, extending west to the coastal glaciers, east to the Fraser River, and north to Sutikalh (near the town of Lillooet), home of the Winter Spirit. The map of Líl'wat is attached as Appendix 1.

At no time have the Líl'wat ever abandoned their country or given it to others. Líl'wat language, culture, spirituality, economy and governance all sprang from the lands on which Líl'watmc (Líl'wat people) have lived for some millennia before the last great flood, 6,000 years ago.

II. LÍL'WAT INVOLVEMENT IN INTERNATIONAL DISPUTE RESOLUTION FORUMS

Since the crown of Britain, and then Canada, have invaded, warred and occupied Líl'wat, and subjected the Líl'wat people to the most extreme and genocidal violations, without reprieve, attempting the full assimilation of the Líl'wat people as Canadian citizens, the Líl'watmc have resisted.

After diplomacy, protest, physical resistance and legal defense in the colonial courts have all failed to restore Líl'wat freedom and independence, Líl'watmc have approached international forums:

- 1994 Meeting with Miguel Alfonso Martinez, reporting in response to his UN-Commissioned survey on treaties and constructive arrangements. Seattle, USA.
- 2007 Petition 879-07, Loni Edmonds v. Canada, received by the Inter-American Commission on Human Rights. Concerning Canada's lack of jurisdiction over a Líl'wat family living in Líl'wat and Canadian agents' forcible removal of Ms. Edmonds' children from her home and her care.
- 2011 Líl'wat participation in the UN Permanent Forum on Indigenous Peoples, New York. Continued in 2012 and 2013 at the annual forums, with several interventions concerning food sovereignty, authentic representation, and Truth Commissions in the Americas.
- 2013 Líl'wat delegate to the Expert Mechanism on the Rights of Indigenous Peoples, delivering intervention on the agenda item "Access to Justice." Geneva.
- 2013 Líl'wat delegation meets with IACHR Special Rapporteur on the rights of women, Tracy Robinson. Vancouver.
- 2013 Líl'wat delegation presents to UN Special Rapporteur on the Rights of Indigenous Peoples, S. James Anaya. Vancouver.
- 2014 The IACHR admits case 12-929, Edmonds v. Canada.
- 2015 Líl'wat delegates to the Human Rights Committee's review of Canada's compliance with the ICCPR. Geneva.

III. REPORT TO CERD 2017

Concerning Líl'wat rights to transmit Líl'wat language, culture, traditional governance, and customary land rights to future generations

1. No one but Líl'wat speaks for Líl'wat

Líl'wat individuals will here represent some of their priority concerns in a report concerning Canadian actions which extinguish Líl'watmc rights under the Convention.

There is no treaty between Líl'wat and Canada. Líl'wat has never sold its land or interests to Canada, never joined Canada, nor have Líl'watmc voluntarily sought Canadian citizenship or participated in a referendum concerning citizenship.

Líl'watmc categorically reject the representation by Canada that they will be referred to as “Aboriginal People,” lumped into a racially defined group, administered by federal welfare programs, and represented by the Canadian-imposed-and-employed elected Mount Currie Indian Band (“Líl'wat First Nation”) Chief Councilor – among 650 other such “representatives” – in the Assembly of First Nations as an ethnic Canadian minority with “Aboriginal Rights.”

Canada declined to accept an invitation to Friendly Settlement with Líl'wat individuals at the IACHR in 2014 to address this issue, as raised in *Edmonds v. Canada*, IACHR 12-929. The case is now at the Merits stage, and concerns Canada's violations of Líl'watmc rights to Líl'wat remedy in cases of child and family welfare, in the absence of any form of treaty or constructive arrangement between the two parties, and therefore in the absence of Canadian proof of its legal right to exercise jurisdiction in Líl'wat. The Commission did not require Líl'wat to “exhaust the domestic remedy.”

2. The status quo

Líl'wat people's human rights are denied and dismissed in an ongoing Canadian encroachment on Líl'wat lands and across all sections of Líl'wat social, cultural, political and economic life. There is an extensive and increasing settler occupation across their best lands; a police and judicial suppression of Líl'wat self-determination; and the ongoing threat of police or military action to protect the rights of the non-Líl'wat “land owners” and “license holders” as issued and determined by the occupying Canadian regime – barring Líl'wat access to essential waterways; forest and plant resources; bird, animal and fish habitat; suitable places to live; sacred healing hotsprings; and often destroying same irreparably in “development” and extractive industry.¹

¹ Re. **industrial impacts:** *St'át'imc Socioeconomic Impact Assessment, an assessment of the socioeconomic impacts of hydroelectric development*, Westland Resource Group, 2004. Re. **judicial and police occupation:** PRISONERS OF DEMOCRACY: THE LIL'WAT'S RIGHT TO AN IMPARTIAL TRIBUNAL, AN ANALYSIS OF THE LILLOOET LAKE ROADBLOCK CASE. By Lynda Jean Crompton LL.B., The University of British Columbia, 2006. Re. **ongoing encroachment, development and extraction:** “Sea to Sky Land and Resource Management Plan,” Province of British Columbia, 2008; *First Nation Land Code voted down in Lil'wat*, vancouver.mediacoop.ca March, 2015.

Canada promotes, rewards and benefits from political and judicial denial and dismissal of the land rights and rights of self-determination of all the original inhabitants over whose lands it assumes jurisdiction. In particular, political and judicial denial forms the foundation of Canadian policy where no treaties exist.²

The pervasive atmosphere generated by this denial is evidenced throughout Canadian activity – all the way to the Supreme Court of Canada where, as recently as 2014, the Court decided a matter of the Tsilhqot'in nation's title to its homelands. The Canadian Court concluded that the Tsilhqot'in nation has "Aboriginal title" to some of its lands, but Canada – which has extensive interests in continuing extractive industries in Tsilhqot'in – can infringe upon the "Aboriginal Title" of the Tsilhqot'in, such as it is. "Aboriginal Title" is a construct of Canada's, bearing no semblance to any sort of internationally recognized peoples' rights in international law as they are presented in Article 1 of the ICCPR and the ICESCR, and bearing no semblance to the Tsilhqot'in title described by the Tsilhqot'in nation themselves, as represented by Chief Roger William of Nemiah, Xení Gwetin.³

In this context, Líl'wat people do not believe that Líl'wat can ever hope to exercise customary titles, or freely occupy Líl'wat lands, or access Líl'wat natural wealth, or enjoy self-determination, or, therefore, transmit their language, culture and land titles to next generations, while Canada continues to assume jurisdiction over Líl'wat in a political, judicial, police and civilian occupation of Líl'wat homelands. Not without third-party independent and impartial hearing, oversight, and possibly intervention. Perhaps with third-party assistance from the CERD, the Líl'wat people can fully enjoy their internationally protected rights.

"Meager Creek Geothermal Permit," Minister of Energy, British Columbia. "Resort Municipality of Whistler Act," Province of British Columbia. Cayoosh/Melvin Creek Four Season Resort Development License, BC.

² The list of Supreme Court of Canada, and Supreme Court of British Columbia, rulings which validate this statement is so long that only a few select cases are referred to here, along with a sample of recent policy documents and independent reports. **Cases:** *Delgamuukw*, SCC, 1997; *Haida*, SCC, 2004; *White and Bob*, SCC, 1965; *Sparrow*, SCC, 1990, *Douglas*, SCBC, 2007; *Halfway River*, BCCA, 1999; *Taku River Tlinget*, SCC, 2004; *Spookw v. Gitksan Treaty Society*, BCCA, 2017; *Lax Kwalaams v. British Columbia*, SCC, 2011; *BC v Okanagan Indian Band*, SCC, 2003; *Attorney General v. Chief Andrew*, BCSC, 1991.

Reports: *Report on the Situation of Indigenous Peoples in Canada*, UNSRRIP Anaya, 2014, Conclusions and Recommendations; *Report on the Situation of Missing and Murdered Women in British Columbia, Canada*, IACHR, OAS, 2014: "...the failure to ensure that there are consequences for these crimes has given rise to both real and perceived impunity."; *Report on Admissibility, Edmonds v. Canada – 12.929*, IACHR, 2014.

Policy: Bill C-45, Parliament of Canada, 2012, unilaterally defining First Nations governance, taxation, health, education, changes to the Indian Act; unilaterally repealing navigable waters and fisheries protection designations. *Tsawwassen Accord*, Province of British Columbia, 2002; Environmental Assessment Office approval of Site C Dam on Peace River, Province of British Columbia; Canadian Environmental Assessment Agency approval of LNG terminal at Lelu Island; etcetera.

³ *Tsilhqot'in Nation v. British Columbia* 2014 SCC 44 File No.: 34986. 2013: November 7; 2014: June 26

Canada's self-justification: the presumption of racial superiority

In 1793, commissioned European explorers-by-sea arrived on the north west coast of North America, and planted flags on beaches and declared the sovereignty of the Kings of Spain and Great Britain. Subsequent treaties between Great Britain and Spain, and then France, Russia, and the United States of America, effected the withdrawal of claims by those other nations in favour of Great Britain's prerogative to make treaty with the nations present on the west coast lands, and every nation east of them along the 49th parallel. However, Great Britain never did make treaties with the nations in the present-day province of British Columbia, west of the Rocky Mountains. Neither had the previous explorers or their regents made treaties, or purchases, or any kind of agreements which might have been transferred in the inter-European treatying process.

Today, Canada and the Province of British Columbia nonetheless assume jurisdiction over some 30 nations west of the Rocky Mountains, north of the 49th parallel, and south of Alaska. Canada's Supreme Court refers to the British-American treaty of 1846 as if that is evidence of British sovereignty, and, succeeding it, Canadian jurisdiction and title over lands which have never been sold, ceded or surrendered.⁴

This interpretation is based on the assumption, by Great Britain, by the Colony of British Columbia, and now by Canada, that the English King and his English Christian God were superior in right to the original inhabitants. The assumption is that the British Crown became sovereign over these lands as soon as a British explorer landed on the shore and declared it so, and then that sovereignty was unassailable once other Christian nations withdrew their claims to the area. Britain's, and then Canada's, ensuing assumption of jurisdiction is based on the assumption of the superiority of the Christian peoples over-riding any right of the original nations. The Líl'wat refuse these assumptions and interpretations, relying on their own sovereignty, land-based jurisdiction, history, culture as evidence of a present and historically consistent and superior title.

In spite of the internationally repugnant maintenance of such a racist position, the courts of British Columbia today all feature a portrait of the Queen of Great Britain, and all regard themselves as having jurisdiction over the original inhabitants of these lands – the source of which rests on the will of the British monarchy, in its view, appointed by its Christian god. When specifically challenged on this matter in 1991 by Líl'wat, the BC courts opted to retain their stance that these lands are under the jurisdiction of the Queen of England in right of Canada and the province of BC. With that assumption, they refused to allow presentation of the Líl'wat defense in the court, and criminalized the Líl'wat people when they sought to exercise their normative human rights to ownership and conservation of their natural wealth.⁵

Neither Great Britain nor Canada nor British Columbia have ever invited the Líl'wat nation to adhere to a Canadian state through some formal, diplomatic process; no referendum concerning Canadian citizenship has ever been conducted to gain formal Líl'wat consent to Canadian

⁴ *Delgamuukw*, Supreme Court of Canada, 1997, para. 145.

⁵ *Attorney General v. Chief Andrew*, BCSC, 1991.

citizenship; no sale of land nor constructive agreement has ever been undertaken between the crown (or state) and authentic representatives of Líl'wat governance.

3. Canada's present-day Indian Act mechanisms of dispossession

Líl'watmc wish to act on their right to return to Green River; Miller Creek; Alta Lake; Soo Valley; Pemberton; Whistler; Daisy Lake; Hurley Valley; Meager Creek; among other Líl'wat places from which they were forcibly removed and criminalized upon their attempted return.⁶ That is, they wish to use and live in their lands according to Líl'wat Nt'ákmen (laws). That is not possible because of the hostile non-Líl'wat occupation of best lands; the military patrols of the Royal Canadian Mounted Police and "Conservation Officers" (game wardens) which regularly incarcerate or fine Líl'wat people for hunting, and often for possessing a weapon (to hunt with); fishing out of prohibitively restricted "open" times; and any meaningful use of natural wealth such as harvesting trees or gathering building supplies for houses or improvements.

The Líl'watmc now live only on a patchwork of small Indian Reserves to which they were forcibly removed. Most of these lands are located in a swamp that is a floodplain of the Lillooet River, where previously no Líl'watmc ever lived year-round.

Of the population of about 5,000 Líl'watmc, only 2,000 live in Líl'wat lands, on the Indian Reserves. There is no room for everyone on the Indian Reserves, and certainly no economic options for that population in the current circumstances. There are an unknown number of Líl'watmc who no longer know their own identity, are possibly not registered as Indian Band members, because of the ongoing forcible removal of Líl'wat children and adoption to non-native families far from Líl'wat. That scheme has been in effect since the 1920s, and continues today, and Líl'wat families have in many cases been unable to remain in contact. There are many present-day cases of children forcibly removed from Líl'wat and prevented from having contact with their families.

The present "Indian Band" administration under Canada's Indian act, with its single elected Chief and elected Council, is accountable to Canada. It receives welfare remuneration for Líl'wat people who are living on the Mount Currie Indian Band Reserves. However, in various exercises concerning on-Reserve housing and infrastructure, welfare distribution and various health and cultural programs, Canada manufactures the appearance of "community living" in a democratic setting. Neither the Indian Reserve confines, nor the single-representative elected system, nor the acceptance of welfare relief, are consensual. They are suffered in protest and under duress, in the absence of effective recourse.⁷

⁶ Indian Act, 1927-51

⁷ *Edmonds v. Canada*, IACHR #12-929; *Interfor v. Pascal*, BCCA, CA013520, 1991; *Attorney General v. Chief Andrew*, BCSC, 1991; *BC Native Blockades: 1980's to 2006*, Warrior Publications, 2006; *Changes in Aboriginal Property Rights: A chronological account of land use practices in the Líl'wat nation* By Akihiho

The Indian Act, 1876, has been continually modified and expanded to describe Indian Reserves and codify the confinement of Líl'wat people on them. Over the years, this has included the forcible removal of Líl'wat children to Indian Residential Schools; criminalization of legal pursuits concerning access to justice over land rights, as well as criminalization of Líl'wat gatherings to discuss land rights and access to justice; criminalization of hunting, fishing, and use of forest resources; and of course the rigid administrative bureaucracy imposed upon the Líl'wat people on the Indian Reserve – the elected Chief and Council system.

This bureaucratic administration imposed by Canada on the Líl'wat, on the Indian Reserves, is programmed, funded and manipulated by Canada and British Columbia to create the appearance of informed consent.

This system has proved antagonistic and destructive to the Líl'wat way of consensus democracy and personal autonomy, which is at the center of Líl'wat culture. The elected system appears to have been designed to bring about the unilateral assimilation of the Líl'wat people into the Canadian state, and the system's efficiency is directly related to its function of dispossessing the Líl'watmc of their own customs and language of governance.

An extensive “Band Office” is manipulated economically by the province and by Canada to create the appearance of consultation and accommodation, according to Canadian law, in a natural resource extraction license referral process. This scheme results in the ongoing dispossession of Líl'watmc. These industries loot and irreparably strip Líl'wat lands and resources, without ever compensating the Líl'wat. The Band Office is wholly constituted, funded and mandated by Canada, and is accountable to Canada. It is not accountable to the customary title holders or the Líl'wat family heads – who are the traditional leadership and authentic representatives concerning customary titles and land use. Líl'wat governance is, at its core, a system of respect and consensus among the families or clans.

The Indian Act Chief and Council are not the title holders of all Líl'watmc – they are merely individuals with interests in their own families' customary lands and titles. These individuals do not have the right to dispose of other title holders' wealth and land interests, nor give consent to the exploitation or development of those areas, but Canada purports to give them that right. Neither the Indian Act Chief and Council nor the employees of the Band Office Lands and Resources Department are the relevant authorities over all the lands on which Canadian licensing systems employ them to release Líl'wat interests. The customary title holders are not compensated for the resource extraction on their lands – the token revenue is paid back to the Band Office and the amount is then subtracted from future federal payments to the Band.

Nemoto, 1986, University of British Columbia; Declaration of the Lillooet Tribe, 1911; Joint submission with the Sovereignty Peoples Information Network to Miguel Alfonso Martinez, member of the Working Group on Indigenous Populations, Special Rapporteur for the Study on Treaties and other Constructive Arrangements between Indigenous Peoples and States, Seattle, USA, 1994; *Justice in Paradise*, Bruce Clark, McGill-Queens University Press, 1999; etcetera.

The Band Office is the only authority that Canada or British Columbia will recognize in connection with Líl'wat lands and peoples. Therefore, many concerned and capable Líl'wat citizens seek to hold these elected offices within the Band Council in order to protect Líl'wat interests, or at least mitigate impacts when they have the chance. For the same reason, and also because of a total lack of employment opportunities on the Indian Reserve and in neighbouring non-Líl'wat communities, Líl'wat people take employment in the Band Office – in health or housing or welfare or fisheries or lands and resources or infrastructure departments.

Unfortunately, the Líl'watmc people who take up these offices have often found themselves coerced to approve the land development referrals in spite of the certainty that the licensed activities will cause irreparable harm to Líl'wat. Many Band employees appear to believe their participation in Band Office business is dependent on their personal indifference to the assimilation of their own people, the Líl'watmc. In fact, individuals who are strongly committed to Líl'wat rights, and who enter Band Office employment or Chief and Council offices, have often been fired from their positions when critical decisions were at hand. The top-office of Band Manager has historically been a non-Líl'wat individual who has consistently made decisions contradicting the recommendations produced in Community consultation processes, when recommendations have been insisted upon by Líl'wat people, contrary to Líl'wat interests, and contradicting the written and mapped legacies of traditional Líl'wat Watchmen, or “lands chiefs”.⁸

4. Countering the Colonial BC treaty process; In-SHUCK-ch

The CERD Committee has asked Canada to provide more information about the BC Treaty Commission and the situation of the “In-SHUCK-ch Final Agreement” negotiations, in light of St'át'imc and Secwepemc complaints.

Líl'watmc interests, as a member of the St'át'imc confederacy, have been meaningfully affected by the proposed Agreement, and by the “interim measures” – resource extraction – expedited during negotiations. It has come to light that the “In-SHUCK-ch” negotiating table has been abandoned and discontinued now, and the “In-SHUCK-ch treaty” offices closed – after over a decade of protest against the process by community members of Sqátin, Xáxtsa7 and Samáhquam. These three communities, which nearly became “In-SHUCK-ch First Nation”, are

⁸ In 1999 Líl'watmc voted “no” to participation in the 2010 Olympic Winter Games in Whistler – but the Band Office generated a participation agreement with the Province and the IOC anyway; in 2008 the Band Office Manager generated Líl'wat approval for a “Strategic Land Use Planning Agreement” with the province of British Columbia by presenting a traditional map of Líl'wat land values during community consultation – instead of the map that is annexed to the Agreement itself; in 2011 the Band Administration promoted ratification of a settlement agreement with the provincial utility, BC Hydro, which released Líl'wat interests in all water flowing to a BC Hydro hydroelectric facility and also released the provincial and federal government from harms related to the utility's infrastructure and operations – for \$11million – but did not provide critical analysis of the agreement; in 2015 the Band Manager oversaw production of expensive and extensive propaganda promoting ratification of a “Land Code” agreement with the federal government, which would have, without precedent, recognized state rights in Líl'wat.

closely linked with Líl'wat, by family and in shared customary land and resource use. We have been made aware that Samáhquam, the closest community to Líl'wat, has an elected council which, until recently, also held top positions in the In-SHUCK-ch organization, and that they are undertaking to rejoin the BC treaty process under a new name.

Líl'wat interests in shared families, and therefore governance and customary titles; shared lands, fisheries, hunting grounds, village sites and graveyards would be negatively impacted, and possibly extinguished, by any nearby Final Agreement completed under the existing mandate of the BC Treaty Commission. Final Agreements in British Columbia have notoriously extinguished the people's rights, and the exercise of overlapping interests by close neighbours, particularly in the case of the province's negotiations with vulnerable communities isolated from their traditional neighbouring Allies and tribal associates by the Indian Act mechanisms described above. The rights of self-determination of the Líl'wat are bound-up in the rights of self-determination of the Samáhquam people, and Sqátin, and Xáxtsa⁷, and the "land-selection model" and "release and indemnify" provisions of BC Final Agreements are less than international rights allow, will extinguish titles shared with Líl'wat families, as well as being divisive and damaging, and negotiated under duress.

IV. LÍL'WAT REQUESTS OF THE COMMITTEE

Concerning the Líl'wat people's right to return and to transmit Líl'wat language, culture, science, worldview, and traditional governance, to future generations

1. Self-determination

In particular, we bring to the Committee's attention the state's use of its own imposed Indian Band administration, under the Indian Act, on the state-defined Indian Reserve, to manufacture the appearance of Líl'wat consent to Canada's disposal of the remainder of Líl'wat customary titles to lands and wealth outside the Reserve.

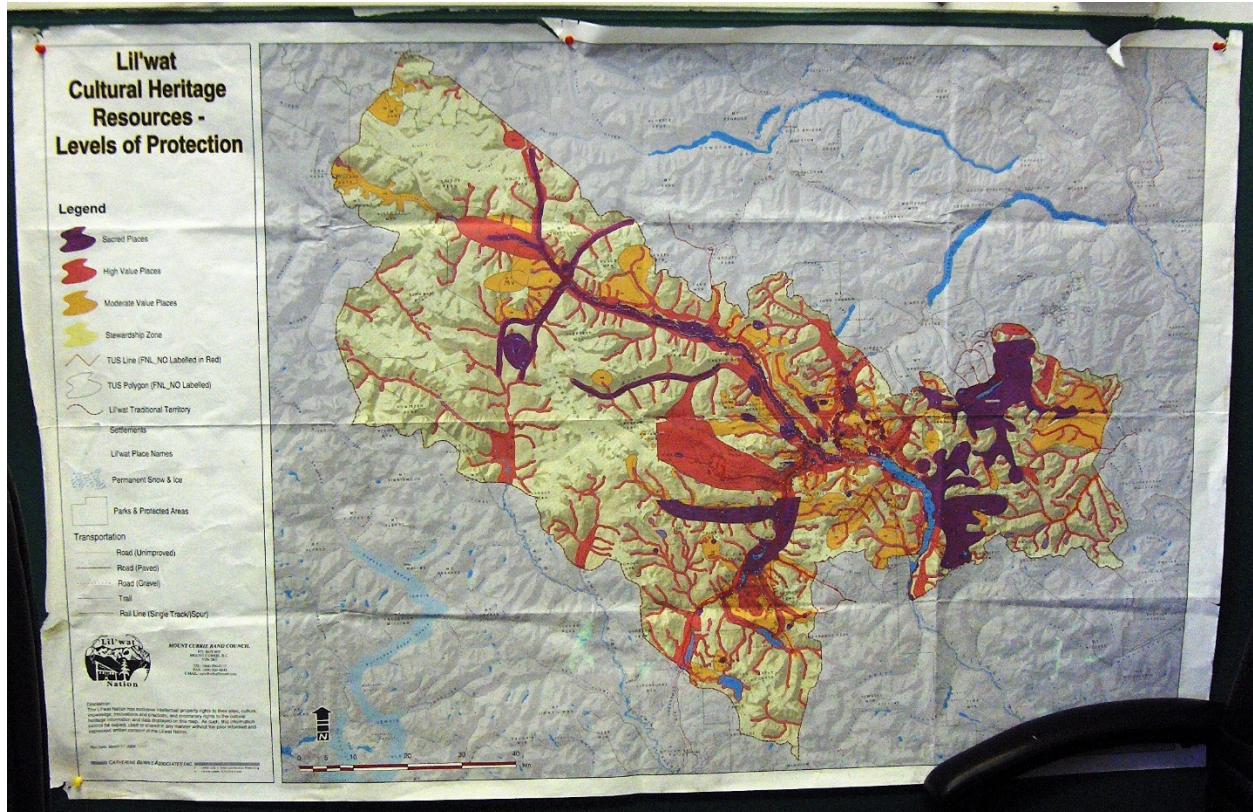
Líl'watmc ask that the Committee question Canada about the origins of any rights of jurisdiction it may have in relation to Líl'wat which could justify Canadian licensing and development without the consent and against the Interests of the Líl'watmc under the Convention, and resulting in the continuing displacement and dispossession of Líl'wat.

Líl'watmc families request the Committee consider a recommendation to Canada: that Líl'wat families have the right to remedy according to Líl'wat custom and Líl'wat law; that Líl'wat families have the right not to have their children forcibly removed.

2. Right to return

Líl'wat people request that the Committee consider receiving correspondence from Líl'wat and from Canada in order to establish the basis for a Committee hearing into the protection of Líl'watmc rights to return to Miller Creek, Whistler Creekside, the Hurley Valley, Pemberton Valley, and Green River, among other customary Líl'wat title lands, and to freely dispose of, or conserve, their natural wealth.

APPENDIX A



Map of Lil'wat territory, produced by traditional Watchmen in the 1990s.

The well-known resort municipality of Whistler is in the prized, southernmost lands of Lil'wat – approximately between the three lakes at the bottom of the coloured mapped area.