Towards Recognition of our Inherent Rights as Indigenous Peoples

Paper Commissioned by Kukpi7 Wayne Christian, Splatsin, Secwepemc Nation

Written by Cynthia Callison - Tahltan, Darwin Hanna – Nlaka'pamux, June McCue – Ned'u'ten and Nicole Schabus with the assistance of Mavis Erickson – Dak'elh and Michael McDonald - Cree

We wrote this paper to voice Indigenous Perspectives from a deep concern for our children's future. Thank-you for considering our perspectives and visions for the recognition of our Inherent Rights.

On August 25, 1910, the Interior Chiefs presented a Memorial to then Prime Minister of Canada, Sir Wilfrid Laurier declaring Indigenous ownership and jurisdiction and calling for the resolution of the "Indian land question". 99 years later, we are challenged to uphold this vision.

Starting August 25, 2009, the All-Chiefs Assembly considered and rejected the proposed provincial legislation on recognition and reconciliation developed by the First Nations Leadership Council and the Province of British Columbia.

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INHERENT RIGHTS

True reconciliation must be based on the full recognition of our inherent rights which are held collectively by indigenous peoples and nations. Any decisions regarding our traditional territories, lands and resources require our free, prior informed consent. Our inherent rights and powers are based on our deep connection to our territories forming the basis of our indigenous jurisdiction and land systems. Our ancestors in declarations remind us that "we are supreme in our own territory and having tribal boundaries known and recognized by all". We do not require "recognition" in provincial legislation or executive decisions since the intent is to override or extinguish our inherent rights and powers and to secure provincial control and jurisdiction over our territories.

INTERNATIONAL MINIMUM STANDARDS

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) sets the minimum standards and norms that Canada must be measured against. First and foremost is the right to self-determination meaning that we freely determine our political status and freely pursue our economic, social and cultural development. UNDRIP also sets standards for recognition and protection of our rights to our traditional territories, lands and resources. In addition, it stipulates the requirement for free, prior informed consent of indigenous peoples to any developments that affect our traditional territories. Prior informed consent is also required before adopting and implementing legislative or administrative measures that may affect us.

THE FNLC IS NOT THE PROPER RIGHTS HOLDER

The First Nations Leadership Council ("FNLC") and its enabling organizations, BCAFN, FN Summit, UBCIC, cannot provide prior informed consent on behalf of indigenous peoples as they are not the proper rights holders. The proper rights holder for the purposes of Section 35 of the Canadian Constitution must be determined by the respective indigenous peoples on their own. The proper rights holder cannot derive their power from federal or provincial law. It has to be determined according to our own political systems. The FNLC and their lawyers implementation of the new relationship

vision through the proposed provincial recognition legislation infers the FNLC can negotiate and consent on our behalf. This new form of colonization must stop!

PROCEDURAL AND SUBSTANTIVE FLAWS

The serious procedural flaws in the process set up by the FNLC and the province regarding the proposed provincial legislation and the development of both the discussion and concepts papers have come to light. They need to be addressed through an independent review to hold the political executives and those who provided the advice and direction accountable. The concepts paper recommendations have serious substantive flaws. They violate our inherent rights as Indigenous peoples and the minimum standards set out in the UN Declaration on the Rights of Indigenous Peoples. Provincial jurisdiction and provincial legislation that affects Aboriginal Title and rights is unconstitutional and is subject to constitutional challenge. The risks of provincial legislation being used to claim provincial jurisdiction over our territories and to legislatively alter or extinguish our Aboriginal Title and rights are too great. Any attempts by the FNLC to continue work on provincial legislation or the fall-back of political proclamations, accords, policies, and mandates must be stopped. The FNLC have no legitimacy or right to make decisions about our inherent rights and no mandate to continue with these flawed processes.

INDIGENOUS ALTERNATIVES

From indigenous perspectives, we are advocating for:

- maintaining exclusive indigenous jurisdiction over our traditional territories given that Aboriginal title results in the jurisdictional ouster for the province of British Columbia;
- holding Canada to the universal standards for the recognition of indigenous rights set out in the UN Declaration on the Rights of Indigenous Peoples
- constitutional reform to recognize indigenous jurisdiction on equal footing with Canada as a form of legal pluralism; and
- policy reform, including replacement of the federal Comprehensive Claims Policy that aims at the extinguishment of Aboriginal Title

I. INHERENT RIGHTS AND POWERS OF INDIGENOUS PEOPLES

> "One hundred years next year they (white people) came amongst us here at Kamloops and erected a trading post… When they first came among us there were only Indians here. They found the people of each tribe supreme in their own territory, and having tribal boundaries known and recognized by all".
>
> Memorial of the Interior Chiefs to Sir Wilfrid Laurier (August 25, 1910)

1. As Indigenous Peoples and nations, we are the original peoples of our territories. In our own languages we call ourselves "the people" of the land, our names tell us where we come from. We are one with the land. We govern and own our territories based on our deep-rooted connection to our territories. We, as the current generation of Indigenous Peoples have inherited our lands, resources and political systems from our ancestors by birth. It is our responsibility to protect our inherent powers and rights for future generations. The inherent rights and powers of Indigenous Peoples, including Indigenous legal systems, are inalienable. These rights cannot be transferred or taken away from us.

2. As Indigenous Peoples and nations, we have the right to self-determination which means we freely and independently determine our own political, legal, economic, social and cultural systems without external interference. We have our own political status and we have created our own forms of political representation. Any decisions about the exercise of inherent rights and powers of Indigenous Peoples must be taken by the people collectively according to our own beliefs, worldviews, priorities, traditions and aspirations about the future.

3. As Indigenous Peoples and nations, we have established relationships with other Indigenous Peoples through trade and commerce, issuing declarations, creating protocols. This includes recognition of each other's territories and sovereignty, peace-making and settlements, creating treaties and forming alliances with each other since time immemorial. This is based on our Indigenous concepts of sharing and reciprocity. Our inherent powers and rights sustain good relations with our neighbors.

4. Our legal status as Indigenous Peoples and nations predates contact with Europeans. It supercedes any assertion or assumption of sovereignty by states such as Britain or Canada. We have territorial integrity and sovereignty, but unlike states' ours is legitimate and not based on colonial doctrines. This means that the Canadian state, for example, must obtain our free prior and informed consent as Indigenous Peoples before doing anything that affects our lands and resources. In the Canadian context, especially in British Columbia, the inherent power and rights of Indigenous Peoples have been disrespected and denied through deliberate colonial laws and policies of Canadian governments.

5. Our generation continues the legacy of ensuring that there is reinstatement and restitution for the history of Crown/industry/individual conduct that has:
   - denied our inherent power and rights as Indigenous Peoples;
   - dispossessed us of our land and resources,
   - violated our human rights, and
   - interfered with the free exercise of our sovereignty and right to self-determination.

6. Canadian courts have only recognized minimal aspects of our inherent powers and rights based on their interpretation of Section 35 of the Canadian Constitution.

7. As Indigenous Peoples and nations, we remain colonized by Canada. Our human and Indigenous rights under international law continued to be violated. We must understand how and by what methods Canadian laws and policies have wreaked havoc of our traditional land and decision-making systems. And through acts of decolonization, being self-determining, and exercising our inherent powers or sovereignty, we must begin to untangle ourselves from colonization by Canada. We must critically assess any new attempts to extinguish our inherent power and rights through federal or provincial policies, laws and the Canadian constitutional framework. We must be careful not to provide our free, prior and informed consent to any initiatives that systemically and blatantly undermine our inherent powers and rights.

8. Decolonization for our peoples will require:
   - the exercise of our inherent political and legal powers in our territories;
   - implementation of international human rights; and
   - constitutional and policy reform based on Indigenous rights standards.

9. Decolonization is necessary so that our future generations can live in sustainable ways in co-existence with other peoples on this planet. We must continue to call for the free exercise of our political diversity and protect the biodiversity of our territories.

A. Our Inherent Political Status as Indigenous Peoples

> They treat us as subjects without any agreement to that effect, and force their laws on us without our consent and irrespective of whether they are good for us or not. They say they have authority over us. They have broken down our old laws and customs (no matter how good) by which we regulated ourselves.
>
> Memorial of the Interior Chiefs to Sir Wilfrid Laurier (August 25, 1910)

10. As Indigenous Peoples, our political status is *equal* to all other peoples in the world. We possess the inherent power to govern our nations and territories. International law has recognized that, as Indigenous Peoples, we have the collective right to self-determination.

11. Self-determination includes decision-making methods and processes that we have developed over time and are shaped by our experiences, the birthing of our institutions

such as the clan, hereditary, and kinship systems, potlatch, ceremonies, and our relationship to our territories. We do not trespass, nor interfere with neighbouring peoples' business. We are the only ones who can make decisions regarding our territories. Political decisions that relate to matters affecting other peoples as well as our own, must be deliberated upon internally first, and then negotiated with other peoples through mechanisms to ensure peace, trade and transfer of knowledge and for our cultural distinctiveness.

12. Our political systems and relationships to our territories are not structured like states with central administration governments making decisions on behalf of their citizens based on representational democracy. The flexibility and decentralized governance systems we have allow for fluid and inter-connecting relations internally or with other Indigenous Peoples. Our systems require that our people fully participate in all decisions that affect them and their territory. Canadian governments must deal with the legitimate political representative of our peoples.

13. In the past, deliberate attempts by colonial powers to destroy our inherent political powers, included:

    - the imposition of the *Indian Act*, which meant to suppress traditional governance; the potlatch ban; defining Indian status and membership; and the undermining of Indigenous women's role in political decision-making;
    - attempts by religious institutions to convert our peoples to Christianity and undermine our methods of decision-making and leadership,
    - imposition of provincial laws and regulations regarding land, resources, wildlife;
    - state's denial of meeting with our inherent political leaders within our traditional forms of governance.

14. We draw our power and rights from our inherent political system, we cannot draw it from colonial systems. The proper rights holder for the purposes of Section 35 of the Canadian Constitution must be determined by Indigenous Peoples. The proper rights holder cannot derive their power from federal or provincial law; it has to be determined according to our own political systems. Provincial political organizations cannot claim that they are the proper title and rights holder. They cannot represent our peoples and make decisions regarding our Aboriginal Title and Rights as they are not the proper rights holder.

15. The current work of the provincial political organizations on the implementation of the "new relationship" infers that they can make decisions on behalf of Indigenous Peoples. By working with the province they operated under the assumption that the province controls all unceded and surrendered Indigenous territories in the absence of proof of title. The province's objective in enacting recognition legislation is to support their claim of provincial jurisdiction over Indigenous lands and to provide certainty for investors.

16. This is a new form of colonization: The First Nations Leadership Council worked with the province to implement the province's objective of jurisdiction and certainty in relation to our rights. The federal and provincial governments are working with political organizations who claim to engage on a "government to government level" by:

    - creating initiatives and commitments for maintaining provincial legislative and administrative control over our territories and resources;
    - delineating our territorial boundaries for government certainty/extinguishment; and
    - creating "political/economic or corporate structures" that advise, engage and make agreements with governments like British Columbia undermining the requirement for free prior informed consent of Indigenous Peoples to any developments in our traditional territories.

17. The colonial attempts to displace our inherent political decision-making systems so that Canadian political structures can permanently shape all decisions made about Indigenous Peoples and our territories must stop!

18. These initiatives by the provincial political organizations do not answer the land and jurisdiction question that our ancestors raised over a hundred years ago. Rather than being advocates and supporters for inherent rights of Indigenous Peoples, the political organizations have become complicit in the denial and assimilation of our inherent powers and rights.

B. Indigenous Peoples Territorial/Land Systems Based On Indigenous Laws

> We claim the sovereign right to all country of our tribe – this country is ours which we have held intact from the encroachments of other tribes, from time immemorial, at the cost of our own blood. We have done because our lives depended on our country. We have never treatied with them, not given them any such title. (We have only lately learned the BC government makes this claim and that it has for long considered its property all the territories of the Indian tribes in BC).
>
> Tahltan Declaration, October 18, 1910

19. Our creation stories tell us that we came from our lands and source our identity as peoples and nations. We have our own distinct traditional land systems that set out responsibilities to take care of the land. Our future generations will inherent this sacred legacy.

20. Our land systems set out our territorial boundaries and place names. We govern our territories according to our own laws and teachings. Our inherent powers, legal systems and rights alone determine that we are the legitimate owners of our lands, resources and territories. We have dispute resolution processes that are formal and informal. Based on our diplomatic experiences, we have often successfully reached agreement with our neighbouring peoples about how to regulate our borders and ensure sustainability.

21. Our distinct land systems have been designed to maintain sufficient access to resources to sustain our people, provide for trade and technology transfer (e.g.: fish weirs), while at the same time maintaining the integrity of the ecosystem. Our land systems are sustainable.

22. According to our inherent laws, the power to govern our traditional territories through our land systems have not been altered by Canada's assumed or asserted sovereignty. Nor have we ceded, surrendered or extinguished our territorial jurisdiction to Britain or Canada.

23. Canadian common law elements of Aboriginal Title reflect aspects our land systems. For example, courts have recognized that one of the sources of Aboriginal Title is Indigenous laws. Aboriginal Title can be exclusive in nature or be jointly shared by peoples. We can govern how we use Aboriginal Title lands once recognized by the courts. But, there are also fundamental distinctions between our respective inherent land systems and the proprietary nature of Aboriginal Title lands under Canadian law that are incompatible with our powers and rights as Indigenous Peoples and nations.

24. For example, the Crown or courts would not have the power to regulate, define, or infringe our land systems based on our laws and jurisdiction. Our inherent powers have not authorized such a limitation on jurisdiction over our territories. Nor would our land systems be parasitic on underlying Crown title. This is a colonial understanding, based on a legal fiction in Canadian law but not our laws. The common law doctrine of Aboriginal Title assumes that our land rights came into being at the time of the assertion of European sovereignty, and not before. There is a distinction between Aboriginal Title as defined by Canadian courts and Indigenous land systems based on our inherent rights and powers.

25. Under common law, Aboriginal Title can be surrendered to the federal Crown for compensation. Under many Indigenous land systems, our territories are inalienable. The current understanding of the common law doctrine of Aboriginal Title, presumes that the Canada is the sovereign over our lands. Courts have considered Aboriginal Title without a full hearing on the issue of our inherent political status and jurisdiction. To ask us to surrender, extinguish, modify or subject our inherent power and rights in relation to our territories through provincial legislation, regulation, policies and negotiation mandates would perpetuate a great injustice towards us. Solving the land question is not about being forced to accept that our land systems now continue as title rights that function and are limited within Canadian jurisdiction and laws. Rather, the starting point should be how we ensure respect for our land systems within a context of self-determination of our peoples and co-existence with others through decolonization.

II. UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES AS THE MINIMUM STANDARD

A. Self-Determination

> Indigenous Peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
>
> UN Declaration on the Rights of Indigenous Peoples – Article 3

26. At the international level, there has been movement to respect our inherent political status as peoples with rights to self-determination. The 2007 *United Nations Declaration on the Rights of Indigenous Peoples* (*UNDRIP*) contains minimum standards and norms that can be the starting point for decolonizing the state-Indigenous Peoples relationship. UNDRIP recognizes that Indigenous Peoples are subjects of international law and have the right to self determination. In order for Canada to overcome colonial laws and policies, it has to endorse and implement the principles set out in the UN Declaration on the Rights of Indigenous Peoples.

27. UNDRIP also recognizes our inherent rights as flowing from our political, economic and social structures and from our cultures, spiritual traditions, histories and philosophies, especially our rights to our lands, territories and resources. We, as Indigenous Peoples, are the representatives of our inherent powers and rights. We, as Indigenous Peoples are the proper right holders for our right to self-determination. We, as Indigenous Peoples possess jurisdiction and sovereignty to make decisions about our respective peoples and our territories. No state governing structure, organization or other political structure holds that power. While Canada has refused to endorse UNDRIP, it is an international standard that the world community has set and states are bound by its principles. Canada must recognize the UNDRIP standards for decolonization remedies and substantive measures to ensure that our distinct political status is respected.

B. Indigenous Peoples Lands, Territories and Resource Rights

> Indigenous Peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
>
> Indigenous Peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, and those which they have otherwise acquired.
>
> States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the Indigenous Peoples concerned.
>
> UN Declaration on the Rights of Indigenous Peoples, Article 26

28. UNDRIP affirms our Indigenous territorial rights within a context of respect for our self-determination as peoples. This means the land question is an international question too. The remedial and substantive standards and norms set out in UNDRIP to recognize, protect and respect our inherent land systems and shape our future development as peoples, are strong and raise the bar with respect to how decisions are made about our lands, territories and resources. These standards are also shaped within an international human rights framework. This means that our diverse Indigenous understandings of what it means to be human must be respected at a collective level by states and all others to affect reconciliation.

29. UNDRIP states that our territories are for our own use, development and control. States are now legally and politically expected to recognize and, if needed, protect our territories in accordance with our "customs, traditions and land tenure systems. We have the remedial right to redress the colonization of our land systems through restitution of lands, territories and resources that have been dispossessed, confiscated, taken, occupied, used or damaged without our free, prior and informed consent. We have the right to conserve and protect the environment and productive capacity of our lands, territories and resources. We have the right to determine and develop priorities and strategies for the development or use of our lands or territories and other resources. And states must get our consent before proposing any development project that can affect our lands, territories and resources as well as mitigate any adverse environment, economic, social, cultural or spiritual impacts. If there are disputes, regarding the implementation of these standards, we can seek resolution at the international level, if states refuse to adhere to them in their own legal processes. Finally, UNDRIP contains a non-extinguishment standard to ensure that any implementation of our rights as peoples under that instrument do not diminish or extinguish rights that we have now or in the future. The goal is to create harmonious and cooperative relations between states and Indigenous Peoples. These standards provide us a pathway to address the land and jurisdiction question in BC.

30. In addressing the land and jurisdiction question in BC, we can look to evolving international standards regarding Indigenous Peoples' land protection in other places in the world too. After much conflict in the Americas, commissions and courts are now recognizing the need for protection of Indigenous rights. Indigenous collective land rights are recognized as human rights.

31. International customary law and general legal principles recognize the right of Indigenous Peoples to legal recognition of their varied and specific forms of modalities of their control, ownership, use and enjoyment of territories and property. After UNDRIP was adopted by the UN General Assembly in 2007, the Supreme Court of Belize applied UNDRIP standards on land, territories and resources and other regional principles to interpret and ultimately find that the respective Mayan People have land rights and that the state of Belize had to respect their distinct "land system", and not just rights.

C. Prior Informed Consent

> States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.
>
> Article 19, UN Declaration on the Rights of Indigenous Peoples

> States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
>
> Article 32(2) UN Declaration on the Rights of Indigenous Peoples

32. According to the international standard contained in UNDRIP, free prior informed consent of Indigenous Peoples is required for any land and resource developments in or that affect our territories. Indigenous Peoples must be provided with all the information to enable us to make a free and informed decision before any action or development. Indigenous Peoples have the decision-making power over the development. The principle of free, prior informed consent recognizes Indigenous jurisdiction and is a much higher standard than consultation. In consultation processes, the final decision and jurisdiction remains with the government.

33. As a signatory to the Convention on Biological Diversity, Canada was a party to negotiations that enshrined the principle of free prior informed consent of Indigenous Peoples to development in or affecting their traditional territories.

34. In addition, UNDRIP includes a prior informed consent standard for all legislation affecting Indigenous Peoples and our rights. This clearly applies to the proposed provincial legislation and any provincial legislation passed without the prior informed consent of Indigenous Peoples would automatically violate UNDRIP. Prior informed consent has to be given collectively by Indigenous Peoples as the proper rights holders.

III.CONSTITUTIONAL REFORM

A. The Current Constitutional Framework

35. States have constitutions, which set out how the country is to be governed. In Canada, the constitution sets out the distribution of power between federal and provincial governments, but not an Indigenous order of government. All matters of governance (heads of power) are listed and put under the exclusive control of either the federal government (s. 91) or the province (s. 92). For example: Section 91(24) says that the federal government has the responsibility for “Indians and lands reserved for Indians”. We have a relationship with the federal government on a “nation-to-nation” level. Provinces are sub-units of the state (Canada) and do not have standing at international law. For example provinces cannot sign or become parties to international treaties or

conventions. As Indigenous Peoples, we can enter into treaties just like states based on our inherent jurisdiction. Provinces, unlike Indigenous Peoples, do not have inherent jurisdiction. The province's jurisdiction comes from the Canadian constitution.

36. As Indigenous Peoples, we have inherent jurisdiction over our territories and peoples. In order to establish an Indigenous order of government under the Canadian constitution, the constitution should be amended to clearly state a new division of powers between Indigenous Peoples, federal and provincial governments. The language in Section 35 which recognizes and affirms Aboriginal and Treaty Rights could be expanded to reflect recognition of our inherent jurisdiction and reshape the Canadian constitution. This would secure constitutional space for our Indigenous jurisdiction on equal footing with the state. Co-existence of Indigenous and Western legal systems on equal footing is referred to as legal pluralism.

37. It is important for Indigenous Peoples to secure recognition of our inherent jurisdiction in the constitution. The constitution is the supreme law in Canada that requires all other laws to conform to it.

38. There is a hierarchy of laws in Western legal systems, which are often described as pyramids of law:
    - Constitutional law sits on top of the pyramid as the highest law in the country setting out the most important legal principles. For example: the right to remain silent. Constitutional law also offers greater protection for the rights and values it protects.
    - On the next level are federal and provincial laws, which can be approved in the legislature by a simple majority vote and can therefore be more easily changed or amended. They can be challenged for violating principles in the constitution or if they have been created without jurisdiction (*ultra vires*). This means federal or provincial laws could be found to be invalid by the courts and they will have no force and effect.
    - On a lower level are regulations which are developed by bureaucrats to implement legislation created by federal or provincial legislatures.
    - Policies are developed by the executive branch, not the legislature. An example would be the federal comprehensive claims policy or the policy on the inherent right to self government. They are proposed by ministers and adopted by Cabinet. Policies are political decisions and do not have the force of law.
    - On the bottom are mandates for provincial or federal negotiators which are informed by policies and under the sole discretion of the respective minister who can unilaterally change them.

39. In order to secure full recognition of our rights and jurisdiction, it is a priority that we force constitutional change at the highest level of the pyramid of laws to afford us full recognition and protection of our inherent rights and jurisdiction. We cannot have our jurisdiction and rights limited or subject to provincial laws and jurisdiction.

B. The Adversarial Relationship with the Province

> They have stolen our lands and everything on them and continue to use same for their own purposes. They treat us as less than children and allow us no say in anything. They say the Indians know nothing, and own nothing, yet their power and wealth has come from our belongings. The queen's law which we believe guaranteed us our rights the BC government has trampled underfoot.
>
> Memorial of the Interior Chiefs to Sir Wilfrid Laurier (August 25, 1910)

40. The province has always been the main adversary of Indigenous Peoples. Under the British North America Act (1867), provinces were given jurisdiction over lands and natural resources which denied Indigenous jurisdiction and ownership over our territories.

41. Our ancestors have been very clear that our relationship is with the federal government on a nation-to-nation basis. They have never accepted the province's jurisdiction or claim to ownership over our territories. To bi-laterally engage with the province would remove us from the nation-to-nation relationship with Canada. It would also subject us to provincial laws that can be easily changed by the provincial legislature and take away from our constitutional protection under s. 35 and s. 91(24) of the Canadian constitution.

42. The province's claim to complete jurisdiction and control over all lands and resources in British Columbia denies that we as Indigenous Peoples own our territories and have jurisdiction over them. Even Canadian courts have recognized Aboriginal Title as an exclusive property right where the province has no jurisdiction. We as Indigenous Peoples have ownership and jurisdiction over our territories and the province does not have jurisdiction over Aboriginal Title territories. The province cannot legislate or regulate Aboriginal Title. Under the Canadian constitution, only the federal government can make laws that affect Aboriginal Title and Rights. If we agreed to operate under provincial processes for shared-decision making and revenue sharing, the risk is that we would implicitly recognize provincial jurisdiction and Crown title to all of our territories. We risk extinguishment or alternation of Aboriginal Title and rights through provincial legislation.

43. In Canada, legislation can override common law (e.g. case law) as long as it is constitutional. The government of British Columbia may try to use their power to pass legislation to redefine the scope of Aboriginal Title and rights and to override decisions by the courts which have recognized the exclusive nature of Aboriginal Title. Unilateral provincial legislation defining a narrower scope of Aboriginal Title would undermine the recognition that we have fought so hard for in court. Courts would be bound to apply the provincial legislation unless it was found to be unconstitutional.

44. Our position is that the province has no jurisdiction over Aboriginal Title and Rights and any provincial legislation on this issue would be outside provincial jurisdiction (*ultra vires)* and is unconstitutional.

C. Federal Responsibility - Transition to Provincial Control

> But it is also their duty to see their government does right by us, and gives us a square deal. We condemn the whole policy of the BC government towards the Indian tribes of this country as utterly unjust, shameful and blundering in every way.
> Memorial of the Interior Chiefs to Sir Wilfrid Laurier (August 25, 1910)

45. The federal government is trying to escape their constitutional obligation to Indigenous Peoples by limiting their responsibility and allowing the province to claim control and jurisdiction over those issues.

46. This was first attempted 40 years ago under the 1969 White Paper on Indian Policy which proposed to assimilate Indians by:
    - Eliminating the legislative and constitutional recognition of Indian status;
    - Abolishing Indian Reserves & imposing taxation;
    - Dismantling treaties; and
    - Off-loading federal Indian programs & services onto provinces, municipalities and communities.

47. Indigenous Peoples successfully fought this attempt of assimilation into mainstream society. The Union of British Columbia Indian Chiefs was formed to oppose assimilationist policies and seek recognition of Indigenous jurisdiction and land rights.

48. Since the White Paper, the federal government has been more subtle in its attempts to transition responsibility to the province. One example is the requirement under the British Columbia Treaty Commission (BCTC) process, to have all treaty settlement lands held in fee simple under provincial jurisdiction. Treaty settlement lands will be subject to provincial legislation.

49. The federal government's policy effectively supports the provincial claim to control and jurisdiction over land management in Indigenous territories. This is contrary to the Supreme Court of Canada's direction that Aboriginal Title lands fall under federal responsibility. The federal government is currently developing consultation guidelines that would be limited to Indian reserves, federal lands (like National Parks) and federal projects. The federal government wants to put other matters related to lands and resources solely in the hands of the province which takes away from Indigenous Peoples' constitutional status and protections.

D. The federal government breaches its own Constitution

50. When Prime Minister Trudeau wanted to patriate the Canadian constitution almost thirty years ago, he attempted to delete the constitutional protection for Indigenous Peoples. Indigenous Peoples from British Columbia forced recognition of Aboriginal and treaty rights into the Constitution of Canada through the Constitution Express to Ottawa (1980) and Europe (1981). Section 35 of the *Constitution Act*, 1982 secured constitutional protection and recognition for Aboriginal and Treaty rights. It is broad enough to form the basis for developing an Indigenous order of government.

51. The Canadian and provincial governments are in a situation of constitutional breach, when they violate the constitution and fail to implement Supreme Court of Canada decisions interpreting the constitution. The Constitution of Canada and the Supreme Court have recognized Aboriginal Title and Rights, but the government of Canada refuses to change the Comprehensive Claims policy aiming at the extinguishment of Aboriginal Title.

52. Canada has been repeatedly criticized by international tribunals for failing to recognize Indigenous land rights and for failing to implement Section 35 of the Constitution.

E. Recognition of Indigenous Jurisdiction

53. Indigenous Peoples in Latin America since the 1990s have secured broader recognition of Indigenous rights and legal pluralism. Rather than being defined as colonial nation states, they now are pluri-national or multi-nation states. Indigenous Peoples have an order of government that is on equal footing with the state's federal government and Indigenous Peoples have sole jurisdiction in their territories. Examples for such fundamental constitutional reform and legal pluralism are:
    - Colombia, where Indigenous territories and land rights are recognized in the national constitution.
    - Ecuador, where Indigenous Peoples are recognized as nations with the right to self-determination; and
    - Bolivia adopted UNDRIP into their national law and is working on one of the most progressive constitutions in the region.

54. In the course of securing constitutional reform in Latin America, Indigenous Peoples engaged in constitutional debates to ensure that Indigenous jurisdiction is not limited or made subsidiary to state laws. It is important that Indigenous jurisdiction be recognized in the Canadian constitution at an equal footing with state jurisdiction. Therefore Indigenous laws should not be made subsidiary to state laws. This would put Indigenous laws at a lower level in the hierarchy or pyramid of laws. Indigenous jurisdiction should be recognized at the constitutional level.

55. The new Latin American constitutions and the UN Declaration on the Rights of Indigenous Peoples have set a minimum standard for recognition of Indigenous jurisdiction on equal footing with state jurisdiction. As Indigenous Peoples, we do not want our rights under the control of the state and removed from our own control. We want full recognition of the inherent jurisdiction of Indigenous Peoples at the constitutional level based on international minimum standards. Provincial recognition and reconciliation legislation would be a step back backwards.

56. The right direction would be to seek constitutional change in Canada including full recognition of Indigenous land rights and jurisdiction. Our inherent jurisdiction has to be recognized in the Canadian constitution so Indigenous Peoples can operate as an independent Indigenous order of government. This was the intention of the constitutional debates that were meant to implement Section 35 of the *Canadian Constitution Act (1982)*.

IV. POLICY REFORM

> After a time when they saw that our patience might get exhausted and that we might cause trouble if we thought all the land was to be occupied by whites they set aside many small reservations for us here and there over the country. This was their proposal not ours, and we never accepted these reservations as settlement for anything, nor did we sign any papers or make any treaties about same. They thought we would be satisfied with this, but we never have been satisfied and never will be until we get our rights.
>
> Memorial of the Interior Chiefs to Sir Wilfrid Laurier (August 25, 1910)

57. Current Canadian policies in regard to Indigenous rights do not recognize our inherent jurisdiction and rights. They do not meet the minimum standards set out in the UN Declaration on the Rights of Indigenous Peoples. They also violate the Canadian constitution that recognizes Aboriginal Title and Rights. The policies right now focus on limiting and extinguishing our inherent rights and need to be changed in order to affect substantive change in Canada.

58. For example the Canadian self-government policy (1995) despite its lofty title "*The Government of Canada's Approach to Implementation of the Inherent right and the Negotiation of Aboriginal Self-government*" sets out that: "The inherent right does not, in Canada's view, include "the right of sovereignty in the international law sense".

59. One example for an overall exclusion stipulated in the federal policy on self-government is "commerce and foreign relation" which Canada claims is under the sole control of the state. As Indigenous Peoples, we have inherent jurisdiction over those issues we continue to maintain international relations with other Indigenous Peoples and states and we have the right to trade across our tribal boundaries. We cannot accept such exclusions as they undermine our inherent jurisdiction and our standing at international law. It is clear that the federal policy on self-government does not live up to the Indigenous right to self-determination.

A. The Federal Comprehensive Claims Policy

60. The federal policy in regard to Indigenous land rights is the Comprehensive Claims Policy. The first version of this policy in 1973 aimed at the blanket extinguishment of Aboriginal Title included "cede, surrender and release" provisions as set out in historic treaties. The policy was revised in 1986 to the "modified rights model" meaning that rather than recognizing the inherent land rights of Indigenous Peoples, those unrecognized rights must be released. Only treaty rights inscribed in a final agreement are protected and rights which are not set out in the agreement will be extinguished. The outcome is *de facto* extinguishment of Aboriginal Title and rights over traditional territories in return for treaty settlement lands, cash, and self-government.

61. The Comprehensive Claims policy is not rights-based; it is not based on the recognition of Aboriginal Title. Rather it aims at the *de facto* extinguishment of Aboriginal Title. The Comprehensive Claims policy violates our inherent rights as Indigenous Peoples. It

further violates Canada's obligations to maintain the human and Indigenous rights of Indigenous Peoples under international law.

62. In 2007 the UN Committee on the Elimination of All Forms of Racial Discrimination (CERD) noted in its concluding observations regarding Canada (CERD/C/CAN/CO/18):

> While acknowledging the information that the "cede, release and surrender" approach to Aboriginal land titles has been abandoned by the State party 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**...[emphasis added]

CERD recommended:

> 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 that the State party 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.

63. In 2000 the Assembly of First Nations (AFN) Delgamuukw Implementation Strategic Committee (DISC) commissioned a legal opinion that documented how the Comprehensive Claims policy violates Section 35 of the Canadian Constitution and Supreme Court of Canada decisions. AFN DISC recommended conducting a judicial review of the Comprehensive Claims Policy since it would not withstand constitutional scrutiny.

64. One of the confounding problems is that Canada's Comprehensive Claims policy and their approach to Indigenous land rights is not contained in one single document, rather it includes agreements already signed under the policy such as the Nisga'a agreement and the mandates for ongoing negotiations under the current policy.

65. AFN DISC met with federal government officials, including of the Privy Council Office to propose that the government revise the policy in light of Supreme Court of Canada decisions and base it on recognition of Aboriginal Title consistent with Constitution of Canada. In 2001 the federal government refused to make any substantive changes to the policy arguing that it was sufficient to address all the needs of Indigenous Peoples and pointing to the fact that the majority of Aboriginal peoples in British Columbia were negotiating under the current policy in the British Columbia Treaty Commission (BCTC) process.

B. The British Columbia Treaty Process and Common Table

66. The Comprehensive Claims Policy aiming at the extinguishment of Aboriginal Title is the policy under which Aboriginal groups are forced to negotiate in the BCTC. The surrender and grant back approach is based on a 5% land formula that requires the surrender of Aboriginal Title over the territories of the respective nation in return for the grant back of a very limited land base. The treaty settlement lands are held in fee simple and subject to provincial jurisdiction. The protection of federal fiduciary and inalienability of lands reserved for Indians is removed.

67. The policy and the very limited mandates of federal and provincial negotiators have stalled negotiations in the BCTC process because the majority of negotiating tables have rejected the current approach. Aboriginal groups formed a common table to try to resolve the most fundamental problems with Canada and BC.

68. Most recently the federal Minister for Indian and Northern Affairs Chuck Strahl in the federal response to the Common Table rejected any substantive policy and mandate changes noting that it was not in the federal interest. It is worth referring to some of the points made by the minister because they show the government's limited vision:

> The federal government negotiates a concurrent law model for First Nation self-government and does not support exclusive jurisdiction for First Nations. The effective operation of First Nations governments within the Canadian constitutional framework is a fundamental interest of Canada. I will not be proposing a change to the concurrent law model.

69. The current constitutional framework is based on mutually exclusive jurisdiction of the federal and provincial government. The federal government does not want to implement Section 35 and an Indigenous order of government. The policy foresees self-government under provincial or federal control and Minister Strahl is clear that he is not ready to change that policy.

70. Regarding the critical issue of certainty from the settler/corporate community and extinguishment for Indigenous Peoples. He said:

> Here is the challenge: Canada negotiates treaties because of Aboriginal rights. However, there is significant uncertainty over the scope and geographic limitations of the Aboriginal rights of particular First Nations. Specific Aboriginal rights and their legal effect are defined by the courts. And while federal mandates are, of course, informed by developments in the law over time, speculative, theoretical debates over the exact definition and extent of existing Aboriginal rights at the negotiating table would not be a fruitful exercise. Therefore, Canada is exploring ways to better recognize the existence of Aboriginal rights in treaty negotiations while balancing other federal and public interests. The recognition of Aboriginal rights and title is closely linked to the issue of certainty.

71. Canada does not want a substantive debate about Aboriginal Title and rights because they know they would lose the argument. They want to recognize our rights in a very limited manner under existing provincial and federal legislation or in final agreements. What the government wants to get out of the process is certainty or de facto extinguishment.

72. Regarding status of lands Minister Strahl noted:

> Developing a treaty framework based on s. 91(24) land status would be a significant challenge for the federal government... I am not proposing to change federal mandates that require the status of treaty lands to change post treaty. I understand that some First Nations are concerned that designating treaty lands as fee simple implies a grant from the Crown and does not respect their historic relationship with the land. Agreements provide that existing Aboriginal Title lands are modified into fee simple.

73. Minister Strahl closed by stating:

> With this response, Canada now considers the Common Table process to be complete. Nonetheless, the BC Treaty Commission has my full confidence, and I am dedicated to pursuing outstanding issues with the Treaty Commission and our other treaty partners, British Columbia and the First Nations Summit.

74. Minister Strahl has co-opted the common table issues that were raised as causing road blocks for negotiations under the BCTC. He said ultimately that the BCTC is the only mechanism to deal with outstanding land issues and that he was not going to change anything substantively in the underlying policy. Whatever came out of his consideration would be introduced through the negotiating tables. There would be no overall change in the policy. He invites groups to keep negotiating to find out about the little changes.

75. BC Minister of Aboriginal Relations and Reconciliation George Abbott concurred with the federal minister, noting that the current negotiating mandates will create workable solutions once they are fully understood. From the statement it is clear that the British Columbia government is not really ready to substantively change their policies regarding Aboriginal Title and Rights.

C. Outside of the British Columbia Treaty Process

76. Groups have been trying to negotiate under the BCTC over the last 17 years and negotiations have been stalled. The common table was established to try to raise certain fundamental points. The government has now dismissed the common table. Their position is either you go back and negotiate extinguishment or walk away.

77. The only way to overcome the current policy is to stop negotiating. Minister Strahl is relying on negotiations to keep the policy alive and to reject the common table proposals.

78. Groups currently involved in the BCTC process feel they are being held hostage to the narrow treaty negotiation policy and mandates and the loan funding. Similarly Indigenous Peoples outside of the BCTC process are held hostage because there are no other processes available that are based on the recognition of Aboriginal Title.

79. Minister Strahl quite bluntly stated that Indigenous Peoples who chose not to become involved in the BCTC process are stuck with operating under the Indian Act on Indian reserves, again totally ignoring our inherent Indigenous rights to our traditional territories. He noted that:

> However, Canada also understands and respects that not all First Nations in BC wish to pursue treaty negotiations at this time. For those First Nations not participating in treaty negotiations, the federal government has developed tools to assist First Nations governed by the *Indian Act* to better manage their lands and resources and pursue economic and community development. To that end, Canada has passed legislation such as the *First Nations Land Management Act*, the *Indian Oil and Gas Act*, and the *First Nation Commercial and Industrial Development Act*.

80. Indigenous Peoples from across British Columbia, including those inside and out of the BCTC, will have to work together to force a substantive change in the underlying policy since it affects all of us.

D. Excuses for lack of recognition

81. Indigenous Peoples from British Columbia who have taken their grievances to international human rights bodies have repeatedly seen Canada point to the British Columbia Treaty Process as their avenue of dealing with Indigenous land rights. The British Columbia Treaty Process serves as an excuse at the national and international level for not substantively recognizing and addressing Indigenous land rights.

82. Similarly the proposed provincial legislation provides the province with an excuse to pretend they are dealing with Indigenous rights. In the lead-up to the 2010 Winter Olympic Games which will be hosted in British Columbia, Canada's human rights record especially in regard to Indigenous rights will be increasingly scrutinized. Now is the time to force fundamental change to Canada's policies in regard to Indigenous rights. Instead the proposed provincial legislation is an easy way out for the province, letting them pretend that they are dealing with Indigenous rights when all they are proposing to do is set up processes that reinforce provincial jurisdiction.

E. Provincial Objective is Access to Lands & Resources

83. It has been our experience as Indigenous Peoples that the intention behind land claims processes set up by governments is certainty for investors at our expense. These processes are usually motivated by settlers' desire for unfettered access to lands and resources. These processes aim at securing increased corporate access to Indigenous territories and undermine Indigenous rights.

84. In North America, the conveyance of land title to the new state of Alaska and the discovery of the largest oil deposit in North America at Prudhoe Bay forced the resolution of native land claims through a comprehensive and complete settlement in the *Alaska Native Claims Settlement Act*, 1971. The Act legislated extinguishment of native title in Alaska in exchange for land entitlement, compensation, and self-government. A settlement motivated by an injunction that effectively stopped access to and development of lands and resources. Under the Act, corporations were set up to administer the settlement funds which undermined traditional governance structures.

85. In Canada, all modern land claims settlements are based on the extinguishment of Aboriginal Title and rights. While the final agreements may be cloaked in different words, the effective has been the extinguishment of Aboriginal Title and rights and certainty for investors to access and develop lands and resources. Despite the recommendation of the *Royal Commission on Aboriginal Peoples, 1996* (RCAP) to find an alternative to extinguishment through recognition of Aboriginal and treaty rights, Canada and British Columbia have not changed their negotiation mandates and policies.

86. In British Columbia, there are vast quantities of pristine land and untapped natural resources. But, to the dismay of government and industry, they are located in our territories and owned by Indigenous Peoples. The provincial motivation is aimed at securing increased corporate access to and development of Indigenous lands and resources.

V. TRUE RECONCILIATION REQUIRES FUNDAMENTAL CHANGE

A. What is true reconciliation?

87. Reconciliation requires fundamental change. It is a process of changing something thoroughly and setting a new standard. Reconciliation has four voices: truth, justice, mercy and peace by restoring and transforming relationships. Justice is a necessary element but not the only component of reconciliation.

88. Reconciliation is “not cheap or easy” and is liable to be a long, drawn-out process with ups and downs, not something accomplished overnight, to quote the Nobel Peace Prize winner Desmond Tutu who headed the South African Truth and Reconciliation Commission. While there are many definitions of reconciliation, he recognized that public acknowledgement of the truth, restoration of human dignity through forgiveness and reparation, and structural changes to legislation and policies were required for reconciliation in a post-apartheid South Africa where white Afrikaners and black Africans share power. It is worth noting that the South African Apartheid system was copied from the Canadian Indian Reserve system aimed at economically marginalize and dispossess Indigenous Peoples who did not have citizenship or rights in Canada.

B. Can we reconcile with Canada?

89. In Canada, reconciliation with First Nations has three, closely related, faces - individual, social and legal. We made progress on individual reconciliation through the Residential School Apology and Settlement process which attempted to restore the dignity of generations of Aboriginal people who were placed in residential school. And, there are attempts to prompt social reconciliation through culturally appropriate programs in areas such as education and health aimed at raising Aboriginal people from the lowest level of the socio-economic ladder. But, we are stalled on social and legal reconciliation front because the government does not want to change its policy based on a model of extinguishment of Aboriginal Title and jurisdiction in exchange for land, cash and self-government. Reconciliation will require the on-going co-existence of our laws with Canadian laws. The first step must be the recognition of Indigenous land rights.

90. The first recommendation of RCAP was that a commitment to build a renewed relationship based on the principles of mutual recognition, mutual respect, sharing and mutual responsibility was required by Canadian people and Aboriginal peoples. RCAP recognized that authority of Aboriginal peoples was based on inherent rights and was not bestowed by other governments. RCAP made it clear that there must be room for Aboriginal peoples to exercise their autonomy and structure their own solutions and that land rights had to be addressed before any other injustices could be rectified. Apologies and limited programmes and services are a start. However, the federal and provincial government must address the underlying issues by agreeing to a framework for implementing the RCAP recommendations which sought to transform the relationship between Aboriginal nations and Canadian governments.

91. While RCAP advocated for “alternative to extinguishment through recognition of Aboriginal and treaty rights and a new treaty making paradigm based on the peaceful and harmonious coexistence of Aboriginal and non-Aboriginal people”, the federal government has failed to change their mandates and policies. There must be a fundamental constitutional reform and comprehensive claims policy change by Canada; otherwise there can be no true reconciliation.

C. Can we reconcile with British Columbia?

92. In British Columbia, Premier Gordon Campbell and the First Nations Leadership Council announced the New Relationship vision in 2005. It acknowledged reconciliation aimed at Aboriginal and Crown titles and jurisdictions. The Premier and the First Nations Leadership Council (FNLC) formed the Recognition Working Group (RWG) in order to implement their vision but their recently proposed Discussion Paper on Recognition and Reconciliation Act (Act) was rejected by Indigenous Peoples. The premise of the Act was wrong because the Act failed to recognize that jurisdiction and ownership lies with Indigenous Peoples. Rather than empowering Indigenous Peoples as the proper title and rights holders, the premise was to accept provincial jurisdiction. The proposed Act has been firmly opposed by most Indigenous Peoples because unilateral provincial legislation that undermines the proper title and rights holder.

93. Reconciliation cannot be conducted in secret but must be an open, respectful, collaborative process and must be built on our inherent rights. The RWG prematurely agreed to confidentiality commitments in the legislative drafting process without sufficient mandate resulting in secrecy and unnecessary break in the linkage between Indigenous Peoples and nations and the details of any potential negotiated legislation. However, the RWG is a small group of FNLC executives and lawyers who operated largely behind closed doors and through secret negotiations in order to have the legislation passed before the provincial election in May 2009. Rather than working with Indigenous Peoples who collectively hold Aboriginal Title to their territories, the RWG undermined the inherent power and rights of Indigenous Peoples.

94. Given the outstanding question of land ownership in BC, it was inconceivable that the RWG proposed such legislation be passed before the election without any debate by those most affected by such legislation. Yet, such an effort was made, and while business, industry, and government remained relatively silent, Indigenous Peoples voiced overwhelming opposition to the proposed legislation in regional sessions.

95. Most Indigenous Peoples want the establishment of their own new relationship with the Crown instead of a final one-size-fits-all legislated solution. The FNLC cannot negotiate template agreements with respect to Aboriginal Title and Rights, but these responses have been largely ignored or dismissed by the FNLC. Even though the FNLC was told that their overall approach was flawed, they continue to claim a mandate.

96. The proposed Recognition and Reconciliation Act and its promised shared decision-making and revenue sharing through future regulation was not a good deal but just another power grab by the Province supported by the FNLC. Unilateral provincial legislation is not the beginning of a new relationship based on recognition and reconciliation but a repeat of past colonization where the government holds all the power and the Premier is the developer-in-Chief.

97. The proposed Act did not substantively address the co-existence of Aboriginal and Crown titles but instead proposed to set up processes under provincial jurisdiction that would pave the way for corporate access to Indigenous territories and to unprecedented and unsustainable development of lands and resources without the free prior informed consent of the Indigenous Peoples. British Columbia has a vested interest in stalling and delaying substantive recognition and true reconciliation. By maintaining the status quo, the province can continue to issue permits to industry to develop lands and resources owned by Indigenous Peoples that are key to our continued cultural and economic survival without meaningfully addressing Aboriginal Title and rights. The government of British Columbia must accept the inherent nature of Indigenous rights to the land and resources; otherwise, legal reconciliation cannot occur.

98. The governments of Canada and British Columbia are unwilling to change their policy even though it is at odds with Indigenous Peoples' inherent human rights, Canadian constitutional and common law, and international standards adopted by the United Nations General Assembly including the UNDRIP.

D. What mandate is required for reconciliation?

99. Following the provincial election, the FNLC, in an attempt to hold on to power, moved the starting point of discussion by consulting with some lawyers who work for First Nations and by calling for an All-Chiefs meeting on August 25-28, 2009. While the invitation to attend this meeting has not been extended to Indigenous Peoples, many plan to attend the meeting to voice their concern with the FNLC adversely affecting their Aboriginal Title and rights through the RWG and to effect a fundamental change by shifting the political landscape.

100. Ultimately, a lobby of Chiefs and lawyers is the wrong starting point, the real power and rights rest with Indigenous Peoples who collectively hold Aboriginal Title and Rights. Unlike the Canadian sense of representative democracy, as Indigenous Peoples we have our own decision making mechanisms built around participatory decision-making. As Indigenous Peoples, we are the holders and decision-makers regarding our inherent rights. Indigenous Peoples will not support proposed legislation that reinforces recognition for recognition's sake without any substance and without prior informed consent.

E. Why has reconciliation failed?

101. Even though individual human rights of our people were recognized in the 1960's when Indians became citizens and were entitled to vote in federal and provincial elections, our collective rights continue to be denied and undermined. While Indigenous Peoples have been living in coexistence since contact, the province still refuses to substantively recognize Aboriginal Title and rights to the lands and resources in BC. Provincial legislation based on the same policies will only undermine our inherent power and rights. Canada and British Columbia need to recognize and accept the inherent rights of Indigenous Peoples which are acknowledged by international standards and protected by the Canadian Constitution. And, Canada and British Columbia must make a profound and unambiguous commitment to establishing a new relationship. A fundamental change in provincial and federal policies to recognize Indigenous jurisdiction as the third order of government and open the constitutional spaces needed to reconcile Crown and Aboriginal Title is required. Then, we can negotiate a mutually agreeable framework and plan with enlightened mandates and measures of success as a first step in the journey of reconciliation. Legal reconciliation is not a final solution but an on-going and evolving process that creates constitutional space for legal pluralism.

F. What is the benefit of true reconciliation?

102. True reconciliation should be a fundamental goal of all peoples. Reconciliation will allow everyone to move forward in a beneficial relationship as equal partners where Indigenous Peoples' and Crown jurisdictions are constitutional ordered. Only then will Aboriginal and Canadian peoples live together and "help each other be great and good" as the Chiefs aspired to in the Laurier Memorial.

VI. SUBSTANTIVE FLAWS OF FNLC CONCEPTS PAPER

A. Constitutional Challenge

103. The Canadian constitution sets out the division of power between the federal (s.91) and provincial governments (s.92). Under Section 91(24), the federal Crown has the power to make laws in relation to "Indians and lands reserved for Indians". The Supreme Court of Canada has ruled that the federal power also applies to Aboriginal Title lands. This means that the province does not have the power to legislate in relation to Aboriginal Title lands. Provincial legislation would be unconstitutional as it is outside the province's powers (*ultra vires*).

104. Section 35 of the *Constitution Act, 1982* is a constitutional provision that recognizes and affirms Aboriginal and Treaty rights. Aboriginal rights flow from our inherent rights as defined in our Indigenous legal systems. Section 35 also forms the basis for the recognition of Indigenous jurisdiction but Section 35 cannot form the basis of provincial encroachment on Indigenous lands. If the province legislated, it would have to legislate on the basis of its Section 92 power which is limited to certain subject matters and does not include "Indian and lands reserved for Indians". The province cannot base their authority to legislate on Section 35 or on claims to implement Section 35.

105. The Concepts Paper claims that Section 35 contains "Crown jurisdiction to infringe Aboriginal Title and Rights". Section 35 is not a basis for either federal or provincial jurisdiction or a sword for Crown infringement and justification. Instead, Section 35 constitutionally protects our inherent rights. The Concepts Paper blurs the constitutional division of powers. However, constitutional law has very clear lines that cannot be blurred. If the province with or without the support of the FNLC, passed provincial legislation in relation to the nature and scope of Aboriginal Title, Indigenous nations would be forced to bring a constitutional challenge of the legislation to court at great expense.

106. In the justification test for infringements of Section 35, the courts consider whether there is a valid legislative objective set out in the respective provincial or federal legislation. The province cannot regulate Aboriginal Title and cannot claim a valid legislative objective by setting up a statutory scheme and provincial processes to address Aboriginal Title under the disguise of regulating Crown conduct. The proposed legislation sets up two way processes that involve FNLC in securing access to Aboriginal Title land and the province in regulating access to Aboriginal Title lands. This strengthens the provincial claim to jurisdiction over and ownership of Indigenous lands. This is the reason that Indigenous nations will be forced to immediately challenge any provincial legislation that purports to affect Aboriginal Title.

107. If provincial legislation dealing with Aboriginal Title was passed and was not challenged, it would be harder for courts to find that Aboriginal Title ousts provincial jurisdiction. Following a declaration of Aboriginal Title, the Canadian courts have found Indigenous nations hold exclusive jurisdiction over Aboriginal Title lands pursuant to Section 35.

The non-derogation clauses relied upon by the FNLC and their lawyers claim that the legislation will not affect Section 35 rights is flawed since the proposed provincial legislation defines and sets limits on Aboriginal Title. This back-door approach to claiming provincial jurisdiction over Aboriginal Title lands offends our inherent rights.

108. Currently, the Crown's power to infringe Aboriginal Title is determined by Canadian courts. However, provincial legislation can statutorily entrench the power to infringe Aboriginal Title and those infringements would be controlled by the provincial government which violates our inherent rights, the Canadian Constitution, and international human rights law.

109. Our ancestors have stated that "we are supreme in our territory". The province is trying to illegitimately claim jurisdiction over Aboriginal Title lands pursuant to Section 92. This is a conflict of laws and jurisdictions. Section 35 contains constitutional protection for our inherent rights and the claim that Section 35 can be used by the province to legislate and infringe our rights is to rewrite history and the Canadian constitution. This is a critical issue and the Concepts Paper acknowledges its importance on page 6 "there is no consensus among the lawyers' caucus as to how a court might interpret Section 35 in the context of the Province recognizing Aboriginal Title."

110. From an Indigenous legal perspective, the risk that a court would justify provincial infringements by deferring to provincial legislation is an uncertainty that cannot be borne by our children and grand-children. Aboriginal Title is our children's inheritance and is entrusted to us to protect.

111. We do not need legislation, administrative or executive actions to "create" our inherent rights. Such instruments are designed to limit our rights and to bring them under the control of the province.

B. Lowering the Bar

112. Although provincial legislation would be unconstitutional and subject to constitutional challenge, we wish to point out the additional dangers and pitfalls of provincial legislation lowering the bar.

113. Under current case law, one of the features of Aboriginal Title is exclusivity. This means that Indigenous peoples do not have to share land with the public unless the Indigenous nation decides to share. Under the proposed provincial legislation, it is assumed that Indigenous peoples will share all of their lands and resources and will given up exclusive jurisdiction and control over Aboriginal Title lands.

114. Another feature of Aboriginal Title under current case law is that the Crown must meet a fiduciary standard when justifying infringements to our land. The fiduciary duty requires a priority status for Aboriginal Title that is not subjected to the public interest. Provincial legislation would create a limited form of Aboriginal Title where the Crown does not

have fiduciary obligations to Indigenous peoples. Instead, the province would balance the public interest with a new statutory concept of Aboriginal Title. Provincial legislation would lower the honour of the Crown's obligation from a fiduciary standard to an administrative standard. The result will be significantly less protection of Aboriginal Title.

115. The Concepts Paper recommends the option of "bare bones" legislation. Coincidently, this is the term used by the provincial and federal governments during litigation. In litigation, the province will recognize "bare bones rights" and then move to the argument of the infringement of rights and its justification based on valid legislative objectives such as the implementation of the New Relationship. While the provincial legislation might include "bare bones" recognition of Aboriginal Title, the province can use it to justify infringements by the provincial Crown.

116. The Concepts Paper argues that there is an opportunity to compel provincial recognition, accommodation and reconciliation of Aboriginal Title and all its essential elements through provincial legislation. Under provincial legislation, the province could interpret the legislation according to their view of the duty to consult and accommodate. This means that provincial legislation would codify the province's current consultation and accommodation guidelines. These guidelines remain deeply rooted in the claim that the province has exclusive jurisdiction, final decision-making authority, and ownership of all lands in the province.

117. The proposal for provincial "bare bones legislation" remains extremely vague but keeps referring to the implementation of Aboriginal Title. A legislated and limited form of Aboriginal Title would be hollow and meaningless. Legislated recognition would amount to vague policy commitments for shared-decision making and revenue-sharing through future regulations with imposed template agreements. This is reminiscent of the imposed template for Forest and Range Opportunity Agreements and the Yukon Umbrella Agreement. Support for the legislation requires recognition of the Minister's statutory decision-making authority and the Minister's discretion over the amount allocated for revenue sharing for resource extraction. This blanket and empty recognition poses a real risk that the provincial government will argue that Aboriginal Title was fully accommodated through the New Relationship Implementation Act, thereby precluding us from exercising and protecting Aboriginal Title through direct action, negotiation, and litigation.

118. The rhetoric of shared decision-making and revenue sharing is still based on the same policy of denial of Indigenous rights. Shared decision-making will set-up and regulate two-way administrative processes that will centre on access to our lands and resources. This model would amount to an advisory board making recommendations for the statutory decision-maker. The final decision and authority will remain with provincial ministers. Shared decision-making serves the purposes of the province seeking administrative streamlining and convenience. In this model of shared decision-making, Indigenous laws concerning environmental stewardship and sustainability will be over-shadowed by economic imperatives.

119. There is no economic analysis of revenue and benefit sharing models. We know that the province is offering a small percentage of royalties which may be changed annually by provincial ministries through regulation. Instead, we need economic empowerment through forms of ownership in infrastructure and development projects. And, we need an economic analysis of Indigenous economies and the macro-economic component of Aboriginal title to ensure real economic empowerment.

120. The proposed dispute settlement mechanisms would help ensure "certainty" for the province about overlap issues in an administrative tribunal. Addressing overlap is an issue to be decided under Indigenous laws and protocols between Indigenous nations.

121. The proposed provincial legislation would be squarely under the control of the provincial legislature, the Premier and the responsible Minister. If the legislative drafting process continues and a bill was to be introduced in the provincial legislature, Indigenous Peoples would have no control over the outcomes which will be subject to a majority vote in the provincial legislature. Any future amendments could be unilaterally introduced by the province in the provincial legislature.

122. In Ontario, Indigenous Peoples are faced with the revision of the provincial Mining Act and the Far North Act which set out provincial objectives to secure access to Indigenous territories in the northern Ontario. In the past, these territories were under a legislated development moratorium. However, revisions of the Ontario mining act were announced after Indigenous Peoples like *Kitchenuhmaykoosib Inninuwug* blocked mining companies from accessing their territories. Their leaders were incarcerated as a result. Ontario Aboriginal organizations were invited to participate in the process to revise the provincial mining act and to participate in a forum for negotiations between Ontario and northern Aboriginal organizations called the Northern Table.

123. Before the Ontario mining legislation was tabled, the northern Aboriginal organizations' lawyers and executives were invited "under the tent" to confidentially review the proposed legislation. One advisor commented that: "If we had shed a tear for every one of our proposals that was ignored, the tent would have been full of tears." The legislation has passed first reading and the organizations are now struggling to do damage control and make changes to the bill. This is an example of the risk in participating in provincial law-making processes because it excludes Indigenous Peoples from decision-making and entrench outcomes that favour corporate interests.

124. Provincial legislation will pave the way to unprecedented and unsustainable development of our lands and resources. The problem is that the provincial government has a vested interest in stalling and delaying reconciliation so that lands and resources claimed by Indigenous Peoples for their continued cultural and economic survival can continue to be developed without meaningfully addressing Aboriginal Title and rights. The province will rely on provincial statutes for its authority to make decisions about Indigenous lands and resources.

125. Enshrining lower standards in provincial legislation will limit Indigenous rights. Once the bar has been lowered, it will be difficult to secure full recognition of Indigenous rights. The provincial government may lower the bar again by unilaterally amending the legislation.

126. The legacy that our ancestors left us is that they never ceded, surrendered, altered or limited our inherent rights. Their declarations are as valid today as they were 100 years ago. We do not want to preclude our children from securing further recognition of our inherent rights and jurisdiction. And, we do not believe that we have reached a "high water mark" in the courts. The land is our future.

VII. FNLC PROCESS BREAK-DOWN

A. How did the FNLC get it SO WRONG?

127. In our view, the First Nations Leadership Council (FNLC) moved from being a political alliance involved in "political level discussions" through "leadership meetings" to interfering with our self-determination of Indigenous Peoples. The FNLC arose out of the Leadership Accord, dated March 17, 2005, between the UBCIC, FN Summit and the BC AFN. Coincidentally, this was just before the announcement of the New Relationship vision in May 2005. The Leadership Accord established a political process for the political executives of the three provincial organizations to work cooperatively together to advance the interests of their members based on their internal mandates.

128. According to the Leadership Accord (2005), the following is a summary of the respective mandates of these organizations:
    a. The [First Nations] Summit represents those First Nations participating in or supportive of the treaty negotiation process in British Columbia and provides a forum for those First Nations to address issues related to treaty negotiations as well as other issues of common concern.
    b. The UBCIC is an organization of First Nations … dedicated to promoting and supporting the efforts of First Nations to affirm and defend Aboriginal Title and Rights. It is the goal of UBCIC to help First Nations exercise their inherent rights by holding the Crown to its obligation to honour and respect those rights.
    c. The BCAFN works to advance the rights and interests of First Nations people …, restore and enhance the relationship among First Nations people in British Columbia, the Crown and the people of Canada … and works in coalition with other organizations that advance the rights and interests of Indigenous Peoples.

129. The internal mandates of these organizations do not contemplate interfering with the inherent power and rights of Indigenous Peoples or with the representation of Aboriginal Title and rights. But, the Discussion Paper on the Proposed Recognition and Reconciliation Act initiative purported to give the FNLC the ability to represent us in respect of our Aboriginal Title and Rights. This would have altered and changed the scope of our rights through unilateral provincial legislation and regulation.

B. What is new about the relationship?

130. The Premier and the FNLC agreed to a *New Relationship* vision in March of 2005. The New Relationship vision states that:

> to establish processes and institutions for shared decision making about the land and resources and for revenue and benefit sharing, recognizing, as has been determined in court decisions, that the **right to Aboriginal Title "in its full form"**, including the inherent right for the community to make decisions as to the use of the land and therefore the right to have a political structure for making those decisions, is constitutionally guaranteed by section 35. These inherent rights flow from First Nations' historical and sacred relationship with their territories. [emphasis added]

131. The New Relationship vision did not amount to a renunciation of the provincial DENIAL policy but access to and development of our traditional territories continues unabated without our prior informed consent and without substantive material benefit to Aboriginal peoples (all social indicators remain the same).

132. FNLC wanted to create a Council of Indigenous Nations who would have a mandate agreed to by the FNLC and the Provincial Executive Council and implemented by regulation (page 10 of the Discussion Paper). The Council of Indigenous Nations would be comprised of leaders of reconstituted Indigenous Nations and initially may include representatives of the members' political organizations of the FNLC.

C. How has the Recognition Working Group process adversely affected us?

133. The Province of British Columbia has relied upon the closed-door, secret negotiations in the Recognition Working Group (RWG) and its development of the proposed recognition and reconciliation legislation to pretend they fulfilled, in part, their duties to act honourably through meaningful consultation and accommodation with respect to statutory decisions which impact and infringe Aboriginal Title and rights.

134. The practical effect of the FNLC advancing the recognition of Aboriginal Title and rights through the RWG has been the province's justification, in some instances, for claiming they are fulfilling their constitutional obligations to consult and accommodate. The FNLC's participation in the RWG has adversely affected and interfered with the inherent jurisdiction of Indigenous Peoples by allowing the Provincial Crown to avoid their constitutional duties and to justify on-the-ground impacts and infringements of Aboriginal Title and rights in some cases.

135. The FNLC must ensure that they do not affect or interfere with Indigenous Peoples' inherent power and rights in advocating the advancement of Aboriginal Title and rights recognition. The FNLC and its participation in the RWG must be withdrawn.

D. Is the Discussion Paper the Final Solution?

136. The FNLC lawyers have acknowledged that: “First Nations have already experienced five years during which the New Relationship vision has failed to lead to real change on the ground.”

137. The FNLC and the Province *JOINTLY* negotiated and agreed to the principles and concepts in the “Discussion Paper on Instructions for Implementing the New Relationship”, which is the “proposed framework for the provincial recognition and reconciliation legislation” (in Recital J of the First Nations Summit Resolution #0309.04). Of grave concern, is the fact that the FNLC tried to impose the proposed Recognition and Reconciliation Act on behalf of the Province so that it would “be introduced in the 2009 Spring sitting of the Legislature” (in Recital K of the First Nations Summit Resolution #0309.04). This attitude shows a complete lack of due process and respect for the members who they claim to be working in the best interest of. Based on political resolutions, the FNLC cannot circumvent the Crown’s legal duties which require prior informed consent of Indigenous Peoples and nations with respect to Aboriginal Title and rights.

138. The FNLC disregarded the Declaration of the Sovereign Indigenous Nations of BC adopted on November 2, 2007 after meeting to discuss the *Tsilhqot’in Nation* decision which provided that Aboriginal Title was to be addressed by each Indigenous nation and reads in part:

> As the original Peoples to this land, we declare: We will only negotiate on the basis of a full and complete recognition of the existence of our title and rights throughout our entire lands, waters, territories and resources.
> We commit to: Recognize and respect each other’s autonomy and support each other in exercising our respective title, rights and jurisdiction in keeping with our continued interdependency.

139. At the 2008 Annual General Assembly of the BC AFN, the Chiefs passed Resolution No. 22 (seconded by Doug Kelly) on the subject of:

> Crown Consultation, Accommodation and Free, Prior and Informed Consent:
> The Chiefs-in-Assembly hereby limit the role of AFN to the procedural aspects of any consultations which may include facilitation and coordination, but does not include decision-making which remains with the rights holders: First Nations.

E. Is the Recognition and Reconciliation Act cloaked extinguishment?

140. The FNLC had no legal authority to negotiate or draft the Recognition and Reconciliation Act that had the potential of legislatively extinguishing or, at the least, altering and limiting the scope of the Aboriginal Title of all Indigenous Peoples whose territories are located within BC. Although various resolutions and declarations are explicit that we as Indigenous Peoples are self-determining, the FNLC took it upon themselves to negotiate blanket arrangements with the province that would have adversely affected Aboriginal Title.

F. What effect did the UBCIC rejection of the FNLC process have?

141. A proposed resolution to support the Recognition and Reconciliation Act initiative was rejected by the Chiefs at the UBCIC Chiefs Council meeting in June and the following was later explained in an Open Letter to Premier from UBCIC, dated July 30, 2009:
A resolution, designed to improve the process for First Nations' review and debate of any proposed legislation was defeated, based on a debate which was in opposition to the Discussion Paper initiative. The Chiefs stated that the process which led to the Discussion Paper and which was proposed for legislative drafting was not sufficiently inclusive.

142. Based upon this rejection, UBCIC declared in an Open Letter to Premier from UBCIC, dated July 30, 2009:
> The UBCIC has now made clear to our members, and we wish to make it clear to you and to your Government, that the UBCIC has withdrawn from the legislative initiative based on the Discussion Paper.

143. The UBCIC Executive unilaterally decided to become observers to the FNLC process and rejected the proposed legislation in the Discussion Paper, UBCIC's legal counsel continued to take instructions from the FNLC and to lead discussion on the implementation of reconciliation.

144. At least one member of the FNLC admitted that the proposed legislation was "ill-conceived and he shouldn't have supported it".

G. Regional Forums & the Collapse of Discussion Paper

145. Despite the rejection of the Discussion Paper which proposed to achieve reconciliation through unilateral provincial legislation and regulation, the FNLC proceeded with Regional Forums to consult with First Nations (the task of the provincial government) in respect to some components of the Discussion Paper: In particular, the First Nations Leadership Council would like your advice on:
    - Who should the BC government negotiate comprehensive agreements with?
    - What should the elements of comprehensive agreements be?
    - In particular, what provisions should be included with respect to shared-decision making and revenue and benefit sharing?
    - What should be the role of an Indigenous nations commission?

146. The FNLC was not seeking input or perspectives into the scope of recognition of Aboriginal Title but assumed that Indigenous Peoples accepted Aboriginal Title was non-exclusive. It was clear from the Regional Forums undertaken by the FNLC that the Discussion Paper was wholly rejected by Indigenous Peoples, as set out in the UBCIC Communiqué, dated July 14, 2009:
> We have heard that while the concept of recognition is supported, which would lead to systemic changes in the Province's conduct from denial of Aboriginal Title to recognition of Aboriginal Title, other elements of the Discussion Paper have

> either been totally rejected or require reconsideration. We have also heard that a more collaborative and inclusive process is needed.

147. The FNLC's idea of a more collaborative and inclusive process was to consult with some lawyers who work for First Nations and to develop the Concepts Paper. The starting point for input is Indigenous people; otherwise, we are not self determining. Reconciliation must come from an Indigenous perspective to be successful.

H. Is the Concepts Paper Switch and Bait?

148. It is our view that the architects and negotiators of the Discussion Paper are trying to distance themselves from the proposed Recognition and Reconciliation Act and to blame the Province. Grand Chief Edward John's commentary in the Globe and Mail (S3, August 14, 2009) stated that: the [Discussion] paper stirred deep suspicions among nations of the Crown's motive.

149. The FNLC needs to take responsibility for the inability to implement the New Relationship vision and the rejection of the Discussion Paper. Instead of negotiating a mutually agreeable framework or plan, the FNLC agreed in principal to implementation through unilateral provincial legislation. Indigenous people have no confidence in the FNLC or their process of secret, closed door negotiations. And, Indigenous people are calling for an inquiry into the failed process.

150. The Concepts Paper states that:

> As a result, the FNLC set aside the *Discussion Paper* in June 2009 and asked the lawyers' caucus to prepare this Concepts Paper for the August 2009 All Chiefs' Assembly.

151. When the FNLC realized that there was no support for the Discussion Paper, the dialogue on provincial legislation should have stopped. Instead, the FNLC unilaterally called for an unsolicited legal opinion from the lawyers' caucus. The Concepts Paper is not a legal opinion, but directions and recommendations for political decisions. In order to be self-determining and to speak for ourselves, the starting point for options and recommendations must be from Indigenous Peoples and Nations.

152. It is inconceivable that the FNLC provided direction to form a lawyers' caucus without Indigenous Peoples participation, input or instructions and without information concerning the background correspondence material from the Province. In fact, the lawyers' caucus was not provided a summary report, notes, or transcripts of the Regional Forums.

153. The Concepts Paper presented by the lawyers' caucus recommends options, a number of which were contained in the Discussion Paper which was jointly developed by the FNLC and the Province. The Discussion Paper and its concepts were rejected by Indigenous Peoples from across British Columbia in Regional Sessions held by the FNLC. The FNLC compiled feedback from these meetings into a Sessions Report that does not reflect the over-whelming opposition to provincial legislation.

154. The Concepts Paper repeats the focus on provincial legislation in the Discussion Paper. The main tool proposed in the Concepts Paper is still provincial legislation (e.g. New Relationship Implementation Act). Alternative or fall back instruments to implement the New Relationship would be a proclamation, policies, and political accords which are the lowest level in the pyramid of laws. The lawyer's caucus could not reach consensus on the extent of certain risks, the dialogue was dropped without further analysis.

155. The lawyers' caucus has not provided a legal opinion without a consensus on the extent of the risks but the Concepts Paper is merely political advice without Indigenous perspectives. Indigenous leaders must stop their dependence on lawyers as it is Indigenous Peoples who must speak for themselves and determine their own futures. This is not only an inherent right but a responsibility of Indigenous leaders.

I. Why does the FNLC not recognize FREE, PRIOR and INFORMED CONSENT?

156. The FNLC process to review and debate the Discussion Paper and to implement recognition and reconciliation through provincial legislation failed to meet the standard of "free, prior and informed consent" as set out in the *United Nations Declaration on the Rights of Indigenous Peoples at* Article 19. The FNLC, in receiving funds from the Province to consult with First Nations, was acting as an agent for the provincial crown in respect to the proposed Recognition and Reconciliation Act. While we are familiar with the government carrying out deficient consultation processes, the FNLC should have a higher standard. Given the funds flowing to pay for honorariums, travel, legal and consultant fees, it was the FNLC executives and their legal advisor who have benefited from the Recognition Working Group (RWG) process while there have been no material benefits to Indigenous Peoples. Questions about the RWG remain unanswered including mandates, financial accountability, existence of draft legislation, disclosure of documents, negotiation positions, and appointment of negotiators. An inquiry into the RWG is required to answer these questions.

157. Although Chiefs were asked to support the FNLC and RWG, they did not understand that this fast-tracked process planned the enactment of Recognition and Reconciliation Act prior to the provincial election in May 2009. Since over-whelming opposition was voiced by Indigenous Peoples at Regional Sessions, the FNLC solicited the Concepts Paper from some lawyers who work for Indigenous Peoples.

158. In the Concepts Paper, the lawyer's caucus recommends to develop "inclusive and transparent processes for all stages of implementing any mandate coming out of this initiative". The FNLC has not set up any transparent processes in the past and we have no confidence in the FNLC to set up an inclusive and transparent process. We recommend that Indigenous Peoples make it very clear that they have no mandate or authority to continue with any initiative.

VIII. VISIONING

A. Objectives

160. The proposed objectives for full recognition of our inherent rights are:

- maintaining exclusive indigenous jurisdiction over our traditional territories given that Aboriginal title results in the jurisdictional ouster for the province of British Columbia;
- holding Canada to the universal standards for the recognition of Indigenous rights set out in the UN Declaration on the Rights of Indigenous Peoples;
- reforming the Canadian constitution to recognize Indigenous jurisdiction on equal footing with Canada and create a pluri-national state;
- reforming federal government policy including replacement of the federal Comprehensive Claims Policy that aims at the extinguishment and modification of Aboriginal Title; and
- recognizing Indigenous economies and the macro-economic component of Aboriginal title to ensure real economic empowerment.

B. Starting Point

161. The proposed starting point for achieving these objectives is:

- Indigenous peoples and nations take back their power from provincial political organizations including the FNLC and its member organizations.
- Recognition of the diversity of Indigenous Peoples instead of one-size-fits-all templates.
- Recognition of Indigenous laws and legal systems as a form of legal pluralism instead of imposed provincial legislation.
- Bottom-up approach where the direction and mandate comes from Indigenous peoples and nations processes as the proper Aboriginal title and rights holders.

C. Interim Options

162. Immediate actions and options for consideration include:

- conducting an independent review or inquiry into the actions taken by the FNLC executives and advisors from January 2005 until September 2009;
- disbanding the FNLC and revoking the Political Accord, 2005;
- terminating the New Relationship, 2005;
- withdrawing from ongoing Recognition Working Group Process and any other technical committees and meetings with the Province of British Columbia;
- holding the federal and provincial governments to standards set in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) including free, prior informed consent before adopting and implementing legislative or administrative measures that may effect us;

- convening an Indigenous Nations Assembly to discuss new alternatives and new political alliances and protocols, based on principles articulated by our ancestors in Indigenous alliances, declarations, and treaties; and
- challenging provincial jurisdiction and any provincial legislation that affects Aboriginal Title and rights as unconstitutional.

D. Long-Term Options - Recognition & Reconciliation Principles

163. Recognition Principles include:

- respect for the inherent power and rights of Indigenous Peoples including political and land systems of Indigenous Peoples;
- recognition of the Indigenous right to self determination and to speak for ourselves;
- recognition of Indigenous laws and legal systems as a form of legal pluralism;
- renewal of Indigenous Nations Treaties and Alliances and use of Indigenous laws for dispute resolution;
- recognition of Indigenous Peoples exercise of political status on two levels:
    - equal powers and rights with all other peoples globally (international status independent of Canada); and
    - equal footing with the state in Canada (constitutional reform);
- implementation of UNDRIP standards including free, prior informed consent of Indigenous Peoples;
- amendment of the Canadian constitution to reform the distribution of powers between the federal, provincial and Indigenous Peoples and Nations;
- ongoing co-existence of both Canadian and Indigenous laws; and
- amendment of the Comprehensive Claims Policy to change the extinguishment model to the co-existence approach.

164. Reconciliation Principles include:

- a respectful process and mutually agreeable framework/plan for reconciliation;
- a holistic approach including individual, social and legal reconciliation: Individual reconciliation aimed at restoring human dignity; social reconciliation aimed at equality between Canadians and Indigenous Peoples; and legal reconciliation aimed at an on-going and evolving process that creates constitutional space for legal pluralism and the co-existence of Aboriginal and Crown jurisdictions, titles and laws; and
- empowerment of Indigenous Peoples and Nations and transformation of Relationships with Canada and BC.