Joint Submission to the United Nations Human Rights Council in regard to the Universal Periodic Review Concerning Canada in February 2009

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Submitted by the International Indian Treaty Council (IITC), NGO with ECOSOC Special Consultative Status, and IITC affiliate the Confederacy of Treaty No. 6 First Nations representing 18 First Nations in Alberta Canada

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Basis of Review: International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESC); International Convention on the Elimination of all forms of Racial Discrimination (ICERD); and the Convention on the Rights of the Child (CRC).

1. The Confederacy of Treaty 6 First Nations (CT6FN) and the International Indian Treaty Council (IITC) bring to the attention of the Human Rights Council's UPR Mechanism the following critical human rights issues of great concern to our organizations and the Indigenous Peoples they represent. They demonstrate the government of Canada's lack of compliance with a range of international human rights obligations, continued disregard for the recommendations of Treaty monitoring bodies, as well as violations of the human rights and fundamental freedoms of Indigenous Peoples both in and outside of Canada. We urge the UPR process established by the Council to carefully consider, and to request that Canada provide a response to the following concerns:

2. The Human Rights Committee (HRC) has established that the Indigenous Peoples of Canada have the right of Self Determination under Article 1 of the International Covenant on Civil and Political Rights (ICCCPR). In its 1999 recommendations to Canada the Committee emphasized the importance of the 1996 Canadian Royal Commission on Aboriginal Peoples (RCAP) findings in this regard: "With reference to the conclusion by RCAP that without a greater share of lands and resources institutions of aboriginal self-government will fail, the Committee emphasizes that the right to self-determination requires, *inter alia*, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence (Article 1, para. 2). The Committee recommends that decisive and urgent action be taken towards the full implementation of the RCAP recommendations on land and resource allocation. The Committee also recommends that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the Covenant."[1]

3. In 2005 the HRC's Conclusions and Recommendations on Canada again linked Article 1 in Common with Indigenous Peoples' rights to their lands and territories. The HRC Council mentioned in particular the practice of extinguishing aboriginal title through government concessions for logging and the extraction of oil and gas on Indigenous territories as violations of Article 1 and 27 of the ICCPR, specifically referring to the rights of the Lubicon Lake Band.[2]

4. Identical concerns over Canada's practice resulting in the extinguishment of Aboriginal Title were raised by the CERD Committee in 2007 in its Concluding Observations regarding Canada, UN Doc. CERD/C/CAN/CO/18, 25 May 2007, paragraph 27), noting that the Canadian Supreme Court had also recognized the inherent Aboriginal Title of Indigenous Peoples to their lands and territories and ordered good faith negotiations between Indigenous Peoples and the Canadian government in order to resolve disputes. It also repeated its recommendation that Canada fully implement the 1996 RCAP recommendations "without delay" (paragraphs 21, 22).

5. Canada and its Provinces have persisted in ignoring these legally binding obligations affirmed by its own Constitution and in its legally binding Treaties with Indigenous Nations, and have continued to license logging, mineral and oil development on Indigenous territories, violating their inherent and Treaty-recognized rights to Aboriginal Title.

6. A glaring abuse of Indigenous Peoples rights is taking place through the Canada's and the Province of Alberta's support for and licensing of corporations to carry out oil extraction from "tar sands" in Northern Alberta. Tar sands extraction currently cover 4.3 million hectares (10.6 million acres). Leases

[1] Concluding Observations of the Human Rights Committee: Canada, CCPR/C/79/Add.105, para. 8 (1999).
[2] Concluding Observations of the Human Rights Committee: Canada, 02/11/2005: paragraphs 8 and 9. "**The State party should …consult with the Band before granting licenses for economic exploitation of the disputed land, and ensure that in no case such exploitation jeopardizes the rights recognized under the Covenant".**

sold by Alberta and Saskatchewan cover 3000 square miles, an area as large as Florida. Current processing of 2.7 million barrels of oil per day is estimated to increase to 6 million barrels by 2030.

7. Extracting the oil from sand and clay is a highly industrialized process which requires strip mining large areas, resulting in destruction of entire ecosystems. It requires large amounts of fresh water and produces large amounts of toxic wastes. By 2010, the industry is projected to generate 8 billion tons of waste sand and 1 billion cubic meters of waste water. Tar sands mining are a major source of greenhouse gas emissions and a major contributor to climate change and global warming.

8. Some of the toxic-tailing ponds are located next to the Athabasca River, a major tributary in northern Alberta. In 2007, Alberta approved withdrawal of 119.5 billion gallons of water for tar sands extraction. An estimated 82% of this water comes from the Athabasca River, the source of life and subsistence for the Mikisew Cree First Nation, the Athabasca Chipewyan First Nation at Fort Chipewyan, the Fort McMurray First Nation, the Fort McKay First Nation, and to the south, the Chipewyan Prairie First Nation, and many downstream First Nations**.**

9. The results are devastating for Indigenous Peoples, their health and their environment. A recent health study commissioned by the Nunee Health Board Society of Fort Chipewyan has empirical evidence that the governments of Alberta and Canada are ignoring the toxic contamination of downstream Indigenous communities and their resultant deteriorating health. Peoples most at risk are those whose means of subsistence is based on their lands and water. Dene, Cree and Métis communities maintain a subsistence diet of fish and wild game. The Fort Chipewyan community has an 80% subsistence diet. Its residents identify tar sands mining and water polluted by its toxins as the cause of the alarming increases in rates of death and chronic illnesses including previously unknown cancers.

10. Article 1 in Common of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESC) states that “in no case may a People be deprived of their means of subsistence”. By allowing the tar sand development and promoting their expansion, Canada is in violation of its obligations under Article 1 of the Covenants.

11. In this situation, Canada has also failed to meet its obligations as a State party to the CRC to assure the right to life and the survival of these Indigenous children (Art. 6) or to consider primarily the best interest of Indigenous Children (Art. 3), it has failed to prevent violent injury or abuse of Indigenous children (Art. 19); has failed in its obligation to assure the enjoyment by Indigenous children of the highest attainable standard of health, its obligation to diminish infant and child mortality, and has failed to provide clean drinking water “taking into taking into consideration the dangers and risks of environmental pollution (Art. 34, (a) and (c). It has also failed in its obligation to ensure that Indigenous children in impacted communities “enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language” (Art. 30). Similar provisions of the ICESC are violated.

12. As a State Party to the ICERD, Canada is obligated to put into practice the Committee on the Elimination of Racial Discrimination’s General Recommendation XXIII which calls up State Parties to “ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent (Para. 4 d, August 18th, 1997).

13. The rights of Indigenous first Nations of this region to Free Prior and Informed Consent regarding development matters affecting their homelands is underscored by the legally binding provisions of Treaty 6 and other Treaties with Indigenous Nations to which Canada is obligated.

14. The Right to Free Prior and Informed Consent is customary international law to which Canada is accountable. This is affirmed by the Programme of Action for the 2nd International Decade (A.60/270), which states that one of its five goals is "Promoting full and effective participation of indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights or any other aspect of their lives, considering the principle of free, prior and informed consent."

15. Canada's failure to ensure the Right to Free, Prior and Informed Consent by Indigenous Peoples whose lives are being irreparably harmed by this activity is of particular concern. The expanding tar sands development has taken place without Right to Free Prior Informed Consent of many of the Indigenous Peoples whose health, ecosystems, subsistence and way of life are being impacted.

16. In their joint Shadow Report responding to "The Report of the government of Canada to the Committee on the Elimination of Racial Discrimination (CERD/C/CAN/18) at its 70th session 19 February – 9 March, 2007", IITC and CT6FN reported that as a result of tar sands development "***Vast areas of traditional subsistence hunting and fishing territories have been desecrated, contaminated and destroyed, and more are being threatened".*** The report also noted that in 2007 Grand Chief Herb Norwegian of the Dehcho First Nation called for a moratorium on tar sands extraction.

17. On February 22, 2008 in Calgary, Alberta, Canada a resolution was also passed by the Chiefs of Alberta representing 47 First Nations, calling for a moratorium on new approvals for tar sands expansion. It also called upon Canada to provide remediation for the damage to the environment and human health and to halt all subsidies and support of the tar sands.

18. There are many similar examples of Canada's failure to obtain the Free Prior and Informed Consent of Indigenous Peoples regarding mineral extraction on their homelands. On March 17th 2008 the Provincial government of Ontario sentenced Chief and Council of the Kitchenuhmaykoosib Inninuwug Nation (hereinafter "KI") as a result of civil proceedings, on a motion brought by a mineral exploration company, Platinex, which had received licenses from the Canadian and Ontario Provincial Governments to explore on KI Territory for platinum, uranium and other minerals. There had been no consultation with KI. In fact, Canada and the Ontario Provincial governmental authorities have unilaterally approved 221 contiguous mining claims and 81 mining leases in 4,889 hectares in KI territory without KI's Free, Prior and Informed consent.

19. Upon request of the KI Nation, in May 2008 IITC filed an urgent action with the Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples and the Secretary General's Special Representative on the Situation of for Human Rights Defenders. The KI Nation leaders were released after over 60 days in jail. Charges and fines have since been dropped against the "defendants". However the Canadian Government and Ontario have shown no indication they will now respect the Free Prior Informed Consent of the KI Nation regarding development activities on their homeland. As recently as August 2008, KI members discovered that Ontario had issued a permit to a scientific team to conduct studies on the KI territory, again without their consent or even their knowledge.

20. To encourage mining and exploration, Ontario's *Mining Act* is based on a "free entry" system, which means that all Crown lands, including those subject to Aboriginal title claims, are open for staking, exploration and mining without any consultation or permitting required. This Act has the effect of depriving First Nations of their aboriginal title, threatening irreparable harm to their means of subsistence which depends upon the pristine condition of their lakes and waters, their Treaty rights and their rights and access to their ancestral lands and territories and a range of other rights.

21. The KI Nation has stated that they will continue to assert their inherent right to protect their health, homeland and territory and to assert their inherent right to self determination, their Treaty Rights and Free Prior Informed Consent in this regard**.** KI and its Peoples call upon Canada to do away with the free entry system and to implement the right of free prior and informed consent in relation to matters affecting Indigenous Territory. They also call upon Canada to uphold its obligations under Treaty No. 9 as well as International Conventions and Covenants, the UN Declaration on the Rights of Indigenous Peoples and its own Constitution in this regard. IITC and CT6FN respectfully request the UPR Mechanism to request Canada's explanation as to their actions and intentions in regards to this ongoing situation, which is an example of so many similar situations throughout Canada.

22. Of direct relevance to this and a range of other cases is the CERD Committee's 2007 recommendations to Canada which also voiced concern that the Canadian government's practice of requiring litigation in order to prove aboriginal title was, "… at a disproportionate cost for the Aboriginal communities concerned due to the strongly adversarial positions taken by the federal and provincial governments (art. 5 (d)(v))." (Concluding observations of the Committee on the Elimination of Racial Discrimination, CANADA, UN Doc. CERD/C/CAN/CO/18, 25 May 2007).

23. The IITC and Treaty 6 reiterate the concern expressed in their report to the CERD in 2007 that the Principle of Free Prior and Informed Consent is not only being violated inside Canada by Canadian-licensed mining companies: "***We are also extremely concerned regarding the failure to implement free prior informed consent by Canadian mining companies operating in other countries, on or near the traditional territories of Indigenous Peoples, posing dire threats to their health and means of subsistence. The words and spirit of the CERD is founded on the principle of non-discrimination. It does not stipulate that the state parties for the CERD are not required to uphold their obligations if the impacts fall on Peoples whose homes are outside the country."***

24. In fact, Canadian mining companies are continuing to pursue permits for mining mega-projects threatening the lands, waters and means of subsistence of the Indigenous Peoples in other counties as well, for instance in Alaska (United States) and Guatemala, as was also documented in the IITC and CT6FN 2007 submission to the CERD . Resolutions and results of referendums by tribal governments and local communities were included in the Shadow Report, all calling for an immediate halt to mining operations and plans by Canadian mining companies in their homelands due to threats of toxic contamination of lands and waters and destruction of subsistence resources.

25. The CERD's Concluding Observations regarding CANADA in 2007 stated that "The Committee notes with concern the reports of adverse effects of economic activities connected with the exploitation of natural resources in countries outside Canada by transnational corporations registered in Canada on the right to land, health, living environment and the way of life of indigenous peoples living in these regions …and **encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada. In**

particular, the Committee recommends to the State party that it explore ways to hold transnational corporations registered in Canada accountable."

27. Unfortunately Canada itself has not complied with its obligation to implement this very important recommendation. Reports recently received by our organizations from impacted communities in both Alaska and Guatemala attested that plans for mining operations by Canadian companies have in fact continued, despite the expressed wishes of the affected Peoples.

28. The IITC and CT6FN join with Indigenous Peoples around the world with regards to the position of Canada regarding the UN Declaration for the Rights of Indigenous Peoples. This not only includes joining a tiny monitory of states (2 and 4 respectively in all) to vote against the Declaration at the Human Rights Council (June 2006) and the General Assembly (September 2007). It also includes taking an active role in attempting to undermine its use in other processes and international standard setting bodies. IITC expresses strong support for the submission of the Grand Council of the Crees (Eeyou Istchee) *et al* which provides detailed examples of Canada's actions in this regard.

29. The IITC and CT6FN affirm the UN General Assembly's call as stated in resolution A/RES/60/251 of 15 March 2006 that all members elected to the Human Rights Council "shall uphold the highest standards in the promotion and protection of human rights" and "shall fully cooperate with the Council". In its rejection of the UN Declaration on the Rights of Indigenous Peoples and its principles of rights and equality for Indigenous Peoples, the Canadian government continues to demonstrate that it is not willing to uphold this commitment in relation to the Indigenous Peoples of Canada or around the world. The Canadian government chose not comply with the CERD's recommendation in 2007 that it "**support the immediate adoption of the United Nations Declaration on the Rights of Indigenous Peoples".**

30. The Nations of Treaty No. 6 Territory in Western Canada continue to be dismayed and disappointed at the attitude of the Government of Canada, especially the ruling Conservative Party of Canada, with regard to the lack of respect that this government has toward the Nation to Nation Treaty Relationship that they have inherited from the British Crown. Not only are they downplaying the role of that relationship. They are also reneging on their Sacred Trust responsibility that was transferred to them when they repatriated the Canadian Constitution from Great Britain in 1982. It has always been the understanding of the Nations of Treaty No. 6 and the other Numbered Treaties that the Treaties are international in nature and that they are the supreme law of the land as one of the foundations of what is now known as Canada. This belief was validated by Special Rapporteur, Senor Miguel Alfonso Martinez in his historic UN Study on Treaties, Agreements and other Constructive Arrangements between Indigenous Peoples and States and has been further supported by the UN Declaration on the Rights of Indigenous Peoples which was ratified by the UN General Assembly on September 13, 2007.

31. Finally, IITC and CT6FN recommend that the UPR mechanism follow the example set by the CERD in its recommendations to the United States earlier this year and utilize the UN Declaration on the Rights of Indigenous Peoples as a guideline to assess and review State's compliance with the rights of Indigenous Peoples in their countries, beginning with Canada. Canada also needs to be held accountable by the UPR Process for its failures to implement the recommendations of UN Treaty Monitoring bodies in a range of critical matters of profound consequence to the rights and survival of Indigenous Peoples both in and outside of Canada including those cited in this submission.

Thank you.