

LAND CLAIMS AGREEMENTS COALITION



Council of Yukon First Nations
Grand Council of the Crees (Eeyou Istchee)
Gwich'in Tribal Council
Inuvialuit Regional Corporation
Kwanlin Dun First Nation

Maa-nulth First Nations
Makivik Corporation
Naskapi Nation of Kawawachikamach
Nisga'a Nation
Nunatsiavut Government

Nunavut Tunngavik Incorporated
The Sahtu Secretariat Incorporated
Tlicho Government
Tsawwassen First Nation
Vuntut Gwitchin

c/o The Consilium Consulting Group, 488 Gladstone Ave., Ottawa, ON, K1R 5N8
Tel: (613) 237-3613 Fax: (613) 237-3845 www.landclaimscoalition.ca

SECOND UNIVERSAL PERIODIC REVIEW OF CANADA Submission of the Land Claims Agreements Coalition (LCAC)

United Nations Human Rights Council
October 9, 2012

Description of the Land Claims Agreements Coalition:

Established in 2003, the Land Claims Agreements Coalition consists of all Aboriginal signatories to modern treaties (comprehensive land claims and self-government agreements) entered into in Canada since the first modern treaty of 1975. Since 1975, 24 modern treaties have been negotiated and signed. These modern treaties apply to Aboriginal traditional lands encompassing more than half of the lands and waters of Canada and the immense resources they contain. Coalition members work together to ensure that comprehensive land claims and associated self-government agreements are respected, honoured and fully implemented in order to meet their commitments and achieve their objectives.

Contact information:

Patti Black, Coordinator
Land Claims Agreements Coalition
c/o The Consilium Consulting Group
488 Gladstone Avenue
Ottawa Ontario Canada K1R 5N8
Tel: +1-613-237-3613
Fax: +1-613-237-3845
Email: black@consilium.ca

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A. Summary

1. This submission is respectfully made by the Land Claims Agreements Coalition concerning the ongoing failure of the Government of Canada to fully, meaningfully and universally implement the modern treaties between it and the members of the Coalition, who are the indigenous signatories of all of the 24 modern treaties in Canada since 1975.

2. The Coalition brought this issue to the attention of the Human Rights Council on the occasion of Canada's first Universal Period Review, in 2009. Regrettably, the Coalition must now report that there has been little or no meaningful progress made in relation to this pressing problem in the intervening years. Indeed, the Government of Canada's *de facto* policy of non-implementation has become more entrenched, and the important promises set out in modern treaties continue to be disregarded and denied.

3. There are persistent gross disparities between the life expectancy, socio-economic conditions, health and well-being of indigenous people and the general population of Canada. Overall, indigenous peoples in Canada endure conditions of social and economic underdevelopment akin to those of much less-developed states.¹

4. Accordingly, modern treaties are entered into between indigenous peoples and the Government of Canada in the hope, indeed upon the rightful expectation and promise, that such long-overdue treaty arrangements will result in improvements in the social and economic conditions of their communities and people. To date and overall, this rightful expectation has generally not been experienced by modern treaty signatories.

5. The rights contained in modern treaties, which form the constitutional "building blocks"² of Canadian Confederation, are human rights. The Government of Canada's ongoing and systemic failure and refusal to fully implement the spirit, intent and letter of all modern land claims agreements perpetuates ongoing, significant social, economic and cultural disparities between Aboriginal peoples in Canada and the rest of the population of this G8 state. It is also wholly inconsistent with the Constitution of Canada, many judgments of the Supreme Court of Canada and other Canadian courts, and Canada's human rights obligations in international law, including the right of self-determination, the right to economic, social and cultural development and well-being, and other collective rights belonging and applying to indigenous peoples.

¹ See Martin Cooke, Francis Mitou *et al*, "Indigenous well-being in four countries: An application of the UNDP's Human Development Index to Indigenous Peoples in Australia, Canada, New Zealand, and the United States" (2007) *BMC International Health and Human Rights* 7:9 at p. 10 (<http://www.springerlink.com/content/k572650208728h75/fulltext.pdf> - accessed October 3, 2012); Martin Cooke & Eric Guimond, "Measuring Changing Human Development in First Nations Populations: Preliminary Results of the 1981-2006 Registered Indian Human Development Index" (2009) *Canadian Diversity* 7:3, 53-63; Aboriginal Affairs and Northern Development Canada, "2011-2012 Report on Plans and Priorities: Demographic Description" (<http://www.aadnc-aandc.gc.ca/eng/1315424049095/1315424155048#ft6b> - accessed October 3, 2012).

² *Gathering Strength – Canada's Aboriginal Action Plan*. (Minister of Indian Affairs and Northern Development, Ottawa, 1997) QS-6121-000-EE-A1, Catalogue No. R32-189-1997E (<http://www.ahf.ca/downloads/gathering-strength.pdf> - accessed October 3, 2012); Standing Senate Committee on Aboriginal Peoples, *Honouring the Spirit of Modern Treaties: Closing the Loopholes*, May 2008, at p. vii (<http://www.parl.gc.ca/Content/SEN/Committee/392/abor/rep/rep05may08-e.pdf> - accessed October 3, 2012).

6. The Coalition respectfully requests that the Human Rights Council adopt the following Conclusions and Recommendations, consistent with the content of the submission that follows:

The Human Rights Council:

- a. *Notes* Canada's record as a country in which overall socio-economic development and social inclusion has been positive in many important respects;
- b. *Observes* that more than any other state facing the challenge of gross disparities between segments of society (such as between indigenous peoples in general and all other Canadians), Canada has the popular good-will, the territory and resources, the governmental capacity, the foundation of existing constitutional, legal, policy and treaty frameworks, and the economic means to succeed;
- c. *Notes* that the situation of indigenous peoples in Canada remains the most pressing human rights issue facing Canadians;
- d. *Notes* with concern the absence of progress in improving the living conditions of indigenous peoples in Canada, attributable in part to the Government of Canada's failure to universally implement the spirit and intent and broad socio-economic objectives of land claims agreements with indigenous peoples in Canada;
- e. *Observes* that Canada has not adequately supported the full extent of modern treaties, and that its practice of ignoring the spirit and intent and broad objectives of these agreements is contrary to its human rights commitments and obligations;
- f. *Urges* Canada to affirm its full commitment to the universal, timely and responsible implementation of the spirit and intent, obligations and broad socio-economic objectives of land claims agreements entered into with indigenous peoples in Canada;
- g. *Further urges* Canada promptly to develop, consistent with its international human rights obligations and the rulings of the Supreme Court of Canada, a new national land claims implementation policy based on the principles of the Land Claims Agreements Coalition's "Four-Ten Declaration", in full consultation with the Coalition;
- h. *Concludes and recommends* that the fulfillment of the broad socio-economic objectives of modern land claims entered into with indigenous peoples in Canada, and associated self-government agreements, must be undertaken, not only because it is the obligation of the Government of Canada, but because it is in Canada's national and international interest to do so.

B. The Land Claims Agreements Coalition

7. Established in 2003, the Land Claims Agreements Coalition consists of all 27 Aboriginal signatories to modern treaties (comprehensive land claims and self-government agreements) entered into in Canada since the first modern treaty of 1975. A list of the modern treaties entered into by Coalition members is attached.³

³ Land Claims Agreement Coalition, Schedule of Modern Land Claims Agreements (<http://www.landclaimscoalition.ca/modern-treaties.php> – accessed October 3, 2012) [Appendix "A"].

8. The first “modern land claims agreement” between Aboriginal peoples and the Crown in right of Canada was entered into in 1975. Since then, 24 modern treaties have been negotiated and signed. These modern treaties *apply to Aboriginal traditional lands encompassing more than half of the lands and waters of Canada and the immense resources they contain.*

9. Modern treaties represent nation-to-nation and government-to-government relationships between an Aboriginal signatory and the Crown in right of Canada (represented by the Government of Canada), and in some cases the Crown in right of a province or territory (as represented by a provincial or territorial government). They are intended to further define and recognize the Aboriginal land and resource rights of Aboriginal signatories, to ensure their continuity as peoples, and to meaningfully improve their social, cultural, political and economic well-being. At the same time, these agreements are intended to provide all signatories with a mutual foundation for the beneficial and sustainable development and use of Aboriginal peoples’ traditional lands and resources.

10. Coalition members work together to ensure that comprehensive land claims and associated self-government agreements are respected, honoured and fully implemented in order to meet their commitments and achieve their objectives. The task at hand is to implement the modern land claims agreements in ways that bring political, economic and social justice to their signatory nations and their members, and that achieve in full measure the letter, spirit, intent and lasting objectives of modern land claims agreements.

C. Aboriginal and treaty rights are human rights

11. As noted by the United Nations Human Rights Committee in 1999, Canada has acknowledged that “the situation of the aboriginal peoples remains ‘the most pressing human rights issue facing Canadians’”.⁴ Recently, in its 2012 review of Canada, the United Nations Committee on the Elimination of Racial Discrimination noted its concern “about the persistent levels of poverty among Aboriginal peoples, and the persistent marginalization and difficulties faced by them in respect of employment, housing, drinking water, health and education, as a result of structural discrimination whose consequences are still present”.⁵

12. There has been little or no progress in the well-being of Aboriginal communities in recent years, and the average well-being of these communities continues to rank significantly below that of other communities in Canada.⁶

13. The treaty rights arising from modern land claims agreements express the mutual desire of the Crown and Aboriginal peoples to reconcile through sharing the lands, resources and natural wealth of this subcontinent in a manner that is equitable and just, in contrast to the discriminatory and assimilationist approaches that have characterized their historical relations.

⁴ Concluding Observations of the Human Rights Committee – Canada. 07/04/99 CCPR/C/79/Add.105 at para. 8 (<http://www.unhchr.ch/tbs/doc.nsf/0/e656258ac70f9bbb802567630046f2f2> – accessed October 3, 2012).

⁵ Concluding Observations of the Committee on the Elimination of Racial Discrimination – Canada. 09/03/12 CERD/C/CAN/CA/19-20 at para. 19 (<http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.CAN.CO.19-20.pdf> – accessed October 3, 2012).

⁶ First Nation and Inuit Community Well-Being: Describing Historical Trends (1981-2006), (Indian and Northern Affairs Canada, Strategic Research and Analysis Directorate, April 2010) at pp. 11, 24, 26-27 (http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/cwbdcck_1100100016601_eng.pdf – accessed October 3, 2012); Cooke & Guimond, *supra* note 1.

14. Aboriginal and treaty rights – including those affirmed in modern land claims agreements – are human rights, protected under s.35 of Canada’s *Constitution Act, 1982* as well as by international human rights treaties and law.⁷

15. The Supreme Court of Canada has recently confirmed that “[t]he reconciliation of Aboriginal and non-Aboriginal Canadians in a mutually respectful long-term relationship is the grand purpose of s. 35 of the *Constitution Act, 1982*”. Modern treaties offer “the legal basis to foster a positive long-term relationship between Aboriginal and non-Aboriginal communities”.⁸

16. The negotiation and implementation of modern land claims agreements, and their ancillary agreements, engage the honour of the Crown, and demand results and ongoing outcomes that are just. Modern treaties are “part of a special relationship: ‘In all its dealings with Aboriginal peoples, from the assertion of sovereignty to the resolution of claims and the implementation of treaties, the Crown must act honourably’”.⁹

D. Canada’s failing modern treaty implementation policy and practice: A persistent and entrenched problem

17. Modern land claims agreements often take many years if not decades to negotiate, and involve many compromises on the part of Aboriginal signatories. For Aboriginal signatories, these are not cash-for-land transactions. The federal government obtains the so-called “certainty” that it demands in respect of lands and resources by promising that social, economic, environmental, developmental and other objectives and commitments set out in the treaties will be attended to and realized.

18. In all cases, the Government of Canada has promptly put into effect the “certainty” promises made by the Aboriginal signatories to modern treaties. The Government of Canada relies heavily on the treaty obligations of Aboriginal peoples in relation to all the development, economic and resource activities that occur in the lands and waters subject to modern treaties. However, in the experience of the members of the Coalition, the ink is barely dry on each land claims agreement before the federal government, and especially its officials, abandons any talk of the broad objectives of the agreement, and proceeds instead on the basis that the government’s sole responsibility is to fulfil the narrow legal obligations set out in the agreement.

19. In December 2006, leaders and representatives of the Land Claims Agreements Coalition assembled in Ottawa to discuss how Canada was doing in honouring the modern treaty undertakings it made to Aboriginal peoples over the past thirty years. They declared:

Through these modern treaty agreements, Ottawa made important and solemn treaty promises enshrined in the constitution in return for reconciling Crown and aboriginal sovereignties and clearing the way for development in more than half of Canada’s land mass and the immense resources it contains. More than three years ago, the signatories of all major modern treaties wrote to the Government of Canada. We called for the mutual development of a new federal Policy to fully implement the fundamental objectives of these important agreements. No meaningful progress has yet been made, and the federal Crown has essentially rebuffed efforts to engage constructively. No progress has been made since that time.¹⁰

⁷ United Nations Declaration on the Rights of Indigenous Peoples, *inter alia* articles 3, 4, 8, 19, 26, 37, 38, 40; Concluding Observations of the Human Rights Committee – Canada (1999), *supra* note 4 at paras. 7-8; *Attorney General of Quebec v. Moses et al*, 2010 SCC 17 at para. 15.

⁸ *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53 at para. 10.

⁹ *Beckman*, *supra* at para. 62, quoting from *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at para. 17.

¹⁰ See http://www.landclaimscoalition.ca/pdf/061206_LCAC_Statement.pdf (accessed October 3, 2012).

20. Regrettably, the Coalition must report that, by and large, this statement is as applicable today as it was in 2006.

21. Some limited individual progress has been made in treaty implementation for some Coalition members. In 2008 the Grand Council of the Crees (Eeyou Istchee) entered into a New Relationship Agreement with the Government of Canada, 33 years after signing its treaty.¹¹

22. Overall, however, Coalition members remain disappointed that their treaties are not all being properly and meaningfully implemented by the Government of Canada. Instead, Coalition members are being forced down a path of frustration, non-implementation and litigation.

23. In 2006, the Inuit of Nunavut, one of the Coalition's founding members, filed a \$1 billion court case against the Government of Canada, concerning a litany of federal implementation failures in respect of the Nunavut Agreement of 1993.¹² The Inuit of Nunavut did not take lightly the decision to proceed to litigation: prior to commencing the suit, on various occasions, the Inuit had requested that 17 disputes be submitted to arbitration, and on each occasion the Government of Canada had refused.

24. In June 2012, Mr. Justice Johnson of the Nunavut Court of Justice ruled in favour of the Inuit, in relation to one aspect of the suit, concerning the failure to develop an ecosystemic and socio-economic monitoring plan. Mr. Justice Johnson found that the Government of Canada had only initiated a sustained effort to implement the required monitoring plan after the Inuit commenced the court case, and had made only "minimal and sporadic" efforts during the time frame set out in the Agreement.¹³ He concluded that

Canada's failure to implement an important article of the land claims for over 15 years undermined the confidence of aboriginal people, and the Inuit in particular, in the important public value behind Canadian land claims agreements. That value is to reconcile aboriginal people and the Crown.¹⁴

25. As a remedy for this breach of its obligations under the treaty, Mr. Justice Johnson ordered the Government of Canada to disgorge the \$14 million it had saved by not implementing the treaty obligation in a timely manner.¹⁵

26. Numerous reports by human rights and governmental accountability authorities within Canada have confirmed that the experience of the Inuit of Nunavut is representative of a long-standing systemic problem.

27. In November 2003, the Auditor General of Canada reported as follows on the implementation of the land claims agreements of the Gwich'in people and the Inuit of Nunavut:

the Department [of Indian and Northern Affairs Canada] managed the two claims we looked at by focussing solely on the letter of the obligations, appearing not to take into account their objectives or the spirit and intent of the agreements. By managing without determining how best to meet the

¹¹ Agreement Concerning a New Relationship between the Government of Canada and the Cree of Eeyou Istchee, signed at Mistissini on February 21, 2008 (<http://www.gcc.ca/pdf/LEG000000020.pdf> – accessed October 3, 2012).

¹² Statement of Claim dated December 5, 2006, *Inuit of Nunavut as represented by Nunavut Tunngavik Inc. v. Canada*, Nunavut Court of Justice File No. 0806713CVC (<http://www.tunngavik.com/documents/publications/2006-12-00%20Statement%20of%20Claim.pdf> – accessed October 3, 2012).

¹³ *Nunavut Tunngavik Inc. v. Canada*, 2012 NUCJ 11 at para. 105.

¹⁴ *Nunavut Tunngavik Inc. v. Canada*, 2012 NUCJ 11 at para. 333.

¹⁵ *Nunavut Tunngavik Inc. v. Canada*, 2012 NUCJ 11 at para. 273-279, 331-334. The Government of Canada has unfortunately chosen to appeal this ruling: see Notice of Appeal dated August 14, 2012, Nunavut Court of Appeal File No. 08-12-001CAC.

objectives, the Department has contributed to a sense of frustration that has developed between the beneficiaries and the federal government.¹⁶

28. In October 2007, the Auditor General reviewed the implementation of the Inuvialuit Final Agreement, which was signed in 1984. The resulting report concluded:

3.92 Although the *Inuvialuit Final Agreement* has existed for 23 years, INAC [the Department of Indian and Northern Affairs Canada] has yet to demonstrate the leadership and the commitment necessary to meet federal obligations and achieve the objectives of the Agreement.¹⁷

29. These concerns were echoed by the Standing Senate Committee on Aboriginal Peoples of the Parliament of Canada in its May 2008 report concerning modern treaties. The Senate Committee stated:

The Committee believes that any meaningful approach to treaty implementation cannot be focused solely on fulfilling, narrowly, the legal and technical obligations identified in modern treaties... The government's focus... however, has largely been to discharge its obligations in a narrow sense, rather than working to achieve the full breadth of reconciliation promised by treaties... The Committee believes that any promise of reconciliation can only be brought about when implementation is construed broadly and with a view to achieving the objectives set out in modern treaty settlements. We find, however, that **government continues to approach these agreements as fundamentally contractual matters, despite the fact that rights flowing from these agreements are recognized and affirmed in the constitution and form part of the supreme law of the land. The result is that broader considerations of economic and social well-being are set aside.**

...

[T]here appears to be federal resistance to fund treaties beyond the technical, legal obligations. Such practices minimize the scope and substance of treaty rights and may deny Aboriginal signatories the full enjoyment of the rights and benefits promised to them under their Agreements. Having obtained these Agreements, and certainty over the ownership of lands and resources, the benefits to the Crown are immediate and ongoing. Government interest in fully funding and implementing agreements, to their full potential, may therefore be limited. However, we are of the firm view that such practices undermine the spirit and intent of agreements and bring dishonour to the Crown.

...

The Committee is of the firm opinion that until, and unless, there is a fundamental, attitudinal shift, neither the federal government nor Aboriginal signatories will achieve the shared objectives set out in these agreements. Accordingly, **we believe the connection between implementation of comprehensive land claims agreements and the constitutional principles governing Aboriginal and treaty rights, as well as recognition of the political relationship between Aboriginal peoples and the Crown, must be given a more meaningful expression in practice.**

...

52 Treaty-making and treaty implementation are not separate concepts. Both engage the honour of the Crown... [T]he controlling question, in the Committee's view, and as stated by the Supreme Court of Canada must be "what is required to maintain the honour of the Crown and to effect reconciliation between the Crown and Aboriginal Peoples with respect to the interests at stake." We find the government's approach, rather than advancing the "interests at stake" uses its discretionary funding power to restrict them.

¹⁶ 2003 Report of the Auditor General of Canada to the House of Commons, Chapter 8 – Indian and Northern Affairs Canada – Transferring Federal Responsibilities to the North (Office of the Auditor General of Canada, Ottawa, November 2003) at para. 8.93 (<http://www.oag-bvg.gc.ca/internet/docs/20031108ce.pdf> – accessed October 3, 2012).

¹⁷ 2007 Report of the Auditor General of Canada to the House of Commons, Chapter 3 – Inuvialuit Final Agreement (Office of the Auditor General of Canada, Ottawa, October 2007) at para. 3.92 (http://www.oag-bvg.gc.ca/internet/docs/20071003c_e.pdf – accessed October 3, 2012).

In our view, **the lack of political engagement at senior ministerial levels in negotiating implementation funding is a critical deficiency.** Federal funding of implementation obligations is managed as another departmental program... This approach seems to us to represent a failure to understand the purpose of treaty-making and treaty implementation. **Treaties are with the Crown and not with any one department. They are nation-to-nation agreements and cannot be treated as another departmental program line item.**¹⁸

30. The Senate Committee recommended that the Government of Canada, in collaboration with the Coalition, take immediate steps to develop a new land claims implementation policy, based on the fundamental principles laid out by the Coalition. The Committee specifically observed that the administrative solutions put forward by federal officials – including a renewed management framework and streamlined funding process – would not adequately address implementation problems, so long as the fundamental principles were ignored or set aside.¹⁹

31. Following the Senate Committee's recommendation, the Coalition sought to engage the Government of Canada in a policy development process. The Coalition also developed a model implementation policy, which was released to the public and the federal government in March 2009 (described in greater detail below²⁰). The Coalition's efforts in this regard to engage the Government of Canada have been rebuffed and/or ignored.

32. In response to the recommendations it has received, and rather than engaging in a responsive policy development process, the Government of Canada has recently focussed its attention upon new administrative approaches and management tools. The Department of Aboriginal Affairs (formerly known as Indian and Northern Affairs, and in law still the Department of Indian Affairs and Northern Development) has developed an implementation management framework for land claims agreements as well as an electronic database of treaty obligations.²¹ Recently, the Department has devoted significant attention to its fiscal harmonization initiative, under which Aboriginal signatories to modern treaties will receive funding according to a fixed formula, rather than on the basis of negotiated funding arrangements based upon their specific circumstances and agreements.²² The Government of Canada has, however, been persistently unwilling to address the fundamental policy issues that are at the root of the problem.

33. In the experience of Coalition members, the administrative measures recently adopted and publicized by the federal government have failed to yield any substantive change in the manner in which treaty implementation issues are approached, and in some cases have aggravated existing problems. Implementation of modern treaties continues to occur at a glacial pace. Coalition members continue to find that agencies and departments of the Government of Canada are unaware of treaty obligations that relate to their mandates and programs.

34. The Coalition's experience in this regard is supported by the Auditor General of Canada's most recent report concerning modern treaty implementation, issued in June 2011,

¹⁸ *Honouring the Spirit of Modern Treaties*, supra note 2 at pp. 14-16, 30-32, 38-39, 52 [emphasis added].

¹⁹ *Honouring the Spirit of Modern Treaties*, supra note 2 at pp. 38, 41.

²⁰ See Section F, below.

²¹ Instituting a Federal Framework for the Management of Modern Treaties (Implementation Management Framework, QS-5410-000-EE-A1 Catalogue No. R3-149/2011E-PDF (Minister of the Department of Indian Affairs and Northern Development, May 2011) (http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/ldc_ccl_mmt_1305827014366_eng.pdf – accessed October 3, 2012); 2011 Status Report of the Auditor General of Canada to the House of Commons, Chapter 4 – Programs for First Nations on Reserves (Office of the Auditor General of Canada, Ottawa, June 2011) at para. 4.68 (http://www.oag-bvg.gc.ca/internet/docs/parl_oag_201106_04_e.pdf – accessed October 3, 2012).

²² See <http://www.aadnc-aandc.gc.ca/eng/1309197361103/1309197389286> (accessed October 3, 2012).

which reviewed the progress made by the federal government in addressing certain recommendations from the Auditor General's 2003 and 2007 reports. In 2011, the Auditor General found that the federal government had performed satisfactorily in relation to the administrative recommendations set out in the earlier reports. However, in respect of the substantive fulfillment of federal treaty obligations, the Auditor General reported that the Department of Indian Affairs had not communicated the obligations to other federal departments, "did not have a plan in place to ensure the fulfillment of their obligations under the agreements, and... had not monitored whether the departments had fulfilled their obligations".²³

35. Coalition members continue to experience resistance (and often outright refusal) on the part of government officials to the adoption of implementation plans and funding arrangements based upon the mutual objectives set out in the treaties and reflecting the steps actually required to achieve results. The Government of Canada approaches these negotiations with a take-it-or-leave-it attitude that is inconsistent with the honour of the Crown.

36. For example, Carcross Tagish First Nation (CTFN), one of the Coalition's Yukon members, recently sought to raise the inadequacy of its funding in its renewal negotiations with the Government of Canada. CTFN identified significant discrepancies between the funding it received and that provided to other Yukon First Nations. CTFN advocated for funding levels equal to those of other self-governing First Nations, and declined to accept a funding formula that was woefully inadequate. Federal officials refused to negotiate with CTFN, or to consider its proposals and reasons. CTFN was warned that if it did not agree to the funding formula that had been offered, the federal government would reassume responsibility for the delivery of essential programs and services to CTFN members, without regard for the fact that under the CTFN self-government agreement, the delivery of these programs and services falls within CTFN jurisdiction. Mere days before the latest extension to CTFN's funding agreement was to expire on September 30, 2012, the Government of Canada proposed mediation, and extended CTFN's funding for an additional three months. The terms of mediation proposed by the federal government focus upon the consequences of the expiry of a funding agreement, and not upon the fundamental problems of inadequate and non-comparable funding identified by CTFN. Thus, the Government of Canada apparently remains unwilling to consider or address the fundamental underlying issues that have been raised by CTFN.

37. The experience of CTFN is unfortunately emblematic of the entrenched pattern of delay, brinksmanship, avoidance and neglect that characterizes the Government of Canada's approach to modern treaty implementation.

E. The impacts of Canada's continuing implementation failure

38. The objectives of land claims and related self-government agreements fall into at least the following categories:

- a) social well-being;
- b) economic self-reliance through success and participation;
- c) growth and stability of Aboriginal populations in their traditional territories;
- d) environmental protection; and
- e) cultural and linguistic protection and enhancement.

²³ 2011 Status Report of the Auditor General of Canada, *supra* note 21, at para. 4.69.

39. Land claims agreements can and should be regarded as important vehicles for the achievement of public policy goals and human rights obligations, including ensuring the survival, viability and well-being of Aboriginal peoples as distinct collectivities.

40. The federal government's approach to the implementation of land claims agreements misses the opportunity that these agreements offer to bring about the inclusion of Aboriginal peoples into the regional, provincial/ territorial and national economies of which they and their lands and resources are part, and, over time, to improve the material well being of Aboriginal peoples while enriching the country as a whole.

F. A way forward: the Coalition's Four-Ten Declaration and Model Implementation Policy

41. The Government of Canada's approach to implementing modern treaties needs to be changed if it is to adhere to the legal, constitutional, and human rights reality and imperatives of these agreements. What is called for is a change in the perspective, and indeed in the very culture, of the Government of Canada in respect of its view of the new relationships set out in land claims and self-government agreements.

42. The Coalition released its "Four-Ten Declaration" in 2006.²⁴ This declaration articulates "Four Points" for a renewed relationship with the Government of Canada:

1. Recognition that the Crown in right of Canada, not the Department of Indian Affairs and Northern Development, is party to our land claims agreements and self-government agreements.
2. A federal commitment to achieve the broad objectives of modern treaties, as opposed to mere technical compliance with narrowly defined obligations. This must include, but not be limited to, ensuring adequate funding to achieve these objectives and obligations.
3. Implementation must be handled by senior officials representing the entire Canadian government.
4. There must be an independent implementation and review body.

43. These Four Points, as well as the Ten Fundamental Principles that elaborate upon them, were endorsed by the Senate Standing Committee in its 2008 report.²⁵

44. On March 3, 2009, the Land Claims Agreements Coalition released a model national policy on land claims agreement implementation: "*Honour, Spirit and Intent: A Model Canadian Policy on the Full Implementation of Modern Treaties Between Aboriginal Peoples and the Crown*" (the "Model Implementation Policy").²⁶

45. The core commitment of the *Model Canadian Policy* is that the Government of Canada will work with Aboriginal signatories to ensure that each modern treaty is fully implemented consistent with its spirit and intent, the developmental objectives of treaty-making in Canada, and the honour of the Crown.

46. In recognition of the fact that the treaty relationship lies not with any single government department or agency, but with the Crown as a whole, the *Model Canadian Policy* requires every

²⁴ Land Claims Agreements Coalition, "Four-Ten" Declaration of Dedication and Commitment, Ottawa, December 2006 (http://www.landclaimscoalition.ca/pdf/Four_Ten_Declaration_061206_FINAL.pdf – accessed October 3, 2012) [Appendix "B"].

²⁵ *Honouring the Spirit of Modern Treaties*, *supra* note 2 at pp. 38-41.

²⁶ Land Claims Agreements Coalition, *Honour, Spirit and Intent: A Model Canadian Policy on the Full Implementation of Modern Treaties Between Aboriginal Peoples and the Crown*, 2008 (http://www.landclaimscoalition.ca/pdf/LCAC_Model_Policy_Document.pdf – accessed October 3, 2012) [Appendix "C"].

agency of the Government of Canada to ensure that its duties and activities are carried out in a manner that is consistent with the obligations of modern treaties and contributes to the ongoing achievement of the objectives of these agreements.

47. Under the *Model Canadian Policy* the Government of Canada would commit to key policy directions including:

- a) Focus on achieving measurable results against stated objectives when implementing land claims and self-government agreements;
- b) Implement dynamic self-government arrangements and negotiate stable, predictable and adequate funding arrangements;
- c) Appoint senior officials to represent the government on implementation panels and committees;
- d) Negotiate in good faith with Aboriginal signatories to conclude multi-year implementation plans and fiscal agreements and arrangements;
- e) Provide sufficient and timely funding to fully implement the objectives of modern treaties;
- f) Effectively use dispute resolution mechanisms in agreements to resolve disputes;
- g) Use the institutions and processes established through modern treaties to achieve other compatible policy objectives in treaty settlement areas;
- h) Undertake or participate in evaluative processes that generate objective data that reveal whether, how, and how well modern treaties are being implemented;
- i) Work with Aboriginal signatories to develop and distribute information to promote greater public and international understanding of the importance of modern treaties and their role in Canada.

48. Unfortunately, the Coalition's effort to engage the Government of Canada in a meaningful policy development process has to date not made progress, as the Crown has refused to engage meaningfully with the Coalition and/or leaders of Aboriginal treaty organizations.

G. Conclusion

49. In this Submission, the Coalition respectfully brings attention to the Government of Canada's ongoing failure to fully and meaningfully implement the spirit and intent and the broad socio-economic objectives of all modern land claims agreements. The Coalition raised this same concern at the time of Canada's first Universal Periodic Review in 2009. Regrettably, little or no progress has been made on this important issue in the intervening years.

50. The Coalition respectfully requests that the Human Rights Council adopt the Conclusions and Recommendations set out at paragraph 6 above, consistent with this submission.