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

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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.

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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.

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[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.

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[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/cwbdck_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]

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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

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[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.**
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> …
>
> [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.
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> …
>
> 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.**
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> …
>
> 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.

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[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 below[20]). The Coalitions 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,

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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.

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[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 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

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[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.

Appendix “A” to the Submission of the Land Claims Agreements Coalition
Second Universal Period Review of Canada
United Nations Human Rights Council

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
Makivik Corporation
Naskapi Nation of Kawawachikamach
Nisga'a Nation
Nunatsiavut Government
Nunavut Tunngavik Incorporated
The Sahtu Secretariat Incorporated
Tlicho Government
Tsawwassen First Nation

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

SCHEDULE OF MODERN LAND CLAIM AGREEMENTS

Name of Agreement	Year
James Bay and Northern Quebec Agreement	November 1975
Northeastern Quebec Agreement	January 1978
Inuvialuit Final Agreement	June 1984
Gwich'in Comprehensive Land Claim Agreement	December 1992
Nunavut Land Claims Agreement	May 1993
Yukon First Nations Final Agreements:	
- Champagne and Aishihik First Nations	May 1993
- First Nation of Nacho Nyak Dun	May 1993
- Teslin Tlingit Council	May 1993
- Vuntut Gwitchin First Nation	May 1993
- Little Salmon/Carmacks First Nation	July 1997
- Selkirk First Nation	July 1997
- Tr'ondëk Hwëch'in First Nation	July 1998
- Ta'an Kwäch'än Council	January 2002
- Kluane First Nation	October 2003
- Kwanlin Dün First Nation	February 2005
- Carcross/Tagish First Nation	October 2005
Sahtu Dene and Metis Comprehensive Land Claim Agreement	September 1993
Nisga'a Final Agreement	May 2000
Tlicho Land Claims and Self Government Agreement	August 2003
Labrador Inuit Land Claims Agreement	December 2005
Nunavik Inuit Land Claims Agreement	July 2008
Tsawwassen First Nation Final Agreement	March 2009
Eeyou Marine Region Land Claims Agreement	July 2010
Maa-nulth Final Agreement	April 2011

Appendix “B” to the Submission of the Land Claims Agreements Coalition
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"FOUR-TEN" DECLARATION OF DEDICATION AND COMMITMENT

Ottawa, December 2006

1. The first "modern land claims agreement" between Aboriginal peoples and the federal Crown was entered into in 1975. Since then, 19 modern treaties applying to Aboriginal traditional lands encompassing more than half of the lands and waters of Canada and the immense resources they contain have been negotiated by the Government of Canada and Aboriginal peoples and ratified by Parliament.

2. For Canada, land claim agreements provide a basis for the shared beneficial usage of lands and natural resources, facilitating economic development on treaty lands, and also providing means for Aboriginal peoples to consent to and benefit from development within their traditional territories.

3. For Aboriginal signatories, land claim agreements are intended to enable economic, social, and cultural development, environmental protection, and self-government. The rights defined in comprehensive land claim agreements are recognized and affirmed in Canada's Constitution.

4. In November 2003, leaders representing the Aboriginal peoples of Canada that have entered into Land Claims Agreements since 1975 gathered in Ottawa at *Redefining Relationships: Learning from a Decade of Land Claims Implementation*. The Land Claims Agreement Coalition ("LCAC") was established, involving all of the beneficiary or signatory organizations or governments of the "modern" land claims agreements in Canada.

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5. In the face of persistent challenges in implementation of their land claims agreements, leaders at *Redefining Relationships* articulated "4 Points" for a renewed relationship with the federal government of Canada:

LCAC "4 Points"

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. There must be a federal commitment to achieve the broad objectives of the land claims agreements and self-government agreements within the context of the new relationships, 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 appropriate senior level federal officials representing the entire Canadian government.

4. There must be an independent implementation and review body, separate from the Department of Indian Affairs and Northern Development. This could be the Auditor General's department, or a similar office reporting directly to Parliament. Annual reports will be prepared by this office, in consultation with Groups with land claims agreements.

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6. LCAC leaders and organizations have elaborated upon these "4 Points" in 2005 with the following "10 Fundamental Principles" respecting modern land claims agreements and their proper implementation by the federal Crown:

LCAC "10 Fundamental Principles"

A new land claims implementation policy must be situated in the following context:

1. The history of nation-to-nation contact and interaction between the Crown and the Aboriginal peoples in Canada has created an enduring relationship between the Crown and Aboriginal peoples, one that is fundamentally predicated on the honour of the Crown.

2. "[T]he doctrine of aboriginal rights exists, and is recognized and affirmed by s. 35(1), because of one simple fact: when Europeans arrived in North America, Aboriginal peoples *were already here*, living in communities on the land, and participating in distinctive cultures, as they had done for centuries." *Supreme Court of Canada*.[1]

3. "The historical roots of the principle of the honour of the Crown suggest that it must be understood generously in order to reflect the underlying realities from which it stems. 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. Nothing less is required if we are to achieve "the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown." *Supreme Court of Canada*.[2]

4. Relations between the Crown and Aboriginal peoples have been and will always be manifested in a wide variety of political and legal arrangements and instruments. No single political or legal arrangement or instrument can be said to comprehensively express the dimensions, in breadth, depth or time, of the ongoing and evolving relationship that connects the Crown and an aboriginal people.

1. *Van der Peet*, [1996] 2 S.C.R. 507 at para 30.
2. *Haida Nation v. British Columbia (Minister of Forests)* [2004] S.C.C. 73 at para 17, quoting *Delgamuukw v. British Columbia, [1997] 3 S.C.R. 1010* at para. 186, quoting *R. v. Van der Peet, [1996] 2 S.C.R. 507* at para. 31.

5. Treaties and land claims agreements between the Crown and Aboriginal peoples are acknowledged to be "basic building blocks in the creation of our country …[T]reaties -- both historical and modern -- and the relationship they represent provide a basis for developing a strengthened and forward-looking partnership with Aboriginal people." *Government of Canada*.[3]

6. Among the key political and legal instruments that affirm the relationship between the Crown and Aboriginal people are modern land claims agreements, and ancillary agreements such as implementation and self-government agreements that attach to or follow from land claims agreements.

7. Modern land claims agreements, which give rise to treaty rights, are multi-faceted, and the ongoing rights they affirm are, among other things, constitutional, statutory, contractual, fiduciary, and in keeping with the "living tree" principle of Canadian law, evolving and progressive in nature.

8. 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. "Where treaties remain to be concluded, the honour of the Crown requires negotiations *leading to a just settlement of Aboriginal claims*." *Supreme Court of Canada*.[4]

9. The treaty rights arising from modern land claims agreements express the mutual desire of the Crown and Aboriginal peoples in Canada to reconcile through sharing the lands, resources and natural wealth of this subcontinent in a manner that is equitable and just – no longer so as to solely assimilate, take or extinguish the interest of the Aboriginal peoples involved, but rather so as to implement mutual objectives that will ensure their socio-economic, political and cultural survival, well-being and development as peoples.

10. Aboriginal and treaty rights are human rights, and they are not amenable to extinguishment as a matter of respect for Canada's international human rights obligations. "The situation of the Aboriginal peoples remains the most pressing human rights issue facing Canadians…. [T]he practice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the [International] Covenant [on Civil and Political Rights]." *United Nations Human Rights Committee*.[5]

3. Gathering Strength -- Canada's Aboriginal Action Plan. QS-6121-000-EE-A1 Catalogue No. R32-189-1997E. ISBN 0-662-26427-4.
4. *Haida Nation v. British Columbia (Minister of Forests)* [2004] S.C.C. 73 at para. 20 , quoting *R. v. Sparrow, [1990] 1 S.C.R. 1075*, at pp. 1105-6; "Section 35 calls for a just settlement for aboriginal peoples." *Sparrow v. The Queen*, [1990] 1 S.C.R. at 1106.
5. *Concluding Observations of the Human Rights Committee - Canada*. 07/04/99 CCPR/C/79/Add.105.

7. These 4 Points and 10 Principles are now known as the "LCAC Four-Ten".

8. Consistent with the LCAC Four-Ten, members of the Land Claim Agreements Coalition will continue to undertake information sharing, joint activities and coordination, mutual encouragement and support, advocacy, policy development, Canadian and international public education, inclusion of new land claims agreement entities, appropriate contact and efforts with governments, and such other future steps as may be decided by Coalition participants.

9. 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 with the federal Crown.

10. THE LAND CLAIMS AGREEMENT COALITION IS DEDICATED AND COMMITTED TO ACHIEVING THESE NECESSARY AND IMPORTANT GOALS, FOR THE BENEFIT AND DEVELOPMENT OF ALL LAND CLAIMS AGREEMENT ORGANIZATIONS, GOVERNMENTS AND BENEFICIARIES AND ALSO FOR THE BENEFIT AND SELF-RESPECT OF ALL CANADIANS.

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HONOUR, SPIRIT AND INTENT:
A MODEL CANADIAN POLICY ON THE FULL IMPLEMENTATION OF MODERN TREATIES BETWEEN ABORIGINAL PEOPLES AND THE CROWN

Finalized November 21, 2008

The Land Claims Agreements Coalition gratefully acknowledges the support of the Gordon Foundation in the development of this policy document.

Foreword

When explorers from Europe arrived in North America they "discovered" a continent occupied and governed by Aboriginal peoples. In subsequent decades and centuries the relationship between the original peoples and the growing number of settlers and immigrants was complex and sometimes difficult. But looking back, it is important to note that Crown-Aboriginal treaties were a central mechanism used in Canada to avoid conflict and to constructively define the relationship between Aboriginal peoples and newcomers. The *Royal Proclamation of 1763* affirmed treaty-making as the key element of the policy of the Crown toward Aboriginal peoples. This approach was continued in British North America following the American Revolution, and by the Government of Canada after Confederation.

Treaty-making occurred as early as the 1600s. Beginning in 1871, numbered treaties were concluded on the Prairies, in northern Ontario, in northeastern British Columbia and in part of the Northwest Territories. With the exception of a limited number of adhesions to the numbered treaties, treaty-making came to a halt in the 1920s, leaving much of northern Canada, most of British Columbia and Québec, and all of Labrador without treaties. In 1927, the *Indian Act* was amended to make it illegal for Aboriginal peoples to raise money to press land claims. Treaty-making, in its modern form, began in the 1970s – prompted by the 1973 decision of the Supreme Court of Canada concerning the Aboriginal title of the Nisga'a Nation in British Columbia. Litigation involving the James Bay Crees in Québec, the Dene of the Mackenzie Valley and the Inuit of Baker Lake provided further impetus.

Since then, nineteen modern treaties – sometimes referred to as comprehensive land claims agreements – have been negotiated and ratified. These modern treaties concern more than half of the lands, waters and natural resources of Canada.

The Government of Canada's policy toward the negotiation and settlement of comprehensive land claims was formalized in 1981 and revised and expanded in 1986. In 1982, Section 35 was added to Canada's Constitution, which recognized and affirmed the existing Aboriginal and treaty rights of Aboriginal peoples in Canada. In 1983 it was explicitly confirmed in subsection 35(3) that section 35 "treaty rights" include those contained in modern land claims agreements. In 1995 the Inherent Right Policy provided for the negotiation of Aboriginal self-government as a component of modern treaties.

Modern treaties are essential building blocks of Canada, and are intended to formalize the relationship between Aboriginal peoples and the Crown. They are entered into to protect the rights of Aboriginal signatories; ensure their continuity as peoples; provide for their political, social, economic and cultural development. This is why the implementation of modern treaties between Aboriginal peoples and the Crown is of national importance, and even attracts international interest.

The number of modern treaties continues to grow, and we now have years of experience in implementation that is both affirmative and problematic. Although much has been accomplished of which we can be proud, modern treaties are far-reaching and sometimes complex. All parties agree that implementation is a challenge and takes forethought, cooperation and, above all, ongoing attention and commitment. While the content of modern treaties varies from agreement to agreement, implementing them requires trust as well firm and enduring cooperation between the Crown and Aboriginal signatories.

In responding to the recommendations and requests of Aboriginal peoples with modern treaties, the Government of Canada will adopt a Land Claims Agreements Implementation Policy that provides a framework to promote the effective implementation of diverse modern land claims agreements.

As its title suggests, the purpose of this Policy is to ensure that modern treaties are fully implemented in accordance with their provisions, their overall objectives, and their spirit and intent. The Policy is not intended to re-write modern treaties or to create new and uncontemplated responsibilities, legally binding or otherwise.

Rather, the Policy lays out the firm commitment of the Government of Canada that federal Ministers, departments and agencies will work diligently with their Aboriginal counterparts to achieve the objectives of modern treaties in a lasting, generous and flexible manner.

Such an evolving and beneficial approach is consistent with long-standing Canadian governmental practice in all other inter-governmental contexts. The Aboriginal land claims agreements context cannot be permitted to languish as an unintended exception.

There have been positive developments in the decades since the first modern land claims agreement in Canada. However there is still more to be done before Aboriginal peoples and all Canadians alike enjoy the many benefits and achieve the overall objectives of our modern treaties.

Introduction

> *"The historical roots of the principle of the honour of the Crown suggest that it must be understood generously in order to reflect the underlying realities from which it stems. 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. Nothing less is required if we are to achieve "the reconciliation of the pre-existence of Aboriginal societies with the sovereignty of the Crown."*
>
> *Supreme Court of Canada, Haida Nation v. British Columbia (Minister of Forests), 2004*

> *"The settling of comprehensive land claims and self-government agreements (such as those of Nunavut or James Bay) are important milestones in the solution of outstanding human rights concerns of Aboriginal people. They do not, in themselves, resolve many of the human rights grievances afflicting Aboriginal communities and do require more political will regarding implementation, responsive institutional mechanisms, effective dispute resolution mechanisms, and stricter monitoring procedures at all levels."*
>
> *United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Report on Canada, 2004*

Modern treaties are negotiated between the Crown and Canadian Aboriginal peoples who generally have not entered into "historic" treaties.

Modern treaties affirm the complex and multifaceted nation-to-nation and government-to-government relationships between Aboriginal peoples and Canada. They currently reconcile the Aboriginal peoples' title to their traditional lands and resources with the Crowns' subsequent occupation and use of more than half of the lands, waters and natural resources of Canada.

Each modern treaty is unique, but all articulate rights to be exercised by Aboriginal signatories, often also involve recognition of Aboriginal self-government or provide for a restructuring of public government. Basically, the Crown's claims in respect of Aboriginal peoples' traditional lands, waters and natural resources are clarified, to the great benefit of all Canadian peoples.

The Crown has, upon ratification of each modern treaty, been able to proceed immediately to manage, develop and dispose of lands and natural resources in reliance upon the terms of the treaty concerned. The promised benefits to Aboriginal peoples, on the other hand, are often incremental and spread out over many years. This fact requires the Government of Canada to ensure that treaty rights are respected now and in coming years and decades, and that the obligations, ongoing objectives, and sprit and intent of modern treaties are fulfilled. The intent of this Policy is to ensure that this is the case.

Modern treaties address such matters as:

- Ownership and use of lands, waters and natural resources including the subsurface;
- Management of land, waters, and natural resources, including fish and wildlife;
- Harvesting of fish and wildlife;
- Environmental protection and assessment;
- Economic development;
- Employment;
- Government contracting;
- Capital transfers;
- Royalties from resource development;
- Impact benefit agreements;
- Parks and conservation areas;
- Social and cultural enhancement;
- The continuing application of ordinary Aboriginal and other general programming and funds; and
- Self-government and public government arrangements.

When ratified, modern treaties become part of the law of the land. The treaty rights they contain are constitutionally recognized and affirmed, and the terms of these agreements thus take precedence over the other laws and policies in Canada.

It is important that modern treaties be implemented and interpreted, consistent with their spirit, in a manner that responds to changing circumstances. Aboriginal peoples rely upon them to chart their paths into the future, just as the Crown is able to use them to bring about overall public policy objectives.

The Crown and Aboriginal signatories to these agreements must therefore work together in creative partnerships, if modern treaties are to be used to full advantage in accordance with their modern purposes of reconciliation, development, and nation-building.

Each modern treaty reflects the aspirations and cultural diversity of the Aboriginal signatories, and the political and other circumstances prevailing when agreements were negotiated. The Land Claims Agreements Implementation Policy respects the differences between modern treaties, and is not intended to promote an inflexible approach to their implementation. Nothing in this policy should be viewed as a substitute for any existing process, plan, obligation, or objective for the implementation of individual land claim agreements that has been worked out by the Parties to those agreements. This policy is meant to strengthen, and not to replace, whatever arrangements currently exist in respect of the implementation of each treaty agreement.

The core commitment of this 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.

The Modern Treaty Relationship Between the Crown and Aboriginal Peoples

Modern treaties confirm enduring relationships between the Crown and Aboriginal peoples that engage and rest upon the "honour of the Crown." These agreements formally enable Aboriginal signatories to "become part of Canada". As quoted above, the Supreme Court of Canada has ruled that in all dealings with Aboriginal peoples from the assertion of sovereignty to the resolution of claims and implementation of treaties, the Crown must act honourably to reconcile the pre-existence of Aboriginal societies with the sovereignty of the Crown.

The treaty relationship lies not with any single government department or agency, but with the Crown as a whole as represented by the Government of Canada. In practical terms this requires *all* agencies of the Government of Canada whose mandates and activities intersect (or may do so) with modern treaties to do their full part to implement them meaningfully.

Every department and agency of the Government of Canada has the responsibility to ensure that its duties and activities are carried out in a manner consistent with the obligations of modern treaties and contribute to the ongoing achievement of the objectives of these agreements. This puts a premium on coordination between federal departments and agencies, and with provincial and territorial governments. The Government of Canada will bring about effective coordination between federal departments and agencies to properly meet the obligations, objectives, and spirit and intent, of modern treaties. Moreover the Government of Canada will also cooperate with provincial and territorial governments; however, the Government of Canada will ensure that it meets its own ongoing modern treaty obligations and fulfills their objectives, regardless of particular steps other levels of government may take.

Obligations and Objectives

Provisions in modern treaties confer or affirm many important rights belonging to Aboriginal signatories and place lasting obligations on the Government of Canada that are enforceable in the courts. As stated in the 1986 Comprehensive Land Claims Policy, the Government of Canada takes a broad view of the purpose and intent of these agreements as to:

> *"encourage self-reliance and economic development as well as cultural and social well-being. Land claims negotiations should look to the future and should provide a means whereby Aboriginal groups and the federal government can pursue shared objectives such as self-government and economic development."*

Such objectives provide the context within which treaty obligations and objectives must be met.

The socio-economic development objectives of modern treaties include benefits that Aboriginal peoples, like all other peoples in Canada, should be *entitled to take for granted*, at least to an average level already generally achieved in non-Aboriginal Canada. Importantly, this standard is already enshrined in the Canadian Constitution, in subsection 36(1), which states that all governments in Canada are committed to promoting equal opportunities for the well-being of Canadians; furthering economic development to reduce disparity in opportunities; and providing essential public services of reasonable quality to all Canadians.

As noted by the Canadian Human Rights Commission, and other authorities in Canada and internationally, disparities between the living standards and other opportunities of Aboriginal peoples in Canada vis-à-vis those generally enjoyed by all other Canadians are persistent and pronounced. Regrettably, these disparities continue to characterize many signatory communities of modern land claims agreements.

The Auditor General of Canada has urged the Government of Canada and Aboriginal signatories to focus on achieving measurable results against stated objectives when implementing land claims and self-government agreements. The Government of Canada accepts this recommendation and will approach the ongoing implementation of land claims and self-government agreements so as to achieve their developmental objectives with measurable outcomes.

The Government of Canada acknowledges that narrow and technical understandings and interpretations of its modern treaty obligations have, in the past, sometimes hindered effective implementation of agreements. To develop a broader appreciation of the nature of obligations and objectives, and to design implementation activities to achieve objectives, requires extensive discussion with Aboriginal signatories in the context of individual agreements. The Government of Canada proposes to engage treaty signatories in such discussions with the aim of injecting new energy, generosity and goodwill into the implementation of modern treaties.

These instruments are important building blocks of confederation. The rights of Aboriginal peoples contained in these modern agreements are no less a part of the Canadian constitutional landscape than any other Canadian constituting arrangements.

Self-Government

Self-government is a right that Aboriginal peoples have exercised in Canada since long before newcomers came to this land and there is an integral relationship between modern treaties and self-government by the Aboriginal signatories. This relationship is expressed in various ways. In some cases self-government arrangements are established outside the land claims agreement. In some cases there is a self-government agreement that is parallel or subsequent to the land claims agreement, and in some cases self-government provisions are fully or partially set out in the text of the land claims agreement itself. In some cases, self-governing aspirations are expressed through the establishment of new institutions of public government, in accordance with the agreement.

In all cases, the dynamic implementation of self-government arrangements is essential to the proper implementation of land claims agreements. This includes both recognition of the jurisdictions and duties for which the Aboriginal government is responsible, and the negotiation of stable, predictable and adequate funding arrangements that are based on the objective evaluation of the costs of governing and the social, economic and cultural needs of Aboriginal peoples.

Implementation Panels and Committees

Implementation committees, panels or other entities, in which the parties to the treaties discuss, negotiate and, in some instances, direct implementation, have been put in place for many of the modern treaties. If modern treaties are to achieve their objectives it is essential that these structures work effectively, efficiently, and creatively. The Government of Canada will continue to approach all implementation discussions and negotiations in good faith and generously, leaving narrow and technical approaches behind it, and will bring forward appropriately coordinated perspectives and positions. Further, the Government of Canada's representatives on these structures will be senior officials with clear mandates and authority to address implementation questions, resolve implementation issues, and set long-term directions. Representatives of federal departments and agencies with appropriate expertise, programmatic responsibilities, and authority will participate directly in implementation panels and committees when requested.

Implementation Plans and Fiscal Agreements

The 1986 Comprehensive Land Claims Policy requires plans to be developed to implement modern treaties. Such plans often identify the agencies of the Government of Canada responsible for implementing specific obligations and detailed budgets of institutions established pursuant to agreements. The Government of Canada reaffirms its commitment to negotiate in good faith with Aboriginal signatories to conclude multi-year implementation plans and fiscal agreements and arrangements. Further, the Government of Canada will incorporate the results of evaluations, reviews and audits of implementation experience in negotiating amendments and renewals of implementation plans and fiscal agreements. While specifying who does what is an essential component of implementation planning, finalized implementation plans and fiscal agreements should, as far as possible, be creative and adaptive documents that identify implementation priorities and enable parties to channel financial and personnel resources accordingly. The Government of Canada will consider, on a case-by-case basis, the need to periodically amend implementation plans and fiscal agreements to achieve mutually agreed objectives.

Moreover, if desired by the Aboriginal party, the Government of Canada will negotiate the development of implementation plans and fiscal agreements for modern treaties, concluded prior to 1986, for matters not yet fully implemented.

Financing Implementation of Modern Treaties

Aboriginal peoples face the same need for adequate and sustainable levels of funding to meet the objective needs and aspirations of their peoples as the other constituent part of the modern Canadian state. This is the legitimate expectation of one of the three constitutional orders of government in Canada. The Government of Canada undertakes to provide sufficient funding to fully implement the objectives of modern treaties, and will work in good faith with Aboriginal signatories to determine these requirements and ensure that funding is provided on a timely basis.

Parliament plays the central role in authorizing the expenditure of public moneys by agencies and departments of the Government of Canada. Modern treaties deal with issues that cross departmental boundaries, and financing their implementation does not always fit neatly within the Government of Canada's departmental budgetary system. The Government of Canada will therefore work with Aboriginal signatories to remove structural and procedural barriers in the current budgetary system, in order to expedite the ongoing implementation of all modern treaties.

Resolving Disputes

Many modern treaties specify means such as mediation and arbitration to resolve disputes between the federal Crown, or other governments, and Aboriginal parties. In some cases dispute resolution mechanisms are provided for in a companion agreement. The Government of Canada undertakes to ensure effective use of the dispute resolution mechanisms in agreements to resolve disputes. In addition, the Government of Canada will use such techniques as mediation, joint research, and joint information gathering and monitoring to resolve disputes, and, on a case-by-case basis, binding arbitration of disputes, including disputes of a financial nature. The Government of Canada does so with the understanding that these approaches to dispute resolution are preferable to both litigation and to the emergence of conflict as may occur when there is litigation.

In those cases where the use of binding arbitration requires the consent of both parties, the Government of Canada's consent will never be withheld as a matter of course, but only in rare and exceptional circumstances where it is demonstrably reasonable and justifiable to do so.

Public Policy and Implementing Modern Treaties

While Aboriginal signatories are entitled to the particular rights and benefits enshrined in their treaties, they remain entitled to all of the rights, privileges, programs and benefits available to other Aboriginal, and to non-Aboriginal, communities, citizens and residents in Canada generally.

There is great need in Aboriginal settlement areas to coordinate implementation of modern treaties with the many Canadian economic, social, cultural, language, environmental and other public policy objectives that have made Canada one of the most developed countries of the world. This is particularly the case in relation to such key areas as economic and business development, housing, education and training, community infrastructure and capacity building—essential processes that equip Aboriginal signatories to take full advantage of the developmental objectives of modern treaties.

Similarly, the Government of Canada will use the institutions and processes established through modern treaties to achieve other compatible policy objectives in treaty settlement areas, such as ensuring that resource development is environmentally and socially sustainable and equitable, and promotes public health and well-being.

The challenge before the Government of Canada is to implement modern treaties as a normal and accepted part of the way in which it carries out its business of national good governance. The Government of Canada will work with Aboriginal signatories to this end, to ascertain how best to co-ordinate implementation of modern treaties with other public policy processes.

Review and Evaluation

Most modern treaties put in place methods to periodically review and evaluate implementation with a view to improving the efficiency and effectiveness of decision-making. The Government of Canada will undertake or participate in evaluative processes that generate objective data that reveal whether, how, and how well modern treaties are being implemented, particularly concerning the social economic, cultural impacts of implementation on the lives and well-being of Aboriginal peoples. All parties to treaties need to know if implementation of modern treaties is moving Aboriginal signatories in the direction of achieving their long-term social, cultural, and economic objectives. The Government of Canada is committed to working with Aboriginal signatories to develop and refine indicators to measure progress to achieve the social, cultural, economic and other objectives of modern treaties, and to use evaluative results to improve implementation planning and decision-making.

Institutional Arrangements

In order to ensure a consistently beneficial approach toward implementation of modern treaties across the Government of Canada, and to ensure the objectivity of data upon which implementation decisions are based, the Government of Canada will, in active partnership with Aboriginal signatories, propose legislation to establish a Land Claims Agreements Implementation Commission. The Commission will evaluate and promote the implementation of modern treaties and advise the Government of Canada and Aboriginal signatories accordingly. The Commission of Modern Treaties will report periodically to the Parliament of Canada.

Aboriginal signatories to modern treaties and the Auditor General of Canada will be invited to work closely with the Government of Canada to design the Commission's mandate and the legislation to give it effect.

In addition, the Government of Canada will establish a Cabinet Committee on Aboriginal Affairs to oversee and co-ordinate the involvement of federal agencies in treaty implementation activities. A committee of senior civil servants will provide the Cabinet Committee with advice and recommendations and carry out its instructions. The job performance evaluation of members of the committee will take into consideration implementation of modern treaties.

Public Information and Education

Notwithstanding the constitutionally recognized and affirmed status and wide geographical application of modern treaties, and their extensive implications for third parties and fundamental role in improving the socio-economic well-being of Aboriginal signatories, few Canadians adequately understand or appreciate their national importance or the international interest they generate. That the Government of Canada has negotiated far reaching accommodations with Aboriginal peoples through modern treaties is of considerable interest and concern to countries in Asia, Africa, Latin America and elsewhere seeking to accommodate Aboriginal peoples or other minorities in those countries, and also to international organizations such as the United Nations, the Organization of American States and the Commonwealth.

The Government of Canada will 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. As well, federal Crown agencies including the Department of Foreign Affairs, the Canadian International Development Agency and the International Development Research Centre will work with Aboriginal signatories to bring modern treaty experience to bear in the exercise of Canada's foreign and development assistance policies.