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'FIGHTING FOR THE FUTURE OF OUR CHILDREN'

INDIGENOUS RIGHTS IN THE SACRED HEADWATERS REGION, BRITISH COLUMBIA, CANADA

A HEALTHY ENVIRONMENT IS A HUMAN RIGHT

AMNESTY INTERNATIONAL





'THE... SACRED HEADWATERS HAVE NOURISHED US FOR UNTOLD CENTURIES, AND STILL DO. [OUR PEOPLE] HAVE LIVED AND DIED HERE FOR MILLENNIA, AND LIKE OUR ANCESTORS, HERE TOO WE WILL DIE. WHAT HAS BEEN PROPOSED FOR THIS PLACE BY THE DESPOILERS WOULD ENRICH A FEW, FOR A SHORT TIME, BUT WOULD LEAVE US DISPOSSESSED OF THE VERY THING WHICH DEFINES US AS A DISTINCT PEOPLE.'

Tahltan activist Rhoda Quock, 2005

The Indigenous Tahltan people of northern British Columbia call the area "The Sacred Headwaters." Three major salmon-bearing rivers form there, as do hundreds of smaller rivers and streams.

The rich diversity of wildlife in the watershed allows the Tahltan people to maintain a way of life in which fishing, hunting, trapping and gathering wild berries and plant medicines provides both a source of subsistence and a link to culture and identity. The salmon

that spawn in these waters are also vital to the economies and cultures of other Indigenous peoples who live downstream from the Sacred Headwaters and along the Pacific coast of British Columbia.

The Sacred Headwaters and surrounding watershed are also rich in mineral deposits. For several years the region has been poised on the verge of an unprecedented mining and resource extraction boom. At least eight large

projects are in various stages of approval, including an open pit gold and copper mine that would be the largest of its kind in North America.

These projects have been met with widespread protest among the Tahltan and downstream communities. Opponents say not enough consideration has been given to the combined, long-term effect of all these projects on the river system and the people who depend on it. Downstream Indigenous



front cover: Talhtan fishing camps on the Stickine River, Canada, 20 July 2008.

above left: Dempsey Bob and Earl Jackson hauling in a salmon net from the Stickine River, Canada, 2008.

above centre: Salmon hanging in drying shed, Canada, 19 July 2008.

above right: Pieces of dried salmon by a campfire in Tahltan territory, Canada, 21 July 2008. Salmon caught during the summer and preserved by drying or canning is an important source of food for the Tahltan and a vital part of their cultural identity.

communities have not even been consulted about the possible impacts on their rights.

“Most people don't know how fast this thing is happening up here,” says Dempsey Bob, an internationally renowned artist and elder from the Tahltan community of Telegraph Creek. “Once the resources are gone, what do we have left? If the whole land is polluted, where are we going to go? We're fighting for the future of our children.”

'THE RIVER IS OUR LIFELINE'

Few jobs are available for Indigenous people in northern British Columbia. Unemployment in the Tahltan communities has been as much as seven to 10 times higher than the provincial average. But the problem of joblessness is even greater than these numbers suggest. Most Tahltan no longer look for work in the region; instead they move away for jobs.

The Tahltan communities are physically isolated, especially in the winter. It can take

several hours to drive from one community to another. Infrastructure and services taken for granted in other Canadian communities, such as libraries and recreation centres, are absent. As in many other First Nations, there is a high rate of suicide among young people.

The Tahltan communities generally agree that some form of economic development is needed to bring income into their communities. However, they want to have a meaningful say in the scale and form of development that take place.

Among the Tahltan, ties to the land remain strong. Fishing, hunting, trapping and gathering wild berries and plants remain important sources of food. These activities are seen as more stable and enduring than jobs in the resource industry. Even those who have moved away return often for the summer fishing season.

Tahltan elder Millie Pauls maintains a fishing camp on the Stikine River, one of the three major rivers that flow from the headwaters. In the summer, three generations of her family gather at the camp to fish and prepare dried and canned salmon for the rest of the year. Up and down the river, other Indigenous families do the same.

"The river is our lifeline," Millie Pauls says. "No matter where we live, we come back to our country and we fish for our people, for our families, for our communities. My grandchildren – they weren't born in Tahltan country – but when they came here they knew they belonged."

There is a long history of mining in the Tahltan territory, including Indigenous excavation of precious stones and the 19th century gold rush. Today, work in the mines and industries that support mining is an important source of income for the Tahltan. However, community members are typically hired for short term, low-skilled jobs with the majority of positions being filled by temporary workers from outside the community.

The Tahltan have found it hard to cope with the disparity in income between those who have jobs and those who don't. Many Tahltan associate the pattern of employment around the mines with growing social tensions in their communities including alcohol and substance abuse, violence against women, and child abuse.

The Tahltan are now facing a potentially unprecedented expansion of extractive



industries in their territories. According to media reports, as of 2008 the value of projects being planned in the Tahltan territory exceeds Can\$3.5 billion. Estimates that thousands of jobs could be created, at least in the initial stages of development, mean that the Tahltan – who number fewer than 1,500 within the territory – would be overwhelmed in their own lands.

Millie Pauls is conscious of the need to create jobs. However, she's also concerned to ensure that the rivers remain healthy for

future generations. "We understand that our people need to work," she says. "But we must protect the waters."

UNRESOLVED LAND AND TITLE ISSUES

There is no historical treaty between the Tahltan and the provincial and federal governments to determine their respective rights over land and resources in the territory. A similar situation exists throughout much of British Columbia.

'The river is our lifeline. No matter where we live, we come back to our country and we fish for our people, for our families, for our communities.'

Millie Pauls



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"Aboriginal people generally die earlier, have poorer health, lower education and significantly lower employment and income levels than other British Columbians. This is directly related to the conditions that have evolved in Aboriginal communities, largely as a result of unresolved land and title issues..."

British Columbia government website, 2009

In 1859, the Governor of the then British colony of British Columbia issued a proclamation that all lands, mines and

minerals in the colony belonged to the Crown. When British Columbia became part of Canada in 1871, the new province maintained the assertion that Indigenous peoples had no pre-existing rights to their lands and resources.

Consequently, only a few treaties (legally binding nation-to-nation agreements over rights and title) were negotiated with Indigenous peoples in British Columbia. Instead, boundaries were arbitrarily imposed around some Indigenous

above: Tahltan elder Millie Pauls at her family's fishing camp on the Stickine River, Canada, 2008.

settlements and fishing sites to form the current system of small and scattered reserves throughout the province. The larger traditional territories where the people hunted, fished, travelled and carried out ceremonies were declared public land without negotiation or compensation.



left: Richard Wright is a member of the Gitksaan Band Council, one of the First Nations downstream from the Sacred Headwaters, British Columbia, Canada, 2008.

right: "Sacred Headwaters" of the Stikine, Skeena and Nass rivers, British Columbia, Canada, 19 July 2008. Three major salmon-bearing rivers and hundreds of smaller rivers and streams all begin there. The waters are vital to the traditional economy and way of life of the Tahltan and other Indigenous peoples living downstream.

Important cultural activities and governance structures were outlawed for decades.

In 1973, the federal government established a process to negotiate new treaties over still-contested territory. In 1990, a specific process was established to resolve the numerous outstanding disputes in British Columbia. However, negotiation of these treaties has proved to be lengthy and extremely costly for Indigenous peoples. As of April 2009, only two modern treaties have been implemented in British Columbia.

First Nations in British Columbia have incurred debts of almost Can\$350 million to participate in the process. In 2006, the Auditor General of Canada estimated that for smaller First Nations the debts built up during negotiation could amount to as much as two thirds of the final cash settlement.

UN human rights bodies have repeatedly criticized the federal government's adversarial approach to treaty making, especially the pressure placed on Indigenous peoples to give up inherent rights in order to achieve settlement.

Forty-seven First Nations in British Columbia are still in treaty negotiations. While some treaties are nearing their final stages, others appear deadlocked. Approximately 40 per cent of eligible First Nations, including the Tahltan, are not currently participating.

While land and title disputes remain unresolved, the province has continued to profit from licensing logging, mining and other resource development on Indigenous lands. In response, Indigenous peoples in British Columbia have mounted numerous legal challenges to protect their rights, particularly over natural resources. These cases have set important precedents that have helped advance recognition of Indigenous rights in Canada.

The 1982 Canadian Constitution entrenched both treaty rights and inherent Aboriginal rights. Canadian courts have called on the federal and provincial governments to deal fairly with Indigenous peoples in order to address these rights and to ensure that they are not further eroded while disputes remain unresolved.

One legal protection of Indigenous rights repeatedly affirmed by Canadian courts is the duty of consultation and accommodation. Whenever governments consider taking action that could affect the rights and interests of Indigenous peoples, the courts have said that they must undertake consultations in good faith with the affected peoples to identify the rights at stake, the potential threat to these rights, and the measures needed to accommodate Indigenous peoples' concerns. Depending on the severity of the potential impact, the accommodation required by the law may mean proceeding only with the consent of the affected peoples.

Faced with growing court recognition of Indigenous peoples' rights, the government of British Columbia has sought new approaches outside the treaty process to ensure that licenses granted to resource industries are not jeopardized later by rights disputes. In March 2009, the government introduced draft "recognition and reconciliation" legislation that affirms the existence of Aboriginal rights and title in the province. The province has also committed



both to ensuring that all government departments work on the assumption that such title exists, and to work with Indigenous peoples to establish procedures that fulfil the province's duty of consultation and accommodation.

Despite this public acknowledgement of the need to do more to respect Indigenous rights, the provincial bodies responsible for licensing mining, oil and gas development and other extractive industries continue to operate according to policy and procedures that provide inadequate protection of Indigenous peoples' legal rights. As the situation in the Sacred Headwaters illustrates, the legal duty of consultation and accommodation is currently interpreted so narrowly as to fail to protect rights essential to the survival and wellbeing of Indigenous peoples in British Columbia.

'A PIECEMEAL APPROACH TO OUR RIGHTS'

In 2005, Tahlitan elders occupied the offices of the Tahlitan government for more than eight months. They were protesting against agreements made by the then elected chief to support a number of large-scale mining and resource extraction projects being proposed for the territory.

The provincial government and the companies point to these agreements as indication that efforts were made to consult with and accommodate the Tahlitan. It is apparent, however, that there is strong opposition within the community to the projects and the process by which they were approved. In 2005 and 2006, blockades were established to prevent mining companies using access roads in the Tahlitan territory. A number of elders and other

activists were arrested for violating injunctions that the companies obtained against the blockades.

A critical concern fuelling these protests is the fact that the combined and cumulative effects of the projects have never been thoroughly examined. Provincial environmental impact assessments have looked at each project in isolation only. The federal government has taken an even narrower approach to its own responsibilities. For example, it chose to carry out only a limited assessment of the tailings (ore refinement waste) disposal for Red Chris mine, rather than a comprehensive public assessment of the impact of all aspects of this proposed open pit gold and copper mine. That decision is currently the subject of a legal challenge by Mining Watch Canada.

A number of Tahltan elders and community members told Amnesty International that their first opportunity to learn about and discuss development plans came after the important decisions had already been made. They said that the process did not allow for proper consideration of how the Tahltan want to use the land and the value that it holds for them.

Millie Pauls explains, “They bring their maps and say this is where we’re going to mine, this is what we’re going to do. Is that consultation? I don’t believe that’s consultation. I don’t believe they’ve done the right thing.”

Downstream Indigenous communities have been largely excluded from the decision-making process. In 2008, an elected government for the downstream Gitksaan

people wrote to the British Columbia Oil and Gas Commission to object to plans by Royal Dutch Shell to drill for methane from coal beds covering a 400,000-hectare area near the Sacred Headwaters. In its response, the Commission said that there was no duty to consult the Gitksaan because the project was not within their traditional area and because “no downstream effects by the proposed activities are expected.”

Richard Wright, a councillor for the Gitanmaax Band, says, “The proposed development is coming at an alarming rate. What we’re getting is a piecemeal approach to our rights.”

Richard Wright is also working with the Tahltan elders to help map traditional land use in the Tahltan territory and develop the community’s land-use plans. This

connection between the Gitksaan and the Tahltan is part of a wide movement connecting Indigenous communities along the watershed, as well as Indigenous and non-Indigenous communities.

In December 2008, faced with growing opposition from Indigenous and non-Indigenous communities to the coal bed methane extraction, as well as a looming provincial election, the province announced the suspension of Shell’s project in the Sacred Headwaters for two years.

Richard Wright says, “I think there’s power in numbers. In northwest British Columbia, non-Aboriginal people have been standing side by side with some of the Aboriginal people and groups. We share this land. Together we need to protect this land.”

TAKE ACTION NOW

Write to the Premier of British Columbia.

- Highlight the vital importance of the Skeena, Nass and Stikine rivers to the culture and economy of the Tahltan peoples and to other Indigenous peoples downstream.
- Express concern that a number of large-scale extraction projects are poised to move ahead in the region without thorough examination of the combined, long-term effects on the watershed and the Indigenous peoples who depend on it.
- Urge the government to work collaboratively with Indigenous peoples in the region to undertake a thorough review

of the combined, cumulative social and environmental impacts of all mining and extraction projects already approved in the watershed area.

- Ask the province to work with the Tahltan and any downstream First Nations who are carrying out their own land-use planning processes. The authorities should ensure that there is adequate time and opportunity for such planning and that it is not jeopardized or undermined by the approval of new extraction projects.

- Call on the province to fulfil its commitment to ensure that all provincial licensing bodies fully respect the legal duty

of consultation and accommodation. This means that projects affecting the rights of Indigenous peoples are carried out only after broad consultation with all potentially affected communities and measures are taken to demonstrably accommodate any identified threats to Indigenous peoples’ rights.

Send letters to:

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