12 September 2013

JOINT STATEMENT

Indigenous Peoples have the right to make decisions about the development of their lands

Six years ago – on September 13, 2007 – the United Nations General Assembly adopted the *UN Declaration on the Rights of Indigenous Peoples* as the minimum standards for the "survival, dignity and well-being" of Indigenous Peoples around the world.

The *UN Declaration* recognizes Indigenous Peoples' right to self-determination and calls for the full and effective participation of Indigenous Peoples in all decisions potentially affecting their land. The *Declaration* urges partnership and collaboration between states and Indigenous Peoples. It sets out the requirement of free, prior and informed consent (FPIC) to protect the right of Indigenous Peoples to make decisions about whether and when development should proceed.

Implementation of the *UN Declaration* remains critical as Indigenous Peoples around the world continue to face exploitation of the natural resources of their territories. FPIC and other rights affirmed in the *UN Declaration* provide indispensable safeguards as Indigenous Peoples struggle to overcome a history of discrimination, marginalization and dispossession.

James Anaya, the UN Special Rapporteur on the Rights of Indigenous Peoples, has said, "*Implementation of the Declaration should be regarded as a political, moral and legal imperative without qualification."*

In this context, it is alarming that Canada, a country at the center of the global extractive industry, continues to fight against recognition and implementation of the human rights protections set out in the *UN Declaration*.

An estimated three-quarters of the world's mining and mineral exploration companies are headquartered in Canada. Canada's national Economic Action Plan is intended to support the development of an estimated 600 new large-scale resource extraction projects in the next decade. Also, Canada is promoting opportunities for Canadian oil and gas, mining and other extractive industries to expand their operations around the world.

Many of these projects will affect lands and waters that Indigenous Peoples depend on as the basis of their economies, cultural traditions, languages and spiritual life. Indigenous Peoples' rights over these lands are often the subject of ongoing legal disputes arising from centuries of unlawful dispossession under discredited doctrines such as Terra Nullius and the Doctrine of Discovery. In some cases, such as oil sands extraction or hydraulic fracturing, the long term and cumulative effects of the planned development are poorly understood.

For Indigenous women, unchecked resource development has been especially destructive, contributing to a rise in violence, sex trafficking and exploitation as large numbers of outside workers are brought into Indigenous Peoples' territories.

A very high standard of precaution is essential to ensure that any decisions about resource development benefit rather than harm Indigenous Peoples. Under international human rights law, that standard will almost always be one of free, prior and informed consent.

Regretfully Canada has taken the unsupportable position that the *UN Declaration* should have no effect on development decisions. This position is contrary to basic principles of international law and the decisions of Canadian courts.

International human rights instruments such as the *UN Declaration* provide vital guidance to governments, courts and the private sector in defining the rights that may be at stake and the measures needed to protect them. The *UN Declaration*

reflects foundational principles of international law, such as the prohibition against racial discrimination, and incorporates standards already well-established through expert interpretation and application of other regional and international human rights instruments.

Canadian courts have concluded that declarations and other instruments are "relevant and persuasive" sources of interpretation of human rights in Canada.[1] Court interpretation of the affirmation of Aboriginal and Treaty rights in the Canadian Constitution has evolved in parallel to international law and reached conclusions that would support international human rights, including free, prior and informed consent. The Supreme Court of Canada has called for Indigenous Peoples' meaningful participation in decision making and the substantial accommodation of their concerns including, where there are very serious issues, acknowledgement that projects should proceed on the basis of Indigenous Peoples' consent.[2] The Supreme Court of Canada will specifically consider the relevance of international human rights standards including the *UN Declaration* in a crucial case on Aboriginal title, the *William* case, which comes before the Court this November.

The federal government has opposed the right of FPIC by casting it as an unacceptable power of absolute veto. This is misleading. Very few rights in international law are absolute. International human rights bodies have been clear that FPIC is a protective measure that is applied in proportion to the potential for harm – the same standard supported by Canadian courts.

The federal government's continued opposition to FPIC puts Canada at odds with progressive trends within industry. Since the adoption of the *UN Declaration*, there has been clear and growing momentum toward FPIC in the private sector with the standard being adopted or endorsed by influential bodies, including the International Financial Corporation, the arm of the World Bank responsible for private sector funding, and the International Council on Mining and Metals.

The imposition of resource development without the meaningful involvement of Indigenous Peoples, or against their wishes, is a colonialist model that has no place in the 21st Century. We must dispense with colonial attitudes and practices so that the human rights of all can be respected and fulfilled without discrimination. The *UN Declaration* provides a roadmap for another approach, based on human rights, justice, non-discrimination and reconciliation – values that all Canadians can be proud to support. Such an approach is long overdue and should be embraced.

The joint statement was endorsed by the following organizations:

Amnesty International Canada
Assembly of First Nations
Canadian Friends Service Committee (Quakers)
Chiefs of Ontario
Council of Canadians
Federation of Saskatchewan Indian Nations
First Nations Summit (British Columbia)
Femmes Autochtones du Québec / Quebec Native Women
Grand Council of the Crees (Eeyou Istchee)
Haudenosaunee of Kanehsatà:ke
Inuit Tapiriit Kanatami
KAIROS: Canadian Ecumenical Justice Initiatives
MiningWatch Canada
Native Women's Association of Canada
Union of British Columbia Indian Chiefs

---

1 For example, *Reference re Public Service Employee Relations Act (Alberta)*, [1987] 1 SCR. 313 and *Canada (Human Rights Commission) v. Canada (Attorney General)*, [2012] FC 445.
2 For example, *Delgamuukw v. British Columbia*, [1997] 3 SCR. 1010 and *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511.