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PUBLIC STATEMENT

Canada uses World Conference to continue indefensible attack on *UN Declaration on the Rights of Indigenous Peoples*

Indigenous peoples' organizations and human rights groups are outraged that the federal government used a high level United Nations forum on Indigenous rights as an opportunity to continue its unprincipled attack on the *UN Declaration on the Rights of Indigenous Peoples*.

On Monday, the World Conference on Indigenous Peoples -- a high level plenary of the UN General Assembly in New York -- adopted a consensus statement reaffirming support for the *UN Declaration*.

Canada was the only member state to raise objections.

Chief Perry Bellegarde, Federation of Saskatchewan Indian Nations, said, "The World Conference was an opportunity for all states to reaffirm their commitment to working constructively with Indigenous peoples to uphold fundamental human rights standards. Alone among all the UN members, Canada instead chose to use this forum to make another unprincipled attack on those very standards."

The Outcome Document, the product of many months of negotiations between states and Indigenous representatives prior to the World Conference, calls on member states to take "appropriate measures at the national level, including legislative, policy and administrative measures, to achieve the ends of the *United Nations Declaration on the Rights of Indigenous Peoples*."

The Outcome Document also affirms provisions in the *UN Declaration* that decisions potentially affecting the rights of Indigenous peoples should be undertaken only with their free, prior and informed consent.

After the Outcome Document was adopted, Canada filed a two page statement of objections, saying that it could not commit to uphold provisions in the *UN Declaration* that deal with free, prior and informed consent (FPIC) if these provisions were "interpreted as a veto."

The notion that the *Declaration* could be interpreted as conferring an absolute and unilateral veto power has been repeatedly raised by Canada as a justification for its continued opposition to the *Declaration*. This claim, however, has no basis either in the *UN Declaration* or in the wider body of international law.

Like standards of accommodation and consent set out by the Supreme Court of Canada, FPIC in international law is applied in proportion to the potential for harm

to the rights of Indigenous peoples and to the strength of these rights. The word “veto” does not appear in the *UN Declaration*.

"The right of free, prior and informed consent is crucial to us, as self-determining peoples," said Matthew Coon Come, Grand Chief of the Grand Council of the Crees. "The government has never explained what it means by 'veto.' Is a 'veto' absolute? If so, then a 'veto' isn't the same thing as 'consent.'"

In international law, human rights are generally relative and not absolute. The right to free, prior and informed consent in the *UN Declaration* is not absolute.

Grand Chief Ed John, First Nations Summit, said, "In the recent decision recognizing Tsilhqot'in title, the Supreme Court itself rejected Canada's incomprehensible position."

In its unanimous decision recognizing Tsilhqot'in ownership of a large part of their traditional lands, the Supreme Court stated in June, "Governments and individuals proposing to use or exploit land, whether before or after a declaration of Aboriginal title, can avoid a charge of infringement or failure to adequately consult by obtaining the consent of the interested Aboriginal group."

National Chief Ghislain Picard, Assembly of First Nations, said, "Canada keeps insisting that Indigenous peoples don't have a say in development on their lands. This position is not consistent with the *UN Declaration on the Rights of Indigenous Peoples*, decisions by its own courts, or the goal of reconciliation."

Regional Chief Stan Beardy, Chiefs of Ontario, said, "Either through the social license to operate, which refers to the level of acceptance or approval that a local community provides to development, or a Notice of Assertions as provided by First Nations in Ontario this past summer, First Nations are already exercising a direct say about development on their lands -- whether Canada objects internationally or not."

Grand Chief Stewart Phillip, President of the Union of BC Indian Chiefs, said, "The Outcome Document speaks directly to the pressing human rights concerns of Indigenous Peoples in Canada such as Indigenous Peoples' participation in consent-based decisions regarding resource development, the need to close the gap in access to government services, and the dire need to address violence against Indigenous women. In light of the game-changing Supreme Court of Canada *Tsilhqot'in Nation* decision, Canada should have embraced the Outcome Document rather than be the only State in the United Nations to invent self-serving reasons to object."

Canada's objection to the World Conference Outcome Document contradicts Canada's 2010 statement of endorsement of the *UN Declaration* in which the government said, "We are now confident that Canada can interpret the principles

expressed in the *Declaration* in a manner that is consistent with our Constitution and legal framework.”

In contrast, Canada told the UN that FPIC provisions in the *Declaration* “run counter to Canada’s constitution” and would “negate” Supreme Court mandated policies on consultation and accommodation.

“It strains credibility to think Canadian officials could actually believe the ridiculous claims they presented to the United Nations,” said Michelle Audette, President of the Native Women’s Association of Canada. “This kind of bad faith and dishonesty will only further tarnish Canada’s reputation and erode Canada’s influence on the world stage.”

On 1 May 2008, over 100 scholars and experts in Canadian constitutional and international law signed an Open Letter stating that the *Declaration* was “consistent with the Canadian Constitution and Charter ... Government claims to the contrary do a grave disservice to the cause of human rights and to the promotion of harmonious and cooperative relations.”

The Outcome Document adopted by the UN General Assembly also calls for “equal access to high-quality education that recognizes the diversity of the culture of indigenous peoples, as well as health, housing, water, sanitation and other economic and social programmes to improve their well-being.” Specific measures are urged for Indigenous people with disabilities and to address HIV/AIDS.

In addition, the Outcome Document calls for “measures which will ensure the full and effective participation of indigenous women in decision making processes at all levels and in all areas,” as well as intensified efforts to stop violence against Indigenous women.

- Ad hoc coalition on the *UN Declaration on the Rights of Indigenous Peoples*

Statement endorsed by

Amnesty International Canada

Assembly of First Nations

Canadian Friends Service Committee

Chiefs of Ontario

Federation of Saskatchewan Indian Nations

First Nations Summit

Grand Council of the Crees(Eeyoulstchee)

Indigenous World Association

KAIROS: Canadian Ecumenical Justice Initiatives

Native Women’s Association of Canada

Union of British Columbia Indian Chiefs